

SECURITIES ADMINISTRATION ACT

A PROPOSED LEGISLATIVE MODEL

FOR ALBERTA

CONSULTATION DRAFT

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SECURITIES ADMINISTRATION ACT

PART 1: DEFINITIONS

Definitions

1.1 Words and terms defined in section 1.2(1) [*Definitions*] of the *Uniform Securities Act* have the same meaning in this Act.

PART 2: SECURITIES REGULATORY AUTHORITY

Division 1 Composition and Mandate

Securities regulatory authority continued

2.1(1) The Alberta Securities Commission is continued as a corporation.

(2) The Alberta Securities Commission has, for the purposes of carrying out its powers, functions and duties under securities laws, the capacity and the rights, powers and privileges of a natural person.

Composition and appointment

2.2(1) The securities regulatory authority consists of the members appointed by the Lieutenant Governor in Council.

(2) The Lieutenant Governor in Council must designate one member of the securities regulatory authority as chair and may designate one or more other members as vice-chair.

(3) The chair is the chief executive officer of the securities regulatory authority.

(4) If the office of the chair is vacant, or if the chair is absent or unable to act, a vice-chair or, if no vice-chair is designated, a person appointed by the Lieutenant Governor in Council as member and acting chair, must serve as chair.

(5) The remuneration and expenses payable to the chair, vice-chairs and other members of the securities regulatory authority must be set by the securities regulatory authority.

Mandate

2.3 The securities regulatory authority is responsible for the administration of securities laws.

Quorum

2.4(1) When making, amending or repealing rules, a quorum of the securities regulatory authority is at least one half of its members, unless subsection (3) applies.

(2) For all other purposes, the quorum of the securities regulatory authority is at least two members, unless the bylaws provide otherwise.

(3) A quorum of at least two members of the securities regulatory authority may make non-substantive and non-controversial changes to rules that

- (a) have been made by the securities regulatory authority, but
- (b) have not been published in accordance with regulations made by the Lieutenant Governor in Council under section 7.1 [*Lieutenant Governor in Council regulations*].

(4) This section does not affect the ability of the securities regulatory authority to delegate a power, function or duty to a member of the authority under section 2.10 [*Securities regulatory authority delegation to a member*].

Crown agent

2.5(1) The securities regulatory authority is an agent of the Crown.

(2) An action or other legal proceeding in respect of a right or obligation acquired or incurred by the securities regulatory authority on behalf of the Crown, whether in the name of the securities regulatory authority or in the name of the Crown, may be brought by or taken against the securities regulatory authority in the name of the securities regulatory authority in any court that would have jurisdiction if the securities regulatory authority were not an agent of the Crown.

Regulator to be appointed

2.6(1) The securities regulatory authority must authorize one or more persons to act as regulator.

(2) The regulator may

- (a) exercise the powers and functions and perform the duties vested in or imposed on the regulator under securities laws, and
- (b) exercise the powers and functions and perform the duties that are delegated to the regulator by the securities regulatory authority.

Bylaws

2.7(1) The securities regulatory authority may make by-laws governing its administration and management.

(2) The *Regulations Act* does not apply to the bylaws.

Financial matters

2.8(1) All money from any source that is received by or payable to the securities regulatory authority, including any income earned on that money, belongs to the securities regulatory authority.

(2) Without limiting its natural person powers, the securities regulatory authority may

- (a) borrow or invest money for the purposes of its operations;
- (b) participate as a depositor in the Consolidated Cash Investment Trust Fund established under the *Financial Administration Act*.

(3) Subject to subsection (4), the securities regulatory authority may make expenditures to

- (a) administer securities laws, and
- (b) operate the securities regulatory authority.

(4) Administrative penalties received by the securities regulatory authority may be expended only for the purposes of educating investors and promoting or otherwise enhancing knowledge and information of persons about the operation of the securities and financial industries and the marketplace.

Annual report

2.9(1) After the end of each fiscal year, the securities regulatory authority must send to the Minister determined under section 16 of the *Government Organization Act* as the Minister responsible for this Act an annual report for that fiscal year consisting of

- (a) a summary of its operations for the fiscal year,
- (b) audited financial statements, and
- (c) any other information requested by the Minister.

(2) The Minister must table the report in the Legislative Assembly as soon as practicable after receiving it.

