

# **SECURITIES AMENDMENT ACT, 2006**

## **Chapter 30**

*(Assented to May 24, 2006)*

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) in clause (b) by adding “by reference” after “incorporated”;**
- (b) by repealing clause (d);**
- (c) by repealing clause (l) and substituting the following:**
  - (l) “control person” means
    - (i) a person or company who holds a sufficient number of the voting rights attached to all outstanding voting securities of an issuer to affect materially the control of the issuer, and if a person or company holds more than 20% of the voting rights attached to all outstanding voting securities of an issuer, the person or company is deemed, in the absence of evidence to the contrary, to hold a sufficient number of the voting rights to affect materially the control of the issuer, or
    - (ii) each person or company, or combination of persons or companies acting in concert by virtue of an agreement, arrangement, commitment or

understanding, who holds in total a sufficient number of the voting rights attached to all outstanding voting securities of an issuer to affect materially the control of the issuer, and if a combination of persons or companies holds more than 20% of the voting rights attached to all outstanding voting securities of an issuer, the combination of persons or companies is deemed, in the absence of evidence to the contrary, to hold a sufficient number of the voting rights to affect materially the control of the issuer;

**(d) in clause (n) by adding** “or under a delegation or other transfer of an extra-provincial authority under section 211.2” **after** “regulations”;

**(e) by repealing clause (o) and substituting the following:**

(o) “director” means a director of a company or an individual performing a similar function or occupying a similar position for a company or for any other person;

**(f) by adding the following after clause (w):**

(w.1) “forward-looking information” means disclosure regarding possible events, conditions or results of operations that is based on assumptions about future economic conditions and courses of action, and includes future-oriented financial information with respect to prospective results of operations, financial position or cash flows that is presented either as a forecast or a projection;

**(g) by repealing clause (aa) and substituting the following:**

(aa) “insider” means

(i) a director or officer of an issuer,

(ii) a director or officer of a person or company that is itself an insider or subsidiary of an issuer,

(iii) a person or company that has

(A) beneficial ownership of, or control or direction over, directly or indirectly, or

- (B) a combination of beneficial ownership of and control or direction over, directly or indirectly,  
  
securities of an issuer carrying more than 10% of the voting rights attached to all the issuer's outstanding voting securities, excluding, for the purpose of the calculation of the percentage held, any securities held by the person or company as underwriter in the course of a distribution,
- (iv) an issuer that has purchased, redeemed or otherwise acquired a security of its own issue, for so long as it continues to hold that security,
- (v) a person designated as an insider in an order made under section 10, or
- (vi) a person that is in a prescribed class of persons;

**(h) by repealing clause (ff) and substituting the following:**

- (ff) "material change" means,
  - (i) if used in relation to an issuer other than an investment fund,
    - (A) a change in the business, operations or capital of the issuer that would reasonably be expected to have a significant effect on the market price or value of a security of the issuer, or
    - (B) a decision to implement a change referred to in paragraph (A) made by the directors of the issuer, or by senior management of the issuer who believe that confirmation of the decision by the directors is probable,
  - and
  - (ii) if used in relation to an issuer that is an investment fund,
    - (A) a change in the business, operations or affairs of the issuer that would be considered important by a reasonable investor in determining whether to purchase or to continue to hold a security of the issuer, or

- (B) a decision to implement a change referred to in paragraph (A) made
  - (I) by the directors of the issuer or the directors of the investment fund manager of the issuer,
  - (II) by senior management of the issuer who believe that confirmation of the decision by the directors is probable, or
  - (III) by senior management of the investment fund manager of the issuer who believe that confirmation of the decision by the directors of the investment fund manager of the issuer is probable;

**(i) by repealing clause (II) and substituting the following:**

- (II) “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);

**(j) by repealing clause (qq);**

**(k) in clause (ccc)**

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

- (ii) that has
  - (A) filed a prospectus for which the Executive Director has issued a receipt under this Act, or
  - (B) filed a securities exchange take-over bid circular under this Act on or before June 1, 1999,

**(ii) by repealing subclause (iv) and substituting the following:**

- (iv) whose existence continues following the exchange of securities of an issuer in connection with an amalgamation, merger, reorganization, arrangement or a statutory procedure, in which one of the parties to the amalgamation, merger, reorganization, arrangement or statutory procedure was a reporting issuer at the time of the amalgamation, merger, reorganization, arrangement or statutory procedure;

**(l) by repealing clause (hhh) and substituting the following:**

- (hhh) “self-regulatory organization” means a person or company that is organized for the purpose of regulating the operations and the standards of practice and business conduct of its members;

**(m) by repealing clause (iii);**

- (n) in clause (kkk)(vi) by adding “listed in Schedule I, II or III of the *Bank Act* (Canada)” after “bank”.**

**3 Sections 7 and 7.1 are repealed.**

**4 Section 8 is repealed.**

**5 Section 22(3) is amended by striking out “151,”.**

**6 The following is added after section 33:**

**Late filing of periodic disclosure**

**33.1(1)** Notwithstanding section 198(3), if a person or company fails to file periodic disclosure under section 146, the Commission or the Executive Director may, without providing an opportunity to be heard, order one or more of the following:

- (a) that trading in or purchasing cease in respect of any security or exchange contract as specified in the order;
- (b) that a person or company cease trading in or purchasing securities, exchange contracts, specified securities or a

class of securities or exchange contracts as specified in the order.

(2) The Commission or the Executive Director, as the case may be, shall send to any person or company directly affected by an order made under subsection (1) written notice of the order.

**7 Section 40(1)(d) is amended by striking out “a mutual fund” and substituting “an investment fund”.**

**8 Section 58(1)(i) is amended by striking out “a mutual fund” and substituting “an investment fund”.**

**9 Section 76 is repealed and the following is substituted:**

**Registration by Executive Director**

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

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

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

(2) The Executive Director may restrict a registration by imposing terms and conditions on the registration and, without limiting the generality of these powers, may

- (a) restrict the duration of the registration, and
- (b) restrict the registration to trades in certain securities or exchange contracts or a certain class of securities or exchange contracts.

(3) The Executive Director shall not refuse to grant, renew, reinstate or amend registration or impose terms and conditions on it without giving the registrant or applicant an opportunity to be heard.

**10 Section 77 is repealed.**

**11 Section 78 is repealed and the following is substituted:**

**Surrender of registration**

**78(1)** If a registrant applies to surrender its registration, the Executive Director shall accept the surrender unless the Executive Director considers it prejudicial to the public interest to do so.

**(2)** On receiving an application under subsection (1), the Executive Director may, without providing an opportunity to be heard, suspend the registration or impose conditions or restrictions on the registration.

**12 Section 79 is repealed.**

**13 Section 80 is repealed.**

**14 Section 81 is repealed.**

**15 Section 83 is repealed.**

**16 Section 100 is repealed and the following is substituted:**

**Representation or holding out of registration**

**100(1)** A person or company shall not represent that the person or company is registered under this Act unless

- (a) the representation is true, and
- (b) in making the representation, the person or company specifies the person or company's category of registration under this Act and the regulations.

**(2)** A person or company shall not make a statement about something that a reasonable investor would consider important in deciding whether to enter into or maintain a trading or advising relationship with the person or company if the statement is untrue or omits information necessary to prevent

the statement from being false or misleading in the circumstances in which it is made.

