

2010 Bill 13

Third Session, 27th Legislature, 59 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 13

SECURITIES AMENDMENT ACT, 2010

THE MINISTER OF FINANCE AND ENTERPRISE

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

BILL 13

2010

SECURITIES AMENDMENT ACT, 2010

(Assented to _____, 2010)

HER MAJESTY, by and with the advice and consent of the
Legislative Assembly of Alberta, enacts as follows:

Amends RSA 2000 cS-4

1 The Securities Act is amended by this Act.

2 Section 1 is amended

(a) by adding the following after clause (l):

- (1.1) “credit rating” means an assessment, disclosed publicly or distributed by subscription, of the credit-worthiness of an issuer as an entity or with respect to specific securities or a specific portfolio of securities or assets;
- (1.2) “credit rating organization” means any person or company that issues credit ratings;

(b) by repealing clauses (m) and (m.1) and substituting the following:

- (m) “dealer” means a person or company engaging in or holding itself out as engaging in the business of
 - (i) trading in securities or exchange contracts as principal or agent, or
 - (ii) acting as an underwriter;

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

Explanatory Notes

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

2 Section 1 presently reads in part:

1 In this Act,

(m) “dealer” means a person or company engaging in or holding itself out as engaging in the business of dealing in securities or exchange contracts;

(m.1) “dealing in securities or exchange contracts” includes

(i) trading a security or exchange contract as principal or agent;

(ii) acquiring a security or exchange contract as principal or agent or any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of this activity;

(iii) acting as an underwriter;

(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

(n.1) “designated rating organization” means a credit rating organization designated as a designated rating organization under section 67.1;

(d) in clause (w.1) by striking out “results of operations” and substituting “financial performance”.

3 Section 10(1) is amended by adding the following after clause (d):

(d.1) a rating or a class of ratings to be, or not to be, a credit rating,

(d.2) a person or company or a class of persons or companies to be, or not to be, a credit rating organization,

4 Section 19(4)(b) is amended by striking out “, debts”.

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

(h) the originating document, all evidence taken down in writing or recorded by electronic means, all documents and things received in evidence at a hearing and in addition, in

information with respect to prospective results of operations, financial position or cash flows that is presented either as a forecast or a projection;

3 Section 10(1) presently reads:

10(1) The Commission may, if the Commission considers that it would not be prejudicial to the public interest to do so, make an order designating

- (a) a good, article, service, right or interest, or a class of those, as a commodity,*
- (b) a futures contract, or a class of futures contracts, not to be a futures contract,*
- (c) a person or company as an insider,*
- (d) an issuer or a class of issuers to be, or not to be, a mutual fund,*
- (e) an issuer or a class of issuers to be, or not to be, a non-redeemable investment fund, and*
- (f) an issuer or a class of issuers to be, or not to be, a reporting issuer.*

4 Section 19(4) presently reads in part:

(4) The Commission

- (b) shall from the money received by the Commission make disbursements and pay all of the expenditures, debts and liabilities incurred by the Commission;*

5 Section 29(h) presently reads:

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

the case of a hearing before the Executive Director, all orders and decisions together with any associated statement of reasons, form the record of the proceeding;

6 Section 33.1 is repealed and the following is substituted:

Failure to comply with filing requirements

33.1(1) Notwithstanding section 198(3), for the reasons set out in subsection (2), the Commission or the Executive Director may, without providing an opportunity to be heard, order one or more of the following:

- (a) that trading 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 may make an order under subsection (1) if the issuer of the security, the exchange on which the exchange contract is traded or the person or company in respect of which the order is made

- (a) fails to file a document required to be filed under Alberta securities laws, or
- (b) files a document required to be filed under Alberta securities laws that has not been completed in accordance with Alberta securities laws.

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

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

(h) all the evidence taken down in writing or recorded by electronic means and all documentary evidence and things received in evidence at a hearing form the record of the proceeding;

6 Section 33.1 presently reads:

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) is amended by adding the following after clause (k):

- (l) a credit rating organization.