Division 2 Internal Delegation

Securities regulatory authority delegation to a member

2.10(1) The securities regulatory authority may delegate to one of its members any of the powers, functions or duties of the securities regulatory authority except:

- (a) the power to delegate a power, function or duty, and
- (b) the power to make, repeal or amend a rule.

(2) A decision by a member acting under delegated authority

- (a) has the same force and effect as if the decision had been made by the securities regulatory authority, and
- (b) is not subject to review by the securities regulatory authority.

Securities regulatory authority delegation to regulator and other persons

2.11(1) The securities regulatory authority may delegate to the regulator or to an officer, employee, appointee or agent of the securities regulatory authority any of the powers, functions or duties of the securities regulatory authority except:

- (a) the power to delegate a power, function or duty, and
- (b) the power to make, amend or repeal a rule.

(2) A person to whom a power, function or duty is delegated by the securities regulatory authority may, with the approval of the securities regulatory authority, sub-delegate it.

(3) A decision of a delegate of the regulator is a decision of the regulator unless otherwise provided by securities laws.

(4) A delegation may, without prior notice, be suspended, revoked or varied by the securities regulatory authority or, in the case of a sub-delegation, by the securities regulatory authority or by the person who sub-delegated the power, function or duty.

(5) The securities regulatory authority and a person who sub-delegates a power, function or duty may continue to exercise any power, function or duty delegated or sub-delegated.

PART 3: PROCESS AND PROCEDURES

Division 1

Service, Admissibility and Non-compellability

Accepting service

3.1 Service of a record on the securities regulatory authority or SRA delegate is properly effected by serving the record on a person authorized by the securities regulatory authority to accept service on behalf of the securities regulatory authority or SRA delegate.

Sending documents

3.2 Unless otherwise provided by securities laws, a record required to be sent, communicated, delivered or served under securities laws may be

- (a) personally delivered to the person that is to receive it,
- (b) sent by prepaid post to the person that is to receive it,
- (c) sent by electronic means, or
- (d) sent as prescribed.

Admissibility of certified statements

3.3 A statement about

- (a) the registration or non-registration of a person,
- (b) the filing or non-filing of a record,
- (c) any other matter, person or record, or

the date the facts upon which any proceeding is based first came to the knowledge of the securities regulatory authority, purporting to be certified by a member of the securities regulatory authority or regulator is, without proof of the office or signature of the person certifying, admissible in evidence in any action, proceeding or prosecution under securities laws.

Evidence from bank officials

3.4 Despite section 41(5) of the *Alberta Evidence Act*, the securities regulatory authority may by order summon a bank or an officer of a bank, in any investigation or proceeding under securities laws

- (a) to produce records, property or things, the contents of which can be proved under section 41 of the *Alberta Evidence Act*, or
- (b) to appear as a witness to prove the matters, transaction and accounts contained in the records, property or things.

Non-compellable witnesses and evidence

3.5(1) A member or former member of the securities regulatory authority

- (a) is not a compellable witness before a court,
- (b) may not be compelled to produce or give evidence in any proceeding before a court, and
- (c) must not give evidence or produce evidence before a court without the consent of the securities regulatory authority,

with respect to information, records, property or things obtained or acquired by that person in the exercise of their powers, functions or duties as a member of the securities regulatory authority.

(2) An individual who is or was an officer, employee, appointee or agent of the securities regulatory authority or the regulator, in any proceeding in a court to which the securities regulatory authority is not a party,

- (a) is not a compellable witness before the court,
- (b) may not be compelled to produce or give evidence in any proceeding before the court, and
- (c) must not give evidence or produce evidence before the court without the consent of the chair or a vice chair of the securities regulatory authority,

with respect to information, records, property or things obtained or acquired by that person in the exercise of their powers, functions or duties.

(3) Neither the securities regulatory authority nor anyone on its behalf

- (a) is a compellable witness before a court, or
- (b) may be compelled to produce or give evidence in any proceeding before a court,

with respect to information, records, property or things obtained or acquired by a member, officer, employee, appointee, agent or regulator in the performance of their powers, functions or duties under securities laws.

(4) In this section **court** has the same meaning that it has in section 1(b) of the *Alberta Evidence Act*.

Protection for witnesses

3.6(1) No person summoned to give evidence or to produce a record, property or thing under Part 4 [*Investigations*] or Part 6 [*Reviews, Decisions, Appeals and Administrative Processes*] is excused from doing so on the ground that the evidence, record, property or thing might:

- (a) tend to incriminate the person;
- (b) subject the person to punishment under securities laws or tend to establish that person's liability
 - (i) in a civil proceeding at the instance of the Crown or any other person, or
 - (ii) to prosecution under any enactment, an enactment of another Canadian jurisdiction or an enactment of Canada.