**17 Section 114 is repealed.**

**18 Section 115 is repealed.**

**19 Section 116 is repealed.**

**20 Section 117 is repealed.**

**21 Section 118 is repealed.**

**22 Section 120 is repealed and the following is substituted:**

**Receipt for prospectus**

**120(1)** Subject to subsection (2), the Executive Director shall issue a receipt for a prospectus filed under this Part unless the Executive Director considers that it is not in the public interest to do so.

**(2)** The Executive Director shall not issue a receipt for a prospectus under this Part if the Executive Director considers that

- (a) the prospectus or any document required to be filed with it
  - (i) does not comply in any substantial respect with any of the requirements of this Part or the regulations,
  - (ii) contains any statement, promise, estimate or forward-looking information that is misleading, false or deceptive, or
  - (iii) contains a misrepresentation,
- (b) an unconscionable consideration has been paid or given or is intended to be paid or given for any services or promotional purposes or for the acquisition of property,
- (c) the aggregate of

- (i) the proceeds from the sale of the securities under the prospectus that are to be paid into the treasury of the issuer, and
  - (ii) the other resources of the issuer
- is insufficient to accomplish the purpose of the issue stated in the prospectus,
- (d) the issuer cannot reasonably be expected to be financially responsible in the conduct of its business because of the financial condition of
    - (i) the issuer,
    - (ii) any of the issuer's officers, directors, promoters or control persons, or
    - (iii) the investment fund manager of the issuer or any of the investment fund manager's officers, directors or control persons,
  - (e) the business of the issuer may not be conducted with integrity and in the best interests of the security holders of the issuer because of the past conduct of
    - (i) the issuer,
    - (ii) any of the issuer's officers, directors, promoters or control persons, or
    - (iii) the investment fund manager of the issuer or any of the investment fund manager's officers, directors or control persons,
  - (f) a person or company that has prepared or certified any part of the prospectus, or that is named as having prepared or certified a report or valuation used in connection with the prospectus, is not acceptable,
  - (g) an escrow or pooling agreement in the form that the Executive Director considers necessary or advisable with respect to the securities has not been entered into, or
  - (h) adequate arrangements have not been made for the holding in trust of the proceeds payable to the issuer

from the sale of securities pending the distribution of the securities.

(3) No person or company filing a prospectus shall be refused a receipt for that prospectus without being given an opportunity to be heard.

**23 Section 121 is repealed.**

**24 Section 124 is repealed.**

**25 Section 125 is repealed.**

**26 Section 126(2) is amended by striking out “under section 125” and substituting “in accordance with the regulations”.**

**27 Section 129 is repealed.**

**28 Section 130 is repealed and the following is substituted:**

**Revocation of purchase**

**130** A person or company that purchases a security under a distribution to which section 110(1) applies may cancel the purchase in accordance with the regulations.

**29 Section 141 is repealed and the following is substituted:**

**Reporting issuer - default**

**141** The Commission may publish a list of defaulting reporting issuers.

**30 Section 146 is repealed and the following is substituted:**

**Disclosure generally**

**146** A reporting issuer shall, in accordance with the regulations,

- (a) provide prescribed periodic disclosure about its business and affairs,
- (b) provide disclosure of a material change, and

- (c) provide other prescribed disclosure.

**31 Sections 149 to 152 are repealed.**

**32 Section 154 is repealed.**

**33 Sections 158 to 175 are repealed and the following is substituted:**

**Interpretation**

**158** For the purposes of this Part,

- (a) “interested person” means
  - (i) an issuer whose securities are the subject of a take-over bid, issuer bid or other offer to acquire,
  - (ii) a security holder, director or officer of an issuer described in subclause (i),
  - (iii) an offeror,
  - (iv) the Executive Director, and
  - (v) any person or company not referred to in subclauses (i) to (iv) who, in the opinion of the Commission or the Court of Queen’s Bench, as the case may be, is a proper person to make an application under section 179 or 180;
- (b) “issuer bid” means a direct or indirect offer to acquire or redeem a security or a direct or indirect acquisition or redemption of a security that is
  - (i) made by the issuer of the security, and
  - (ii) within a prescribed class of offers, acquisitions or redemptions;
- (c) “take-over bid” means a direct or indirect offer to acquire a security that is
  - (i) made directly or indirectly by a person or company other than the issuer of the security, and

- (ii) within a prescribed class of offers to acquire.

**Making a bid**

**159** A person or company shall not make a take-over bid or issuer bid, whether alone or acting jointly or in concert with one or more persons, except in accordance with the regulations.

**Directors' or director's or officer's recommendation**

**160(1)** When a take-over bid has been made, the directors of the issuer whose securities are the subject of the bid shall

- (a) determine whether to recommend acceptance or rejection of the bid or determine not to make a recommendation, and
- (b) make the recommendation, or a statement that they are not making a recommendation, in accordance with the regulations.

**(2)** An individual director or officer of the issuer described in subsection (1) may recommend acceptance or rejection of the take-over bid if the recommendation is made in accordance with the regulations.

**34 Sections 176 to 178 are repealed.**

**35 Section 179 is repealed and the following is substituted:**

**Applications to the Commission**

**179(1)** On application by an interested person, if the Commission considers that a person has not complied or is not complying with this Part or the regulations, the Commission may make an order

- (a) restraining the distribution of any document, record or materials used or issued in connection with a take-over bid or issuer bid,
- (b) requiring an amendment to or variation of any document, record or materials used or issued in connection with a take-over bid or issuer bid and requiring the distribution of amended, varied or corrected information,

- (c) directing any person or company to comply with this Part or the regulations,
- (d) restraining any person or company from contravening this Part or the regulations, or
- (e) directing the directors and officers of any person or company to cause the person or company to comply with or to cease contravening this Part or the regulations.

(2) On application by an interested person, the Commission may order that a person or company is exempt from any requirement under this Part or the regulations if the Commission considers it would not be prejudicial to the public interest to do so.

**36 Section 180 is repealed and the following is substituted:**

**Applications to the court**

**180(1)** On application by an interested person, if the Court of Queen's Bench is satisfied that a person or company has not complied with this Part or the regulations, the Court of Queen's Bench may make an interim or final order as the court sees fit, including, without limitation, an order

- (a) compensating any interested person who is a party to the application for damages suffered as a result of a contravention of this Part or the regulations,
- (b) rescinding a transaction with any interested person, including the issue of a security or a purchase and sale of a security,
- (c) requiring any person or company to dispose of any securities acquired pursuant to or in connection with a take-over bid or issuer bid,
- (d) prohibiting any person or company from exercising any or all of the voting rights attached to any securities, or
- (e) requiring the trial of an issue.

(2) If the Executive Director is not the applicant under subsection (1), the Executive Director

- (a) must be given notice of the application, and

- (b) is entitled to appear at the hearing and make representations to the Court of Queen's Bench.

**37 Section 181 is repealed.**

**38 Section 182 is repealed and the following is substituted:**

**Reports of insider**

**182** An insider of a reporting issuer shall file reports and make disclosure in accordance with the regulations.

**39 The following is added after section 182:**

**Early warning**

**182.1** If a person or company acquires beneficial ownership, directly or indirectly of, or direct or indirect control or direction over, securities of a prescribed type or class of a reporting issuer representing a prescribed percentage of the outstanding securities of that type or class, the person or company and any person or company acting jointly or in concert with the person or company shall make and file disclosure in accordance with the regulations and comply with any prohibitions in the regulations on transactions in securities of the reporting issuer.