8 Section 41(4)(d) is amended by striking out “debts.”.

7 Section 40(1) presently reads:

40(1) In this section, “party” means

- (a) a registrant;*
- (b) a person or company that is exempted by an order made under section 144 from the requirement to be registered under section 75;*
- (c) a reporting issuer;*
- (d) a manager or custodian of assets, shares or units of an investment fund;*
- (e) a general partner of a person or company referred to in clause (a), (b), (c), (f) or (i);*
- (f) a person or company purporting to distribute securities in reliance on an exemption*
 - (i) for which the regulations provide that a prospectus is not required, or*
 - (ii) in an order issued under section 144;*
- (g) a transfer agent or registrar for securities of a reporting issuer;*
- (h) a director or officer of a reporting issuer;*
- (i) a promoter or control person of a reporting issuer;*
- (j) the Canadian Investor Protection Fund;*
- (k) a clearing agency.*

8 Section 41(4) presently reads in part:

(4) For the purposes of an investigation ordered under this section, the person appointed to make the investigation may with respect to the person or company that is the subject of the investigation, investigate, inquire into and examine

- (d) the assets at any time held by, the liabilities, debts, undertakings and obligations at any time existing and the*

9 Section 46.1(1) and (2) are amended by adding “60.3,” after “46(4).”

10 Section 58(1) is amended

- (a) by striking out “or 60” and substituting “, 60, 60.1 or 60.2”;**
- (b) by adding the following after clause (i):**
 - (j) a credit rating organization.**

financial or other conditions at any time prevailing in respect of that person or company, and

9 Section 46.1(1) and (2) presently read:

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

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

10 Section 58(1) presently reads:

58(1) Notwithstanding anything in section 59 or 60, the Executive Director may in writing appoint a person to examine the financial affairs, books, records and other documents of the following for the purpose of determining if that person or company is complying with Alberta securities laws:

- (a) a registrant;*
- (b) a reporting issuer;*
- (c) a director, officer or promoter of a reporting issuer;*
- (d) a transfer agent of a reporting issuer;*
- (e) a recognized exchange;*
- (f) a recognized self-regulatory organization;*
- (g) a recognized clearing agency;*
- (h) a recognized quotation and trade reporting system;*
- (i) a manager or a custodian of assets, shares or units of an investment fund.*

11 Section 60 is repealed and the following is substituted:

Requirement to provide information

60 A registrant shall file with the Executive Director any information the Executive Director may require in a form that is acceptable to the Executive Director.

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

Record-keeping

60.1(1) This section applies to every recognized exchange, recognized self-regulatory organization, credit rating organization, recognized clearing agency, recognized quotation and trade reporting system and reporting issuer, and every officer, director and promoter of a credit rating organization and

11 Section 60 presently reads:

60(1) Every registrant whose financial affairs are not subject to examination under section 59 shall keep those books and records that are necessary for the proper recording of the registrant's business transactions and financial affairs.

(2) A registrant shall appoint an auditor who satisfies those requirements as may be established by the Executive Director.

(3) The auditor of a registrant shall

(a) in accordance with generally accepted auditing standards, make an examination of the annual financial statements and other regulatory filings of the registrant, and

(b) prepare a report on the financial affairs of the registrant in accordance with professional reporting standards.

(4) Subject to the regulations, a registrant shall file the report referred to in subsection (3) with the Executive Director together with

(a) the registrant's annual financial statements prepared in accordance with generally accepted accounting principles, and

(b) the registrant's other regulatory filings.

(5) The annual financial statements and regulatory filings shall be certified by the registrant or an officer or partner of the registrant.

(6) A registrant shall file with the Executive Director any other information as the Executive Director may require in a form that is acceptable to the Executive Director.

12 Section 60.1(1) presently reads:

60.1(1) This section applies to every recognized exchange, recognized self-regulatory organization, recognized clearing agency, recognized quotation and trade reporting system and reporting issuer, and every officer, director, promoter and transfer agent of a reporting issuer.

every officer, director, promoter and transfer agent of a reporting issuer.