(2) No evidence given or record produced by a witness in response to a summons may be used to incriminate that witness in a prosecution for an offence under securities laws or any other enactment, except in a prosecution for or proceeding in respect of perjury or the giving of contradictory evidence.

Verification

3.7 The securities regulatory authority may require any information, record, property or thing produced, provided to or obtained by it to be verified by affidavit or other means.

Division 2 Treatment of Information

Collection, use and disclosure of personal information

3.8 A recognized entity may,

- (a) with respect to any personal information referred to in, dealt with in or governed under sections 33(a), 34(1)(a)(ii) or 40(1)(e) of the *Freedom of Information and Protection of Privacy Act*, collect that information whether directly from the individual or by some other method, and disclose that information for the purpose of carrying out any power, function or duty under securities laws, or
- (b) with respect to any personal information referred to, dealt with or governed under sections 14, 17 or 20 of the *Personal Information Protection Act*, collect that information, whether directly from the individual, through a registrant or participant, or by some other method, and use and disclose that information for the purpose of
 - (i) an investigation or proceeding under securities laws, or suppressing fraud, market manipulation or unfair trading practices, or
 - (ii) investigating a contravention of securities laws or an investigation relating to the integrity of securities trading on exchanges, quotation and trade reporting systems or alternative trading systems.

Information sharing arrangements

3.9(1) The securities regulatory authority or SRA delegate may provide information to and receive information from:

- (a) an extra-provincial SRA or its delegate,
- (b) an entity performing, in a foreign jurisdiction, any power, function or duty similar to the securities regulatory authority,
- (c) a financial regulatory authority, an exchange, a self-regulatory organization, a recognized entity, a professional regulatory body or organization, a law enforcement agency, a quotation and trade reporting system, a clearing agency, or a government or a governmental authority in another Canadian jurisdiction or in a foreign jurisdiction, and
- (d) any person or entity that provides services to the securities regulatory authority.

(2) The securities regulatory authority may enter into an arrangement or agreement for the purpose of providing, receiving and managing the information.

(3) Information received by the securities regulatory authority under this section is confidential and must not be disclosed except when authorized by the securities regulatory authority.

(4) This section prevails despite the *Freedom of Information and Access to Information Act* and any information received by the securities regulatory authority under this section is exempt from disclosure under that Act.

Confidentiality and public disclosure of records

3.10 Records in the possession of the securities regulatory authority must be held in confidence or disclosed to the public in accordance with the rules.

Public inspection of records

3.11 Records filed under securities laws must be made available for public inspection during normal business hours, unless the securities regulatory authority considers that

- (a) the record or class of record discloses intimate financial, personal or other information, and
- (b) the desirability of not disclosing the information, in the interests of the person affected, outweighs the desirability of adhering to the principle of public disclosure,

in which case the record, or part of it, is to be held in confidence.

Division 3 Inquiries

Inquiry by securities regulatory authority

3.12(1) The securities regulatory authority may inquire into and hold hearings with respect to any matter related to securities laws.

(2) The securities regulatory authority may engage a person to provide services and to advise, or to inquire into and report back on matters referred to that person for the purposes of subsection (1) or otherwise.

(3) The securities regulatory authority

- (a) may send records to be examined by persons engaged by it, and
- (b) may
 - (i) summon and enforce the attendance of witnesses before persons engaged by it,
 - (ii) compel witnesses to give evidence under oath or otherwise before persons engaged by it, and
 - (iii) compel witnesses to produce records, property and things to persons engaged by it.

(4) The failure or refusal of a person summoned to attend, answer questions, or produce records, property or things that are in the person's custody or possession, or under their direct or indirect control, makes that person, on application to the court by the securities regulatory authority, liable to be committed for contempt by the court.

(5) A person engaged under subsection (2) may take evidence under oath and may administer oaths for the purpose of taking evidence.

(6) The *Alberta Rules of Court* with respect to compelling the attendance of witnesses, including the provisions relating to the payment of conduct money, apply to proceedings conducted by a person engaged under subsection (2).