**40 Section 183 is repealed.**

**41 Section 187 is repealed.**

**42 Section 190 is repealed and the following is substituted:**

**Standard of care for management  
of investment fund**

**190** Every investment fund manager shall

- (a) exercise the powers and discharge the duties of its office honestly, in good faith and in the best interests of the investment fund, and
- (b) exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances.

**43 The following is added after section 193:****Authorized exceptions to prohibitions**

**193.1** If the regulations so provide, a body established under section 193.2(1) by an investment fund may approve a transaction that is prohibited under this Part, in which case the prohibition does not apply to the transaction.

**Oversight, etc., of investment funds**

**193.2(1)** If required to do so by the regulations, an investment fund shall establish and maintain a body for the purposes of overseeing activities of the investment fund and the investment fund manager, reviewing or approving prescribed matters affecting the investment fund, including transactions referred to in section 193.1, and disclosing information to security holders of the fund, to the investment fund manager and to the Commission.

(2) The body has such powers and duties as may be prescribed by the regulations.

**44 Section 198 is amended****(a) in subsection (1) by adding the following after clause (b):**

- (b.1) that the registration or recognition of a person or company under Alberta securities laws be suspended or restricted for such period as is specified in the order or be terminated, or that terms and conditions be imposed on the registration or recognition;
- (b.2) that a registrant be reprimanded;

**(b) by adding the following after subsection (1.1):**

**(1.2)** The Commission may, after providing an opportunity to be heard, make an order under subsection (1)(a) to (e) against a director or officer of a company or of a person other than an individual who authorizes, permits or acquiesces in the contravention of Alberta securities laws or conduct contrary to the public interest.

**(c) in subsection (2) by striking out “subsection (1)” and substituting “subsection (1), (1.1) or (1.2)”.**

**45 Section 199(1) is repealed and the following is substituted:****Administrative penalty****199(1)** If the Commission, after a hearing,

- (a) determines that
  - (i) a person or company has contravened or failed to comply with any provision of Alberta securities laws, or
  - (ii) a director or officer of a person or company or a person other than an individual authorized, permitted or acquiesced in a contravention or failure to comply with any provision of Alberta securities laws by the person or company,

and

- (b) considers it to be in the public interest to make the order,

the Commission may order the person or company to pay an administrative penalty of not more than \$1 000 000 for each contravention or failure to comply.

**46 Section 203 is amended**

- (a) **in subsections (1)(b) and (2)(b) by striking out** “who is required to sign the certificate referred to in section 117” **and substituting** “that is in a contractual relationship with the issuer or selling security holder on whose behalf the distribution is made”;
- (b) **in subsection (1)(d) by striking out** “whose consent has been filed pursuant to a requirement of the regulations” **and substituting** “whose consent to disclosure of information in the prospectus has been filed”.

**47 Section 205 is amended**

- (a) **in subsection (1)**
  - (i) **by striking out** “that is sent” **and substituting** “is sent”;

- (ii) **by striking out** “by Part 14” **and substituting** “under the regulations and that document”;
- (b) **in subsection (2)**
  - (i) **by striking out** “sent to” **and substituting** “is sent to”;
  - (ii) **by striking out** “by Part 14” **and substituting** “under the regulations and that document”;
- (c) **by repealing subsection (10).**

**48 The following is added after section 205:**

**Defence to liability for misrepresentation**

**205.1** A person or company is not liable in an action under section 203, 204 or 205 for a misrepresentation in forward-looking information if the person or company proves all of the following:

- (a) the document containing the forward-looking information contained, proximate to that information,
  - (i) reasonable cautionary language identifying the forward-looking information as such, and identifying material factors that could cause actual results to differ materially from a conclusion, forecast or projection in the forward-looking information, and
  - (ii) a statement of the material factors or assumptions that were applied in drawing a conclusion or making a forecast or projection set out in the forward-looking information;
- (b) the person or company had a reasonable basis for drawing the conclusions or making the forecasts and projections set out in the forward-looking information.

**49 Section 206 is amended**

- (a) **in clause (a) by striking out** “in compliance with section 129” **and substituting** “under the regulations”;
- (b) **in clause (b) by striking out** “in compliance with Part 14” **and substituting** “under the regulations”.

**50 Section 208 is amended**

- (a) **in subsections (3), (4), (9) and (10) by striking out “mutual fund” wherever it occurs and substituting “investment fund”;**
- (b) **in subsection (5)**
  - (i) **by striking out “a board of directors” and substituting “the directors”;**
  - (ii) **by striking out “the board of directors” and substituting “the directors”.**

**51 Section 210 is repealed.****52 The following is added after Part 17:**

**Part 17.01  
Civil Liability for Secondary  
Market Disclosure**

**Definitions**

**211.01** In this Part,

- (a) “compensation” means compensation received during the 12-month period immediately preceding the day on which the misrepresentation was made or on which the failure to make timely disclosure first occurred, together with the fair market value of all deferred compensation including, without limitation, options, pension benefits and stock appreciation rights, granted during the same period, valued as of the date that such compensation is awarded;
- (b) “core document” means,
  - (i) where used in relation to
    - (A) a director of a responsible issuer who is not also an officer of the responsible issuer,
    - (B) an influential person, other than an officer of the responsible issuer or an investment fund manager

where the responsible issuer is an investment fund, or

- (C) a director or officer of an influential person who is not also an officer of the responsible issuer, other than an officer of an investment fund manager,

a prospectus, a take-over bid circular, an issuer bid circular, a directors' circular, a rights offering circular, management's discussion and analysis, an annual information form, an information circular, annual financial statements and interim financial statements of the responsible issuer;

- (ii) where used in relation to

- (A) a responsible issuer or an officer of the responsible issuer,
- (B) an investment fund manager where the responsible issuer is an investment fund, or
- (C) an officer of an investment fund manager where the responsible issuer is an investment fund,

a prospectus, a take-over bid circular, an issuer bid circular, a directors' circular, a rights offering circular, management's discussion and analysis, an annual information form, an information circular, annual financial statements, interim financial statements and a material change report required under section 146 of the responsible issuer, and

- (iii) such other documents as may be prescribed by regulation for the purposes of this definition;

- (c) "document" means any written communication, including a communication prepared and transmitted only in electronic form,

- (i) that is required to be filed with the Commission, or

- (ii) that is not required to be filed with the Commission and

- (A) that is filed with the Commission,

- (B) that is filed or required to be filed with a government or an agency of a government under applicable securities or corporate law or with any exchange or quotation and trade reporting system under its bylaws, rules or regulations, or
  - (C) that is any other communication the content of which would reasonably be expected to affect the market price or value of a security of the responsible issuer;
- (d) “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 an approved rating organization;
- (e) “failure to make timely disclosure” means a failure to disclose a material change in the manner and at the time required under this Act;
- (f) “influential person” means, in respect of a responsible issuer,
- (i) a control person,
  - (ii) a promoter,
  - (iii) an insider who is not a director or officer of the responsible issuer, or
  - (iv) an investment fund manager, if the responsible issuer is an investment fund;
- (g) “issuer’s security” means a security of a responsible issuer and includes a security
- (i) the market price or value of which, or payment obligations under which, are derived from or based on a security of the responsible issuer, and
  - (ii) that is created by a person or company on behalf of the responsible issuer or is guaranteed by the responsible issuer;