13 Section 60.2 is repealed and the following is substituted:

Disclosure reviews

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

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

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

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

14 The following is added after section 60.2:

Confidential documents

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

(2) On the application of an interested person or company or the Executive Director and on giving the interested person and the Executive Director an opportunity to be heard, the Commission may make an order directing that any materials or

13 Section 60.2 presently reads:

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

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

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

14 Confidential documents.

class of materials delivered or obtained under section 58, 60, 60.1 or 60.2 be held in confidence if the Commission considers that it would not be prejudicial to the public interest to grant the order.

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

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

15 The heading to Part 4 is amended by adding “, Credit Rating Organizations” after “Self-regulatory Organizations”.

16 The following is added after section 67:

Designation of credit rating organizations

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

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

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

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

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

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

15 The heading to Part 4 presently reads:

*Part 4
Exchanges, Self-regulatory
Organizations and Clearing Agencies*

16 Designation of credit rating organizations.

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

Contents and methodology of credit ratings

67.2 The Commission may not regulate the contents of a credit rating or the methodology used by a credit rating organization.

17 Section 75(2) is amended

- (a) **in clause (a) by striking out** “deal in securities or exchange contracts” **and substituting** “act as a dealer”;
- (b) **in clause (b) by striking out** “advise in securities or exchange contracts” **and substituting** “act as an adviser”.

18 Section 198 is amended

- (a) **in subsection (1.01) by striking out “or” at the end of clause (l), adding “, or” at the end of clause (m) and adding the following after clause (m):**
 - (n) a credit rating organization.
- (b) **in subsection (1.1)(c) and (d) by striking out** “in Canada or elsewhere”;
- (c) **by adding the following after subsection (1.1):**
 - (1.11)** In subsection (1.1), “securities regulatory authority” means
 - (a) a securities commission or other person or body empowered by law to regulate trading in securities or

17 Section 75(2) presently reads:

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

- (a) deal in securities or exchange contracts on behalf of a person or company that is required to be registered under subsection (1),*
- (b) advise in securities or exchange contracts on behalf of a person or company that is required to be registered under subsection (1), or*
- (c) perform a prescribed function or duty for a person or company that is required to be registered under subsection (1).*

18 Section 198 presently reads in part:

(1.01) An order under subsection (1)(e.4) or (e.5) may be made against

- (a) an exchange or a quotation and trade reporting system,*
- (b) a self-regulatory organization,*
- (c) a clearing agency,*
- (d) a registrant,*
- (e) a partner, director, officer, insider or control person of a registrant,*
- (f) a person providing record-keeping services to a registrant,*

exchange contracts, or to administer or enforce securities laws of any province or territory in Canada or elsewhere,

- (b) a self-regulatory organization, and
- (c) an exchange.

19 Section 202 is amended

- (a) **by repealing subsections (1) and (2) and substituting the following:**

Payment of costs

202(1) If, after conducting a hearing in respect of the affairs of a person or company, the Commission or the Executive Director, as the case may be, is satisfied that the person or company has contravened Alberta securities laws or acted contrary to the public interest, the Commission or the Executive Director, as the case may be, may order the person or company to pay, subject to the regulations, costs of or

- (g) *a person that manages a compensation, contingency or similar fund formed to compensate clients of dealers or advisers,*
- (h) *an issuer,*
- (i) *an investment fund manager or custodian of assets or securities of an investment fund,*
- (j) *a transfer agent or registrar for securities of an issuer,*
- (k) *a director, officer, insider or control person of an issuer,*
- (l) *a general partner of a person or company referred to in this subsection, or*
- (m) *a person or company that the Commission has ordered is exempt from a provision of Alberta securities laws.*

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

- (c) is subject to an order made by a securities regulatory authority in Canada or elsewhere imposing sanctions, conditions, restrictions or requirements on the person or company, or*
- (d) has agreed with a securities regulatory authority in Canada or elsewhere to be subject to sanctions, conditions, restrictions or requirements.*

19 Section 202 presently reads in part:

202(1) If, in respect of a person or company whose affairs were the subject of an investigation, the Commission or the Executive Director

- (a) is satisfied that the person or company has not complied with, or is not complying with, any provision of Alberta securities laws, or*
- (b) considers that the person or company has not acted in the public interest,*

related to the hearing or the investigation that led to the hearing, or both.