PART 4: INVESTIGATIONS

Order for production

4.1(1) The securities regulatory authority may order a market participant or a former market participant specified or described in the order

- (a) to provide information;
- (b) to produce records, property or things specified or described in the order that are or may be in the market participant's custody, possession or direct or indirect control.

(2) The order may

- (a) specify the location at which and the person to whom the information or the records, property or things is to be produced, and
- (b) prescribe the time within which or the intervals in respect of which the information, records, property or things must be produced.

Confidentiality of production orders

4.2 A production order under section 4.1 [*Order for production*] is confidential and must not be disclosed except to

- (a) the market participant to whom it is directed,
- (b) the market participant's counsel,
- (c) any other persons to whom disclosure is consented to by the securities regulatory authority, and
- (d) other persons to the extent reasonably necessary to comply with the order.

Investigation order

4.3(1) The securities regulatory authority may issue an investigation order appointing a person to make any investigation it considers necessary

- (a) for the administration of securities laws;
- (b) for the regulation of the capital markets in Alberta;

- (c) for the administration of extra-provincial securities laws or securities laws of a foreign jurisdiction;
- (d) for the regulation of capital markets in another Canadian jurisdiction or in a foreign jurisdiction.

(2) An investigation order must describe the matter to be investigated.

Scope of investigation

4.4(1) A person appointed to make an investigation under an investigation order may investigate and inquire into

- (a) the affairs of a person in respect of which the investigation is conducted, including,
 - (i) trades, communications, negotiations, transactions, investigations, loans, borrowings or payments to, by, on behalf of, or in relation to or in connection with the person, and
 - (ii) records kept and property and things owned, acquired or alienated in whole or in part by the person or by any other person acting on behalf of or as agent for the person;
- (b) the assets at any time held, the liabilities, debts, undertakings and obligations at any time existing, the financial or other conditions at any time prevailing in or in relation to or in connection with the person;
- (c) any relationship that may at any time exist or have existed between the person and any other person by reason of investments, commissions promised, secured or paid, interests held or acquired, the loaning or borrowing of money, securities or other property, the transfer, negotiation or holding of securities, interlocking directorates, common control, undue influence or control or any other relationship.

(2) The person appointed to make the investigation under an investigation order may examine any records, property or things that

- (a) are in the custody or possession of or under the direct or indirect control of the person whose affairs are subject to investigation, or
- (b) are in the custody or possession or under the direct or indirect control of any other person.

Investigation powers

4.5(1) A person appointed to make an investigation under an investigation order has the same power as is vested in the court for the trial of civil actions:

- (a) to summon and enforce the attendance of witnesses,
- (b) to compel witnesses to give evidence under oath or otherwise, and
- (c) to compel witnesses to produce records, property and things.

(2) The failure or refusal of a person summoned to attend, answer questions, or produce records, property or things that are in the person's custody or possession, or under their direct or indirect control, makes that person, on application to the court by the securities regulatory authority, liable to be committed for contempt by the court.

(3) No person, without lawful excuse, may fail to comply with a summons issued under subsection (1).

(4) A person giving evidence to a person appointed to make an investigation under an investigation order may be represented by counsel.

Right of entry and examination

4.6(1) A person appointed to make an investigation under an investigation order may, with respect to the matter that is the subject of the investigation,

- (a) enter the business premises of any person during business hours;
- (b) examine any records and make copies of them;
- (c) examine the property or things used in the business of the person;
- (d) make inquiries of the person who is the subject of the investigation, or persons employed or engaged by, or persons that have entered into an agency relationship with, that person;
- (e) require information to be provided about the person's business and conduct;
- (f) require the person to produce any record.

(2) In exercising the power to make copies of records, the person conducting the investigation may

- (a) carry out the copying at the business premises of the person who is the subject of the investigation, or
- (b) on giving an appropriate receipt, remove records for the purpose of copying them at other premises specified in the receipt.

(3) Records removed for copying must be promptly returned to the person from whom they were received.

Court application for entry and search order

4.7(1) A person appointed to make an investigation under an investigation order may apply to a judge of the court, in the absence of the public and without notice, for an order authorizing the person or persons named in the order

- (a) to enter and search any building, receptacle or place, other than a portion of a building or place used exclusively as a private residence, and
- (b) to seize any record, property or thing described in the authorization that is found in the building, receptacle or place.

(2) On production of the court order, the person named or described in it may enter the building, receptacle or place specified in the order, and may search for and seize anything specified in the order.