- (h) “liability limit” means,
- (i) in the case of a responsible issuer, the greater of
    - (A) 5% of its market capitalization as defined in the regulations, and
    - (B) \$1 000 000,
  - (ii) in the case of a director or officer of a responsible issuer, the greater of
    - (A) \$25 000, and
    - (B) 50% of the aggregate of the director’s or officer’s compensation from the responsible issuer and its affiliates,
  - (iii) in the case of an influential person who is not an individual, the greater of
    - (A) 5% of its market capitalization as defined in the regulations, and
    - (B) \$1 000 000,
  - (iv) in the case of an influential person who is an individual, the greater of
    - (A) \$25 000, and
    - (B) 50% of the aggregate of the influential person’s compensation from the responsible issuer and its affiliates,
  - (v) in the case of a director or officer of an influential person, the greater of
    - (A) \$25 000, and
    - (B) 50% of the aggregate of the director’s or officer’s compensation from the influential person and its affiliates,
  - (vi) in the case of an expert, the greater of
    - (A) \$1 000 000, and

(B) the revenue that the expert and the affiliates of the expert have earned from the responsible issuer and its affiliates during the 12 months preceding the misrepresentation,

and

(vii) in the case of each person who made a public oral statement, other than an individual referred to in subclause (iv), (v) or (vi), the greater of

(A) \$25 000, and

(B) 50% of the aggregate of the person's compensation from the responsible issuer and its affiliates;

- (i) "management's discussion and analysis" means the section of an annual information form, annual report or other document that contains management's discussion and analysis of the financial condition and results of operations of a responsible issuer as required under Alberta securities laws;
- (j) "public oral statement" means an oral statement made in circumstances in which a reasonable person would believe that information contained in the statement will become generally disclosed;
- (k) "release" means, with respect to information or a document, to file with the Commission or any other securities regulatory authority in Canada or an exchange or to otherwise make available to the public;
- (l) "responsible issuer" means
- (i) a reporting issuer, or
  - (ii) any other issuer with a real and substantial connection to Alberta, any of whose securities are publicly traded;
- (m) "trading day" means a day during which the principal market as defined in the regulations for the security is open for trading.

**Application**

**211.02** This Part does not apply to

- (a) the purchase of a security offered by a prospectus during the period of distribution,
- (b) the acquisition of an issuer's security pursuant to a distribution that is exempt from section 110, except as may be prescribed by regulation,
- (c) the acquisition or disposition of an issuer's security in connection with or pursuant to a take-over bid or issuer bid, except as may be prescribed by regulation, or
- (d) such other transactions or class of transactions as may be prescribed by regulation.

**Liability for secondary market disclosure**

**211.03(1)** Where a responsible issuer or a person or company with actual, implied or apparent authority to act on behalf of a responsible issuer releases a document that contains a misrepresentation, a person or company who acquires or disposes of the issuer's security during the period between the time when the document was released and the time when the misrepresentation contained in the document was publicly corrected has, without regard to whether the person or company relied on the misrepresentation, a right of action for damages against

- (a) the responsible issuer,
- (b) each director of the responsible issuer at the time the document was released,
- (c) each officer of the responsible issuer who authorized, permitted or acquiesced in the release of the document,
- (d) each influential person, and each director and officer of an influential person, who knowingly influenced
  - (i) the responsible issuer or any person or company acting on behalf of the responsible issuer to release the document, or
  - (ii) a director or officer of the responsible issuer to authorize, permit or acquiesce in the release of the document,

and

- (e) each expert where
  - (i) the misrepresentation is also contained in a report, statement or opinion made by the expert,
  - (ii) the document includes, summarizes or quotes from the report, statement or opinion of the expert, and
  - (iii) if the document was released by a person or company other than the expert, the expert consented in writing to the use of the report, statement or opinion in the document.

(2) Where a person with actual, implied or apparent authority to speak on behalf of a responsible issuer makes a public oral statement that relates to the business or affairs of the responsible issuer and that contains a misrepresentation, a person or company who acquires or disposes of the issuer's security during the period between the time when the public oral statement was made and the time when the misrepresentation contained in the public oral statement was publicly corrected has, without regard to whether the person or company relied on the misrepresentation, a right of action for damages against

- (a) the responsible issuer,
- (b) the person who made the public oral statement,
- (c) each director and officer of the responsible issuer who authorized, permitted or acquiesced in the making of the public oral statement,
- (d) each influential person, and each director and officer of the influential person, who knowingly influenced
  - (i) the person who made the public oral statement to make the public oral statement, or
  - (ii) a director or officer of the responsible issuer to authorize, permit or acquiesce in the making of the public oral statement,

and

- (e) each expert where
  - (i) the misrepresentation is also contained in a report, statement or opinion made by the expert,
  - (ii) the person making the public oral statement includes, summarizes or quotes from the report, statement or opinion of the expert, and
  - (iii) if the public oral statement was made by a person other than the expert, the expert consented in writing to the use of the report, statement or opinion in the public oral statement.
- (3) Where an influential person or a person or company with actual, implied or apparent authority to act or speak on behalf of the influential person releases a document or makes a public oral statement that relates to a responsible issuer and that contains a misrepresentation, a person or company who acquires or disposes of the issuer's security during the period between the time when the document was released or the public oral statement was made and the time when the misrepresentation contained in the document or public oral statement was publicly corrected has, without regard to whether the person or company relied on the misrepresentation, a right of action for damages against
  - (a) the responsible issuer, if a director or officer of the responsible issuer, or where the responsible issuer is an investment fund, the investment fund manager, authorized, permitted or acquiesced in the release of the document or the making of the public oral statement,
  - (b) the person who made the public oral statement,
  - (c) each director and officer of the responsible issuer who authorized, permitted or acquiesced in the release of the document or the making of the public oral statement,
  - (d) the influential person,
  - (e) each director and officer of the influential person who authorized, permitted or acquiesced in the release of the document or the making of the public oral statement, and
  - (f) each expert where

- (i) the misrepresentation is also contained in a report, statement or opinion made by the expert,
- (ii) the document or public oral statement includes, summarizes or quotes from the report, statement or opinion of the expert, and
- (iii) if the document was released or the public oral statement was made by a person other than the expert, the expert consented in writing to the use of the report, statement or opinion in the document or public oral statement.

(4) Where a responsible issuer fails to make a timely disclosure, a person or company who acquires or disposes of the issuer's security between the time when the material change was required to be disclosed in the manner required under this Act and the subsequent disclosure of the material change has, without regard to whether the person or company relied on the responsible issuer having complied with its disclosure requirements, a right of action for damages against

- (a) the responsible issuer,
- (b) each director and officer of the responsible issuer who authorized, permitted or acquiesced in the failure to make timely disclosure, and
- (c) each influential person, and each director and officer of an influential person, who knowingly influenced
  - (i) the responsible issuer or any person or company acting on behalf of the responsible issuer in the failure to make timely disclosure, or
  - (ii) a director or officer of the responsible issuer to authorize, permit or acquiesce in the failure to make timely disclosure.