- (b) in subsection (4) by striking out “(1), (2) or (3)” and substituting “(1) or (3)”.**

20 Section 211.01 is amended

- (a) in clause (b)(i) and (ii) by striking out “interim financial statements” and substituting “an interim financial report”;**
- (b) in clause (i) by striking out “results of operations” and substituting “financial performance”.**

the Commission or the Executive Director, as the case may be, may, after conducting a hearing, order the person or company to pay, subject to the regulations, the costs of the investigation, including any costs incurred in respect of services provided by persons appointed or engaged under section 28, 41 or 43 or the appearance of any witnesses under this Act.

(2) If, in respect of a person or company whose affairs were the subject of a hearing, the Commission or the Executive Director, as the case may be, after conducting the hearing

- (a) is satisfied that the person or company has not complied with, or is not complying with, any provision of Alberta securities laws, or*
- (b) considers that the person or company has not acted in the public interest,*

the Commission or the Executive Director, as the case may be, may order the person or company to pay, subject to the regulations, the costs of or related to the hearing that are incurred by or on behalf of the Commission or the Executive Director, including any costs incurred in respect of services provided by persons appointed or engaged under section 28, 41 or 43 or the appearance of any witnesses under this Act.

(4) The Executive Director may prepare and file with the clerk of the Court of Queen's Bench a certificate certifying the amount of the costs that the person or company is required to pay under subsection (1), (2) or (3).

20 Section 211.01 presently reads in part:

211.01 In this Part,

- (b) "core document" means,*
 - (i) where used in relation to*
 - (A) a director of a responsible issuer who is not also an officer of the responsible issuer,*
 - (B) an influential person, other than an officer of the responsible issuer or an investment fund manager where the responsible issuer is an investment fund, or*

21 Section 223 is amended

- (a) in clause (v)(iii) by striking out “interim financial statements” and substituting “interim financial reports”;**
- (b) by adding the following after clause (w):**

(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

(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;*

21 Section 223(v)(iii) presently reads:

223 The Lieutenant Governor in Council may make 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*

- (w.1) governing credit rating organizations and, without limiting the generality of the foregoing,
 - (i) respecting the designation of credit rating organizations as designated rating organizations;
 - (ii) respecting the suspension, cancellation or variance of designations of credit rating organizations as designated rating organizations;
 - (iii) respecting the disclosure to or filing or furnishing of information and documents with the Commission or the Executive Director by credit rating organizations and their directors, officers and promoters;
 - (iv) respecting the disclosure of information to the public;
 - (v) requiring credit rating organizations to establish, publish, maintain and enforce a code of conduct applicable to their operations and to their directors, officers and employees;
 - (vi) governing minimum requirements for credit rating organizations' code of conduct;
 - (vii) prohibiting or regulating conflicts of interest involving credit rating organizations;
 - (viii) prohibiting or regulating the disclosure, use and dissemination of non-public material information;
 - (ix) respecting the maintenance of books and records necessary for the conduct of business and the issuance and maintenance of credit ratings;
 - (x) respecting the appointment of auditors and the preparation of audited financial statements;
 - (xi) respecting the circumstances in which a credit rating organization or class of credit rating organization is not required to be designated or is deemed to be designated;
 - (xii) respecting minimum designated ratings from credit rating organizations;

the regulations and, without limiting the generality of the foregoing,

- (iii) respecting interim financial statements and financial statements;*

22 The *Securities Amendment Act, 2006* is amended by repealing section 3 and substituting the following:

3 Section 7.1 is repealed.

23 Sections 2(a), (c) and (d), 3, 4, 7 to 10, 12 to 16, 18(a) and 19 to 21 come into force on Proclamation.

22 Amends chapter 30 of the Statutes of Alberta, 2006. Section 3 presently reads:

3 Sections 7 and 7.1 are repealed.

23 Coming into force.