Access to and return of material seized or obtained

4.8 Subject to section 4.6(3) [*Right of entry and examination*], record, property or thing seized, provided or obtained under this Part must

- (a) be made available for inspection and copying by the person from whom it was obtained, if practicable, and
- (b) be returned to the person from whom it was seized or obtained when
 - (i) retention is no longer necessary for the purposes of an investigation, examination, proceeding or prosecution under securities laws, or
 - (ii) the securities regulatory authority so orders.

Confidentiality of investigation and disclosure of information

4.9(1) No person may disclose, at any time,

- (a) an order referred to in section 4.3 [*Investigation order*], anything acquired, and any information or evidence provided, obtained, collected, disclosed or shared, under the order, or
- (b) any information obtained or records, property or things voluntarily provided or obtained in the course of an investigation under this Part,

except to a person's counsel or in accordance with subsection (2) or (3).

(2) An investigation order and everything acquired, and any information or evidence provided, obtained, collected, disclosed or shared under the order, must not be disclosed unless disclosure of the information

- (a) is authorized by the securities regulatory authority, if it considers the disclosure to be in the public interest,
- (b) is necessary for the administration of securities laws, extra-provincial securities laws or securities laws of a foreign jurisdiction, or
- (c) is necessary for the regulation of the capital markets of another Canadian jurisdiction or a foreign jurisdiction.

(3) A person appointed under an investigation order to make an investigation may, without notice to any person and without an order of the securities regulatory authority, disclose the order and anything acquired and all or any part of the information or evidence provided, obtained, collected, disclosed or shared through the investigation

- (a) for the purpose of conducting the investigation,
- (b) in connection with a proceeding commenced or proposed to be commenced by the securities regulatory authority under securities laws,
- (c) for the purpose of examining a witness,
- (d) for the administration of securities laws, extra-provincial securities laws or securities laws of a foreign jurisdiction, or
- (e) for the purpose of the regulation of the capital markets of another Canadian jurisdiction or a foreign jurisdiction.

PART 5: RECEIVERS, RECEIVER-MANAGERS, TRUSTEES AND LIQUIDATORS

Division 1 Appointment Criteria

Appointment

5.1(1) The securities regulatory authority may apply to a judge of the court for the appointment of a receiver, receiver-manager, trustee or liquidator of all or any part of the property and affairs of a person.

(2) On application, the court may appoint a receiver, receiver-manager, trustee or liquidator if the court is satisfied that it is

- (a) in the best interests of the person's creditors,
- (b) in the best interests of other persons whose property is in the possession or under the control of the person in respect of whom the application is made,
- (c) in the best interests of security holders, subscribers to or clients of the person in respect of whom the application is made, or
- (d) appropriate for the administration of securities laws.

Division 2 Authority of Court Appointees

Application of Division 2

5.2 This Division applies to a person appointed under section 5.1 [*Appointment*] or section 2.11 [*Appointment to manage affairs*] of the *Uniform Securities Act*, unless another enactment governs the matters described in this Division, in which case the other enactment prevails to the extent of any inconsistency.

Authority of appointees

5.3 A receiver, receiver-manager, trustee or liquidator appointed by the court under section 5.1 [*Appointment*] or under section 2.11 [*Appointment to manage affairs*] of the *Uniform Securities Act*

- (a) has all necessary authority to carry out the powers, functions and duties of the appointment in accordance with the court order and this Part;

- (b) is appointed with respect to the person, property and affairs of the person named in the court order, whether the property is held in trust, owned or held in some other capacity, unless the order provides otherwise;
- (c) must comply with the terms and conditions of the court order.

Authority of receiver

5.4(1) A receiver appointed under securities laws may, subject to the rights of secured creditors,

- (a) receive income from the property and affairs of the person named in the order and pay liabilities in respect of the property and affairs, and
- (b) realize the security of the person on whose behalf the receiver is appointed.

(2) When an order is made appointing a receiver, the person in respect of whom the order is made ceases to have authority and may not exercise any powers in respect of the income from the property or affairs for which the receiver is appointed, except as directed by the court or the receiver.

Authority of receiver-manager

5.5(1) A receiver-manager appointed under securities laws may take control of the property and administer the affairs of the person in respect of whom the court order is made and

- (a) with respect to an individual, has all the authority of the individual to administer the property and manage the individual's affairs,
- (b) with respect to a corporation, has all the authority of the shareholders and directors of the corporation, and
- (c) has any other authority prescribed in the order appointing the receiver-manager.