(5) In an action under this section, a person who is a director or officer of an influential person is not liable in that capacity if the person is liable as a director or officer of the responsible issuer.

(6) In an action under this section,

- (a) multiple misrepresentations having common subject-matter or content may, in the discretion of the court, be treated as a single misrepresentation, and
- (b) multiple instances of failure to make timely disclosure of a material change or material changes concerning common subject-matter may, in the discretion of the court, be treated as a single failure to make timely disclosure.

(7) In an action under subsection (2) or (3), if the person who made the public oral statement had apparent authority, but not implied or actual authority, to speak on behalf of the issuer, no other person is liable with respect to any of the responsible issuer's securities that were acquired or disposed of before that other person became, or should reasonably have become, aware of the misrepresentation.

### **Burden of Proof and Defences**

#### **Non-core documents and public oral statements**

**211.04(1)** In an action under section 211.03 in relation to a misrepresentation in a document that is not a core document or a misrepresentation in a public oral statement, a person or company is not liable, subject to subsection (2), unless the plaintiff proves that the person or company

- (a) knew, at the time that the document was released or the public oral statement was made, that the document or public oral statement contained the misrepresentation,
- (b) at or before the time that the document was released or the public oral statement was made, deliberately avoided acquiring knowledge that the document or public oral statement contained the misrepresentation, or
- (c) was, through action or failure to act, guilty of gross misconduct in connection with the release of the document or the making of the public oral statement that contained the misrepresentation.

(2) A plaintiff is not required to prove any of the matters set out in subsection (1) in an action under section 211.03 in relation to an expert.

(3) In an action under section 211.03 in relation to a failure to make timely disclosure, a person or company is not liable,

subject to subsection (4), unless the plaintiff proves that the person or company

- (a) knew, at the time that the failure to make timely disclosure first occurred, of the change and that the change was a material change,
- (b) at the time or before the failure to make timely disclosure first occurred, deliberately avoided acquiring knowledge of the change or that the change was a material change, or
- (c) was, through action or failure to act, guilty of gross misconduct in connection with the failure to make timely disclosure.

**(4)** A plaintiff is not required to prove any of the matters set out in subsection (3) in an action under section 211.03 in relation to

- (a) a responsible issuer,
- (b) an officer of a responsible issuer,
- (c) an investment fund manager, or
- (d) an officer of an investment fund manager.

**(5)** A person or company is not liable in an action under section 211.03 in relation to a misrepresentation or a failure to make timely disclosure if that person or company proves that the plaintiff acquired or disposed of the issuer's security

- (a) with knowledge that the document or public oral statement contained a misrepresentation, or
- (b) with knowledge of the material change.

**(6)** A person or company is not liable in an action under section 211.03 in relation to

- (a) a misrepresentation if that person or company proves that,
  - (i) before the release of the document or the making of the public oral statement containing the misrepresentation, the person or company conducted

or caused to be conducted a reasonable investigation,  
and

- (ii) at the time of the release of the document or the making of the public oral statement, the person or company had no reasonable grounds to believe that the document or public oral statement contained the misrepresentation,

or

- (b) a failure to make timely disclosure if that person or company proves that
  - (i) before the failure to make timely disclosure first occurred, the person or company conducted or caused to be conducted a reasonable investigation, and
  - (ii) the person or company had no reasonable grounds to believe that the failure to make timely disclosure would occur.

(7) In determining whether an investigation was reasonable under subsection (6), or whether any person or company is guilty of gross misconduct under subsection (1) or (3), the court shall consider all relevant circumstances, including

- (a) the nature of the responsible issuer,
- (b) the knowledge, experience and function of the person or company,
- (c) the office held, if the person was an officer,
- (d) the presence or absence of another relationship with the responsible issuer, if the person was a director,
- (e) the existence, if any, and the nature of any system designed to ensure that the responsible issuer meets its continuous disclosure obligations,
- (f) the reasonableness of reliance by the person or company on the responsible issuer's disclosure compliance system and on the responsible issuer's officers, employees and others whose duties would in the ordinary course have given them knowledge of the relevant facts,

- (g) the period within which disclosure was required to be made under the applicable law,
  - (h) in respect of a report, statement or opinion of an expert, any professional standards applicable to the expert,
  - (i) the extent to which the person or company knew, or should reasonably have known, the content and medium of dissemination of the document or public oral statement,
  - (j) in the case of a misrepresentation, the role and responsibility of the person or company in the preparation and release of the document or the making of the public oral statement containing the misrepresentation or the ascertaining of the facts contained in that document or public oral statement, and
  - (k) in the case of a failure to make timely disclosure, the role and responsibility of the person or company involved in a decision not to disclose the material change.
- (8) A person or company is not liable in an action under section 211.03 in respect of a failure to make timely disclosure if
- (a) the person or company proves that the material change was disclosed by the responsible issuer in a report filed on a confidential basis with the Commission under section 146,
  - (b) the responsible issuer had a reasonable basis for making the disclosure on a confidential basis,
  - (c) where the information contained in the report filed on a confidential basis remains material, disclosure of the material change was made public promptly when the basis for confidentiality ceased to exist,
  - (d) the person or company or responsible issuer did not release a document or make a public oral statement that, due to the undisclosed material change, contained a misrepresentation, and
  - (e) where the material change became publicly known in a manner other than the manner required under this Act,

the responsible issuer promptly disclosed the material change in the manner required under this Act.

**(9)** A person or company is not liable in an action under section 211.03 for a misrepresentation in forward-looking information if the person or company proves all of the following:

- (a) the document or public oral statement containing the forward-looking information contained, proximate to that information,
  - (i) reasonable cautionary language identifying the forward-looking information as such, and identifying material factors that could cause actual results to differ materially from a conclusion, forecast or projection in the forward-looking information, and
  - (ii) a statement of the material factors or assumptions that were applied in drawing a conclusion or making a forecast or projection set out in the forward-looking information;
- (b) the person or company had a reasonable basis for drawing the conclusions or making the forecasts and projections set out in the forward-looking information.

**(10)** A person or company is deemed to have satisfied the requirements of subsection (9)(a) with respect to a public oral statement containing forward-looking information if the person who made the public oral statement

- (a) made a cautionary statement that the oral statement contains forward-looking information,
- (b) stated that
  - (i) the actual results could differ materially from a conclusion, forecast or projection in the forward-looking information, and
  - (ii) certain material factors or assumptions were applied in drawing a conclusion or making a forecast or projection as reflected in the forward-looking information,

and

- (c) stated that additional information about
- (i) the material factors that could cause actual results to differ materially from the conclusion, forecast or projection in the forward-looking information, and
  - (ii) the material factors or assumptions that were applied in drawing a conclusion or making a forecast or projection as reflected in the forward-looking information,

is contained in a readily available document or in a portion of such a document and has identified that document or that portion of the document.

**(11)** For the purposes of subsection (10)(c), a document filed with the Commission or otherwise generally disclosed is deemed to be readily available.

**(12)** Subsection (9) does not relieve a person or company of liability respecting forward-looking information in a financial statement required to be filed under this Act or forward-looking information in a document released in connection with an initial public offering.