(2) When an order is made appointing a receiver-manager of the property or affairs of a person

- (a) in the case of an individual, the individual has no authority to and may not exercise any powers in respect of the individual's property and affairs for which the order is made, and

- (b) in the case of a corporation, the shareholders and the directors of the corporation have no authority to and may not exercise any powers in respect of the corporation,

except as directed by the court order or by the receiver-manager.

Authority of trustee

5.6(1) A trustee appointed under securities laws must hold in trust the property specified in the court order, subject to the terms of the order.

(2) When an order is made appointing a trustee, the person in respect of whom the order is made ceases to have authority and may not exercise any power in respect of the property subject to the trust, except as directed by the court or the trustee.

Authority of liquidator

5.7(1) A liquidator appointed under securities laws must wind up the affairs of the person in respect of whom the liquidator is appointed in accordance with the court order.

(2) When an order is made appointing a liquidator, the person in respect of whom the order is made ceases to have authority and may not exercise any powers in respect of the affairs to be wound up, except as directed by the court or the liquidator.

Termination of appointments

5.8(1) A receiver or a receiver-manager appointed under securities laws remains in office until the appointment is terminated by the court or

- (a) the receiver or receiver-manager winds up the affairs of the person in respect of whom the order is made in accordance with a direction of the court, or
- (b) a liquidator is appointed to wind up the affairs of the person.

(2) A liquidator appointed under securities laws remains in office until the appointment is terminated by the court or the property and affairs are wound up.

Fees

5.9 The fees payable to a receiver, receiver-manager or liquidator for their services, expenses and disbursements

- (a) must be fixed by the court from time to time,
- (b) must be paid,
 - (i) out of the assets of the person in respect of whom the appointment was made, or
 - (ii) if the assets are insufficient, from the assets of those persons that benefited from the appointment of the receiver or receiver-manager, as directed by the court, and
- (c) in the case of the winding-up of a corporation, rank equally with the remuneration paid to the liquidator.

Application for directions

5.10(1) A receiver, receiver-manager, trustee or liquidator may apply to the court for directions on any matter and the court may

- (a) give directions,
- (b) if required, declare the rights of parties before the court, and
- (c) make any further order it considers necessary.

(2) The court may at any time revoke an appointment under securities laws and appoint another receiver, receiver-manager, trustee or liquidator in their place.

Filing in land registry

5.11(1) The securities regulatory authority may send a notice to the Registrar of Land Titles that proceedings are being or are about to be taken under this Part that may affect land belonging to the person referred to in the notice, and may amend or revoke the notice as the circumstances require.

(2) On receipt of the notice, the Registrar of Land Titles must register or record the notice against the land named in the notice.

(3) A notice registered or recorded under subsection (2) has the same effect as the registration or recording of a certificate of pending litigation or a caveat.

PART 6: REVIEWS, DECISIONS, APPEALS AND ADMINISTRATIVE PROCESSES

Division 1 Review of Decisions of SRA Delegates

Extra-provincial decision

6.1 In this part, **extra-provincial decision** means a decision of an extra-provincial SRA or its delegate under authority delegated by the securities regulatory authority.

Review by securities regulatory authority

6.2(1) The securities regulatory authority may, on its own initiative, review a decision of an SRA delegate, other than an extra-provincial decision.

(2) If the securities regulatory authority intends to conduct a review on its own initiative, the securities regulatory authority must, within 30 days after the date of the decision to be reviewed, notify the following persons of its intention:

- (a) the person who made the decision, and
- (b) any person directly affected by the decision.

Request for review

6.3(1) A person directly affected by a decision of an SRA delegate, other than an extra-provincial decision, may request and is entitled to a review of the SRA delegate's decision by the securities regulatory authority.

(2) The request for a review must be made

- (a) by sending notice to the securities regulatory authority within 30 days after the date on which the person was sent notice of the decision, and
- (b) by sending a copy of the request to the person who made the decision.

Regulator's authority and status

6.4 The regulator

- (a) has the same right to request a review of a decision of an SRA delegate as a person directly affected by the decision;

- (b) has the same right to make an application on any matter as a person directly affected by the matter that is the subject of the application;
- (c) has the same standing at a review as a person directly affected by the matter under review, whether or not the regulator requested the review.

When decisions take effect

6.5 A decision of an SRA delegate takes effect immediately despite a request for a review or notice by the securities regulatory authority that it intends to conduct a review, unless the person who made the decision or the securities regulatory authority suspends the decision pending the review.

Nature of a review

6.6 The securities regulatory authority may decide the nature and extent of a review to be conducted, including

- (a) a partial or full hearing or rehearing of the matter, or
- (b) a documents-only review.

Decision after a review

6.7 After a review, the securities regulatory authority may confirm, vary or revoke the decision reviewed and in doing so may

- (a) make any decision the SRA delegate could have made;
- (b) on the review of a decision of a recognized entity or its delegate, make any decision the recognized entity or its delegate could have made acting under
 - (i) authority delegated to the recognized entity by the securities regulatory authority, or
 - (ii) rules, policies or other similar instruments made by the recognized entity;
- (c) make any other decision that the securities regulatory authority may make under securities laws.

Division 2 Procedural Matters

Witnesses and evidence

6.8(1) For the purpose of preparing for or conducting a review or hearing, the securities regulatory authority has the same power as is vested in the court for the trial of civil actions:

- (a) to summon and enforce the attendance of witnesses,
- (b) to compel witnesses to give evidence under oath or otherwise, and
- (c) to compel witnesses to produce records, property and things.

(2) The failure or refusal of a person summoned to attend, answer questions or produce records, property or things that are in the person's custody or possession, or under their direct or indirect control, makes that person, on application to the court by the securities regulatory authority, liable to be committed for contempt by the court.

(3) The *Alberta Rules of Court* with respect to compelling the attendance of witnesses, including the provisions relating to the payment of conduct money, apply to hearings and reviews conducted by the securities regulatory authority.

(4) No person may, without lawful excuse, fail to comply with a summons issued under subsection (1).

Evidence taken outside Alberta

6.9(1) The securities regulatory authority may apply to the court for

- (a) an order appointing a person to take the evidence of a witness outside Alberta for use in an investigation or a proceeding before the securities regulatory authority, and
- (b) a letter of request from the court directed to the judicial authorities of the jurisdiction in which a witness is located, requesting the issuance of such process as is necessary to compel the person to attend before the person appointed under clause (a) to give evidence on oath or otherwise and to produce records, property or things relevant to the subject matter of the investigation or proceeding.

(2) The practice and procedure in connection with:

- (a) an appointment under this section,

- (b) the taking of evidence, and
- (c) the certifying and return of the appointment,

is, to the extent possible, to be the same as the practice and procedure governing similar matters in civil proceedings under the *Alberta Rules of Court*.

(3) Unless the court otherwise directs, making an order under this section does not determine whether evidence obtained as a result of the order is admissible in a review or hearing before the securities regulatory authority.

(4) Nothing in this section limits any power that the securities regulatory authority has to obtain evidence outside Alberta by any other means, including under securities laws or by operation of law.

(5) On application by an extra-provincial SRA, the court may, for the purpose of administering extra-provincial securities laws,

- (a) summon and enforce the attendance of witnesses before a person appointed by the extra-provincial SRA;
- (b) direct witnesses to give evidence under oath or otherwise before the person appointed by the extra-provincial SRA;
- (c) direct witnesses to produce records, property and things to the person appointed by the extra-provincial SRA.

(6) The failure or refusal of a person summoned to attend, answer questions, or produce records, property or things that are in the person's custody or possession, or under their direct or indirect control, makes that person, on application to the court by the extra-provincial SRA, liable to be committed for contempt by the court.

(7) The *Alberta Rules of Court* with respect to compelling the attendance of witnesses, including the provisions relating to the payment of conduct money, apply to proceedings described in subsections (5) and (6).

Joint reviews, hearings and location

6.10(1) The securities regulatory authority may hold a review or hearing in or outside Alberta on its own, or in conjunction with one or more extra-provincial SRAs.

(2) Members of the securities regulatory authority that are sitting on a joint review or hearing may consult with any member of an extra-provincial SRA that is taking part in the joint review or joint hearing.

Evidence

6.11(1) The securities regulatory authority

- (a) is not bound by the rules of evidence or any other law applicable to judicial proceedings,
- (b) has the power to determine the admissibility, relevance and weight of any evidence,
- (c) may determine the manner in which evidence is to be admitted, and
- (d) may determine any question of law or fact.

(2) The securities regulatory authority may require witnesses to give evidence under oath.

(3) A member of the securities regulatory authority may administer an oath for the purpose of receiving evidence.