**(13)** A person or company, other than an expert, is not liable in an action under section 211.03 with respect to any part of a document or public oral statement that includes, summarizes or quotes from a report, statement or opinion made by the expert in respect of which the responsible issuer obtained the written consent of the expert to the use of the report, statement or opinion if the consent had not been withdrawn in writing before the document was released or the public oral statement was made, if the person or company proves that

- (a) the person or company did not know and had no reasonable grounds to believe that there had been a misrepresentation in the part of the document or public oral statement made on the authority of the expert, and
- (b) the part of the document or oral public statement fairly represented the report, statement or opinion made by the expert.

**(14)** An expert is not liable in an action under section 211.03 with respect to any part of a document or public oral statement that includes, summarizes or quotes from a report, statement or

opinion made by the expert if the expert proves that the written consent previously provided was withdrawn in writing before the document was released or the public oral statement was made.

**(15)** A person or company is not liable in an action under section 211.03 in respect of a misrepresentation in a document, other than a document required to be filed with the Commission, if the person or company proves that, at the time of release of the document, the person or company did not know and had no reasonable grounds to believe that the document would be released.

**(16)** A person or company is not liable in an action under section 211.03 for a misrepresentation in a document or a public oral statement if the person or company proves that

- (a) the misrepresentation was also contained in a document filed by or on behalf of another person or company, other than the responsible issuer, with the Commission or any other securities regulatory authority in Canada or an exchange and was not corrected in another document filed by or on behalf of that other person or company with the Commission or that other securities regulatory authority in Canada or exchange before the release of the document or the public oral statement made by or on behalf of the responsible issuer,
- (b) the document or public oral statement contained a reference identifying the document that was the source of the misrepresentation, and
- (c) when the document was released or the public oral statement was made, the person or company did not know and had no reasonable grounds to believe that the document or public oral statement contained a misrepresentation.

**(17)** A person or company, other than the responsible issuer, is not liable in an action under section 211.03 if the misrepresentation or failure to make timely disclosure was made without the knowledge or consent of the person or company and if, after the person or company became aware of the misrepresentation before it was corrected, or the failure to make timely disclosure before it was disclosed in the manner required under this Act,

- (a) the person or company promptly notified the directors of the responsible issuer or other persons acting in a similar capacity of the misrepresentation or the failure to make timely disclosure, and
- (b) if no correction of the misrepresentation or no subsequent disclosure of the material change in the manner required under this Act was made by the responsible issuer within 2 business days after the notification under clause (a), the person or company, unless prohibited by law or by professional confidentiality rules, promptly and in writing notified the Commission of the misrepresentation or failure to make timely disclosure.

### **Damages**

#### **Assessment of damages**

**211.05(1)** Damages shall be assessed in favour of a person or company that acquired an issuer's securities after the release of a document or the making of a public oral statement containing a misrepresentation or after a failure to make timely disclosure as follows:

- (a) in respect of any of the securities of the responsible issuer that the person or company subsequently disposed of on or before the 10th trading day after the public correction of the misrepresentation or the disclosure of the material change in the manner required under this Act, assessed damages shall equal the difference between the average price paid for those securities, including any commissions paid in respect of them, and the price received on the disposition of those securities, without deducting any commissions paid in respect of the disposition, calculated taking into account the result of hedging or other risk limitation transactions;
- (b) in respect of any of the securities of the responsible issuer that the person or company subsequently disposed of after the 10th trading day after the public correction of the misrepresentation or the disclosure of the material change in the manner required under this Act, assessed damages shall equal the lesser of
  - (i) an amount equal to the difference between the average price paid for those securities, including any

commissions paid in respect of them, and the price received on the disposition of those securities, without deducting any commissions paid in respect of the disposition, calculated taking into account the result of hedging or other risk limitation transactions, and

- (ii) an amount equal to the number of securities that the person disposed of, multiplied by the difference between the average price per security paid for those securities, including any commissions paid in respect of that disposition determined on a per security basis, and

- (A) if the issuer's securities trade on a published market, the trading price of the issuer's securities on the principal market (as those terms are defined in the regulations) for the 10 trading days following the public correction of the misrepresentation or the disclosure of the material change in the manner required under this Act, or

- (B) if there is no published market, the amount that the court considers just;

- (c) in respect of any of the securities of the responsible issuer that the person or company has not disposed of, assessed damages shall equal the number of securities acquired, multiplied by the difference between the average price per security paid for those securities, including any commissions paid in respect thereof determined on a per security basis, and

- (i) if the issuer's securities trade on a published market, the trading price of the issuer's securities on the principal market as defined in the regulations for the 10 trading days following the public correction of the misrepresentation or the disclosure of the material change in the manner required under this Act, or

- (ii) if there is no published market, the amount that the court considers just.

(2) Damages shall be assessed in favour of a person or company that disposed of securities after a document was released or a public oral statement made containing a

misrepresentation or after a failure to make timely disclosure as follows:

- (a) in respect of any of the securities of the responsible issuer that the person or company subsequently acquired on or before the 10th trading day after the public correction of the misrepresentation or the disclosure of the material change in the manner required under this Act, assessed damages shall equal the difference between the average price received on the disposition of those securities, deducting any commissions paid in respect of the disposition and the price paid for those securities, without including any commissions paid in respect of them, calculated taking into account the result of hedging or other risk limitation transactions;
- (b) in respect of any of the securities of the responsible issuer that the person or company subsequently acquired after the 10th trading day after the public correction of the misrepresentation or the disclosure of the material change in the manner required under this Act, assessed damages shall equal the lesser of
  - (i) an amount equal to the difference between the average price received on the disposition of those securities, deducting any commissions paid in respect of the disposition and the price paid for those securities, without including any commissions paid in respect of them, calculated taking into account the result of hedging or other risk limitation transactions, and
  - (ii) an amount equal to the number of securities that the person disposed of, multiplied by the difference between the average price per security received on the disposition of those securities, deducting any commissions paid in respect of the disposition determined on a per security basis, and
- (A) if the issuer's securities trade on a published market, the trading price of the issuer's securities on the principal market as defined in the regulations for the 10 trading days following the public correction of the misrepresentation or the disclosure of the material change in the manner required under this Act, or

- (B) if there is no published market, the amount that the court considers just;
- (c) in respect of any of the securities of the responsible issuer that the person or company has not acquired, assessed damages shall equal the number of securities that the person or company disposed of, multiplied by the difference between the average price per security received on the disposition of those securities, deducting any commissions paid in respect of the disposition determined on a per security basis, and
  - (i) if the issuer's securities trade on a published market, the trading price of the issuer's securities on the principal market as defined in the regulations for the 10 trading days following the public correction of the misrepresentation or the disclosure of the material change in the manner required under this Act, or
  - (ii) if there is no published market, the amount that the court considers just.

(3) Notwithstanding subsections (1) and (2), assessed damages shall not include any amount that the defendant proves is attributable to a change in the market price of securities that is unrelated to the misrepresentation or the failure to make timely disclosure.

#### **Proportionate liability**

**211.06(1)** In an action under section 211.03, the court shall determine, in respect of each defendant found liable in the action, the defendant's responsibility for the damages assessed in favour of all plaintiffs in the action, and each such defendant is liable, subject to the limits set out in section 211.07(1), to the plaintiffs for only that portion of the aggregate amount of damages assessed in favour of the plaintiffs that corresponds to that defendant's responsibility for the damages.

(2) Notwithstanding subsection (1), where, in an action under section 211.03 in respect of a misrepresentation or a failure to make timely disclosure, a court determines that a particular defendant, other than the responsible issuer, authorized, permitted or acquiesced in the making of the misrepresentation or the failure to make timely disclosure while knowing it to be a misrepresentation or a failure to make timely disclosure, the

whole amount of the damages assessed in the action may be recovered from that defendant.

(3) Each defendant in respect of whom the court has made a determination under subsection (2) is jointly and severally liable with each other defendant in respect of whom the court has made a determination under subsection (2).

(4) Any defendant against whom recovery is obtained under subsection (2) is entitled to claim contribution from any other defendant who is found liable in the action.

#### **Limits on damages**

**211.07(1)** Notwithstanding section 211.05, the damages payable by a person or company in an action under section 211.03 is the lesser of

- (a) the aggregate damages assessed against the person or company in the action, and
- (b) the liability limit for the person or company less the aggregate of all damages assessed after appeals, if any, against the person or company in all other actions brought under section 211.03, and under comparable legislation in other provinces or territories in Canada in respect of that misrepresentation or failure to make timely disclosure, and less any amount paid in settlement of any such actions.

(2) Subsection (1) does not apply to a person or company, other than the responsible issuer, if the plaintiff proves that the person or company authorized, permitted or acquiesced in the making of the misrepresentation or the failure to make timely disclosure while knowing that it was a misrepresentation or a failure to make timely disclosure, or influenced the making of the misrepresentation or the failure to make timely disclosure while knowing that it was a misrepresentation or a failure to make timely disclosure.

#### **Procedural Matters**

##### **Leave to proceed**

**211.08(1)** No action may be commenced under section 211.03 without leave of the court granted on motion with notice to each defendant.

(2) The court shall grant leave only where it is satisfied that

- (a) the action is being brought in good faith, and
  - (b) there is a reasonable possibility that the action will be resolved at trial in favour of the plaintiff.
- (3) On an application under this section, the plaintiff and each defendant shall serve and file one or more affidavits setting forth the material facts on which each intends to rely.
- (4) The maker of such an affidavit may be examined on it in accordance with the *Alberta Rules of Court*.
- (5) A copy of the application for leave to proceed and any affidavits filed with the court shall be sent to the Commission when filed.

**Notice**

**211.09** A person or company that has been granted leave to commence an action under section 211.03 shall

- (a) promptly issue a news release disclosing that leave has been granted to commence an action under section 211.03,
- (b) send a written notice to the Commission within 7 days of leave being granted, together with a copy of the news release, and
- (c) send a copy of the statement of claim or other originating document to the Commission when filed.

**Restriction on discontinuation, etc. of action**

**211.091** An action under section 211.03 shall not be discontinued, abandoned or settled without the approval of the court given on such terms as the court thinks fit including, without limitation, terms as to costs, and in determining whether to approve the settlement of the action, the court shall consider, among other things, whether there are any other actions outstanding under section 211.03 or under comparable legislation in other provinces or territories in Canada in respect of the same misrepresentation or failure to make timely disclosure.

**Costs**

**211.092** Notwithstanding the *Court of Queen's Bench Act* and the *Class Proceedings Act*, the prevailing party in an action

under section 211.03 is entitled to costs determined by a court in accordance with the Alberta Rules of Court.

**Power of the Commission**

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

**No derogation from other rights**

**211.094** The right of action for damages and the defences to an action under section 211.03 are in addition to and without derogation from any other rights or defences the plaintiff or defendant may have in an action brought otherwise than under this Part.

**Limitation period**

**211.095** No action shall be commenced under section 211.03,

- (a) in the case of misrepresentation in a document, later than the earlier of
  - (i) 3 years after the date on which the document containing the misrepresentation was first released, and
  - (ii) 6 months after the issuance of a news release disclosing that leave has been granted to commence an action under section 211.03 or under comparable legislation in the other provinces or territories in Canada in respect of the same misrepresentation;
- (b) in the case of a misrepresentation in a public oral statement, later than the earlier of
  - (i) 3 years after the date on which the public oral statement containing the misrepresentation was made, and
  - (ii) 6 months after the issuance of a news release disclosing that leave has been granted to commence an action under section 211.03 or under comparable legislation in another province or territory of Canada in respect of the same misrepresentation,

and

- (c) in the case of a failure to make timely disclosure, later than the earlier of
  - (i) 3 years after the date on which the requisite disclosure was required to be made, and
  - (ii) 6 months after the issuance of a news release disclosing that leave has been granted to commence an action under section 211.03 or under comparable legislation in another province or territory of Canada in respect of the same failure to make timely disclosure.

**53 The heading to Part 17.1 is repealed and the following is substituted:**

### **Interjurisdictional Co-operation**

**54 Section 211.1 is amended**

- (a) **by repealing subsection (1)(c) and substituting the following:**
  - (c) “extra-provincial securities commission” means a body empowered by the laws of a province or territory other than Alberta to regulate trading in securities or exchange contracts or to administer or enforce laws respecting trading in securities or exchange contracts;
- (b) **by repealing subsection (1)(e);**
- (c) **by repealing subsection (2)(b) and substituting the following:**
  - (b) any person or company who in respect of that extra-provincial securities commission exercises a power or performs a duty or function that is substantially similar to a power, duty or function exercised or performed by the Executive Director under this Act.

**55 Section 211.2 is repealed and the following is substituted:**

#### **Delegation and acceptance of authority**

**211.2(1)** Subject to any regulations made under section 211.6, the Commission may by order, for the purposes of this Part,

- (a) delegate any Alberta authority to an extra-provincial securities commission, and
- (b) accept a delegation or other transfer of any extra-provincial authority from an extra-provincial securities commission.

(2) The Commission shall not delegate any power, function or duty of the Commission or of the Executive Director that is, or is intended to be, performed or exercised by the Commission or the Executive Director under Part 1, this Part or section 224 or 224.1.

**56 Section 211.4 is repealed and the following is substituted:**

**Adoption or incorporation of extra-provincial securities laws**

**211.4(1)** Subject to any regulations made under section 211.6, the Commission may by order adopt or incorporate by reference as Alberta securities laws all or any provisions of any extra-provincial securities laws of a jurisdiction to be applied to

- (a) a person or company or class of persons or companies whose primary jurisdiction is that extra-provincial jurisdiction, or
- (b) trades or other activities involving a person or company or a class of persons or companies referred to in clause (a).

(2) If the Commission adopts or incorporates by reference an extra-provincial securities law under subsection (1), it may adopt or incorporate it by reference as amended from time to time, whether before or after the adoption or incorporation by reference, and with the necessary changes.

**57 Sections 211.41 and 211.42 are repealed and the following is substituted:**

**Exemptions**

**211.41** Subject to any regulations made under section 211.6, the Commission may by order exempt a person, company, security, exchange contract or trade or a class of persons, companies, securities, exchange contracts or trades from all or any requirements of Alberta securities laws if the person, company, security, exchange contract or trade or class of

persons, companies, securities, exchange contracts or trades, as the case may be, satisfies the conditions set out in the order.

**58 Section 211.5 is repealed and the following is substituted:**

**Exercise of discretion, interprovincial reliance**

**211.5(1)** Subject to any regulations made under section 211.6, if the Commission or Executive Director is empowered to make a decision regarding a person, company, trade, security or exchange contract, the Commission or the Executive Director may make a decision on the basis that the Commission or the Executive Director, as the case may be, considers that an extra-provincial securities commission has made a substantially similar decision regarding the person, company, trade, security or exchange contract.

**(2)** Subject to any regulations made under section 211.6, notwithstanding any provision of this Act, the Commission or Executive Director may make a decision referred to in subsection (1) without giving the person affected by the decision an opportunity to be heard.

**59 Section 211.6(1) is amended**

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

(b) the acceptance by the Commission of any delegation or other authority of an extra-provincial authority from an extra-provincial securities commission;

**(b) by repealing clauses (d), (e) and (f) and substituting the following:**

(d) the adoption or incorporation by reference of extra-provincial securities laws under section 211.4, including the administration of those laws once adopted or incorporated by reference;

(e) the administration of exemptions from Alberta securities laws under section 211.41;

**60 Section 217(4) is amended by striking out “3 successive” and substituting “2 successive”.**

**61 Section 223 is amended**

**(a) by repealing clause (f);**

**(b) in clause (j) by adding the following after subclause (xiv):**

(xv) circumstances in which

(A) a person or company or a class of persons or companies is not required to be registered under section 75, or

(B) a person or company or a class of persons or companies is deemed to be registered for the purposes of this Act or the regulations,

including the circumstance in which a person or company or a class of persons or companies is registered under the laws of another jurisdiction respecting trading in securities or exchange contracts;

**(c) in clause (k)**

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

(iii) the issuance of receipts for preliminary prospectuses and prospectuses, including the issuance of receipts after an expedited or selective review, and respecting when receipts are not required or will not be issued, and the circumstances under which a receipt may be refused;

**(ii) by repealing subclause (xi) and substituting the following:**

(xi) the form of certificates relating to a preliminary prospectus, prospectus and amendments to a prospectus and the persons required to sign the certificates;

**(iii) by repealing subclause (xiv) and substituting the following:**

(xiv) the lapse date for a prospectus, restricting the period of time to the lapse date, the terms and conditions for continuing to distribute securities after the lapse date,

and the circumstances under which the purchaser may cancel a trade that occurs after the lapse date;

- (xv) circumstances in which
  - (A) section 110 does not apply to a person or company or a class of persons or companies, or
  - (B) a receipt is deemed to have been issued for the purposes of this Act,

including the circumstance in which a receipt has been issued for a preliminary prospectus or prospectus under the laws of another jurisdiction respecting trading in securities or exchange contracts;

- (xvi) requirements in respect of amendments to a preliminary prospectus or prospectus and prescribing circumstances under which an amendment to a preliminary prospectus or prospectus must be filed;
- (xvii) requirements for dealers for delivery of a preliminary prospectus between the issuance of a receipt for a preliminary prospectus and the issuance of a receipt for a prospectus, including any record-keeping requirements;

**(d) by adding the following after clause (k):**

- (k.1) prescribing circumstances in which a person or company that purchases a security under a distribution may cancel the purchase, including
  - (i) prescribing the period in which a purchaser may cancel the purchase;
  - (ii) prescribing the principles for determining the amount of the refund if the purchaser cancels the purchase;
  - (iii) specifying the person responsible for making and administering the payment of the refund and prescribing the period in which the refund must be paid;

- (iv) prescribing different circumstances, periods, principles or persons or companies for different classes of securities, issuers or purchasers;

**(e) in clause (o) by adding the following after subclause (iv):**

- (v) designating a person or company or class or classes of persons or companies as an accredited investor;

**(f) in clause (p) by adding the following after subclause (vii):**

- (viii) requiring investment funds to establish and maintain a body for the purposes described in section 193.1, prescribing its powers and duties and prescribing requirements relating to
  - (A) the mandate and functioning of the body,
  - (B) the composition of the body and qualifications for membership on the body, including matters respecting the independence of members and the process for selecting the members,
  - (C) the standard of care that applies to members of the body when exercising their powers, performing their duties and carrying out their responsibilities,
  - (D) the disclosure of information to security holders of the investment fund, to the investment fund manager and to the Commission, and
  - (E) matters affecting the investment fund that require review by the body or approval of the body;

**(g) by repealing clause (r) and substituting the following:**

- (r) governing disclosure obligations under Parts 12 and 13 and the regulations and, without limiting the generality of the foregoing,
  - (i) requiring any person or company or class of persons or companies to comply with Parts 12 and 13 and the regulations;
  - (ii) prescribing disclosure requirements, including the form, content, preparation, review, audit, approval,

certification, filing, delivery and use of disclosure documents;

**(h) by repealing clause (t) and substituting the following:**

- (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;
  - (ii) prescribing how a security or class of security or a related financial instrument or class of related financial instruments must be reported in an insider report filed under section 182;
  - (iii) prescribing disclosure, delivery, dissemination and filing requirements, including the use of particular forms or particular types of documents;
  - (iv) respecting self-dealing and conflicts of interest;
  - (v) prescribing exemptions from the requirements of Part 15 or the regulations;
  - (vi) designating a person or company as an insider;

**(i) by repealing clause (u) and substituting the following:**

- (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;

**(j) by adding the following after clause (v):**

- (v.1) governing the solicitation of proxies and, without limiting the generality of the foregoing,
  - (i) prescribing requirements for the solicitation and voting of proxies;
  - (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;

**(k) by adding the following after clause (dd):**

- (dd.1) prescribing circumstances in which a person or company or a class of persons or companies is prohibited from trading or purchasing securities or exchange contracts, or a particular security or exchange contract, including the circumstances in which a body empowered by the laws of another jurisdiction to regulate trading in securities or exchange contracts or to administer or enforce securities or exchange contract laws in that jurisdiction, has ordered that
  - (i) a person is prohibited from trading or purchasing securities or exchange contracts, or a particular security or exchange contract, or
  - (ii) trades or purchases of a particular security or exchange contracts

**(l) by repealing clause (hh);**

**(m) by repealing clause (hh.4) and substituting the following:**

- (hh.4) prescribing circumstances and conditions for the purposes of an exemption under clause (hh.3), including
  - (i) conditions relating to the laws of another jurisdiction of Canada or relating to an exemption from those laws granted by a body empowered by the laws of that jurisdiction to regulate trading in securities or exchange contracts or to administer or enforce laws respecting trading in securities or exchange contracts in that jurisdiction, or
  - (ii) conditions that refer to a person or company or to a class of persons or companies designated by the Commission;
- (hh.5) prescribing documents for the purpose of the definition of “core document” in section 211.01(b);
- (hh.6) providing for the application of Part 17.01 to the acquisition of an issuer’s security pursuant to a distribution that is exempt from section 110 and to the acquisition of an issuer’s security in connection with or pursuant to a take-over bid or issuer bid;
- (hh.7) prescribing transactions or classes of transactions for the purposes of section 211.02(d);

**62 This Act comes into force on Proclamation.**