Conduct of reviews, hearings and inquiries

6.12 Subject to this Act and the *Uniform Securities Act*, all matters respecting the initiation of hearings, reviews or inquiries, and other matters relevant to the conduct of hearings, reviews and inquiries, including pre-hearing disclosure, must be dealt with in accordance with the rules.

Division 3 Administrative Orders Protecting the Public Interest

Interim orders

6.13(1) If the securities regulatory authority has the authority to make an order under this Division, the securities regulatory authority may, at any time, make an interim order, without a hearing, when the securities regulatory authority considers that

- (a) the length of time required to conduct a hearing, or
- (b) the length of time to give an opportunity to be heard and make a decision

could be prejudicial to the public interest.

(2) Despite subsection (1), the securities regulatory authority may not make an interim order

- (a) that a market participant submit to a review of its practices and procedures under section 6.16(1)(e) [*Securities regulatory authority orders*];
- (b) that records, property or things be provided, not be provided or amended under section 6.16(1)(f)(i) and (iii) [*Securities regulatory authority orders*];
- (c) reprimanding a person under section 6.16(1)(g) [*Securities regulatory authority orders*];
- (d) requiring payment of an administrative penalty under section 6.16(1)(l) [*Securities regulatory authority orders*];
- (e) requiring disgorgement of amounts described in section 6.16(1)(m) [*Securities regulatory authority orders*].

(3) An interim order

- (a) takes effect immediately on being made, unless the order provides otherwise, and
- (b) expires not more than 15 days after the date the interim order is made.

(4) If the securities regulatory authority considers it necessary and in the public interest, the securities regulatory authority may, by order made without a hearing, extend the period of time that an interim order remains in effect

- (a) for such period as the securities regulatory authority considers necessary, or
- (b) until a final decision is made.

(5) If the securities regulatory authority makes an interim order, the securities regulatory authority must send to any person named in the order,

- (a) the interim order and the notice of hearing, and
- (b) any order extending the interim order.

Freeze orders

6.14(1) If the securities regulatory authority considers it expedient for the administration of securities laws, the securities regulatory authority may, by order,

- (a) direct a person having on deposit, or under their direct or indirect control or safekeeping, records, property or things, including funds or securities, to hold them pending a further order, or
 - (b) direct a person who owns or is in possession or control of records, property or things, including funds or securities,
 - (i) not to withdraw or remove the records, property or things from any person having them on deposit, under their direct or indirect control, or holding them for safekeeping, or
 - (ii) to hold all records, property or things of clients or others in the person's possession or control in trust for a receiver, receiver-manager, trustee or liquidator appointed under securities laws, any other enactment, or an enactment of Canada.
- (2) An order of a securities regulatory authority to a Canadian financial institution applies to all offices, branches or agencies of the Canadian financial institution that are located in Alberta if a copy of the order is served on the Canadian financial institution's principal place of business in Alberta.
- (3) Unless it expressly so states, an order of the securities regulatory authority does not apply to records, property or things in a clearing agency or to securities in the process of being transferred by a transfer agent.
- (4) The securities regulatory authority may send a notice to the Registrar of Land Titles that proceedings are being or are about to be taken under this Part that may affect land belonging to the person referred to in the notice, and may amend or revoke the notice as the circumstances require.
- (5) On receipt of the notice, the Registrar of Land Titles must register or record the notice against the land named in the notice.
- (6) A notice registered or recorded under subsection (5) has the same effect as the registration or recording of a certificate of pending litigation or a caveat.

Cease trading orders for failing to file records

- 6.15(1)** For the reasons set out in subsection (2), the securities regulatory authority, without a hearing, may order that all persons named in the order
- (a) not trade or purchase specified securities, or
 - (b) stop or not start purchasing specified securities.

- (2) The securities regulatory authority may make the order if the issuer of the security, the exchange on which an exchange-traded derivative is traded or the person in respect of whom the order is made, fails to file a record required to be filed under securities laws.
- (3) The order must be revoked as soon as practicable after the record referred to in the order, completed in accordance with securities laws, is filed.
- (4) The securities regulatory authority must send to any person directly affected by the order
- (a) written notice of the order, and
 - (b) written notice of the revocation of the order, if any.

Securities regulatory authority orders

6.16(1) If, after a hearing, the securities regulatory authority considers that it is in the public interest, the securities regulatory authority may make one or more of the following orders:

- (a) that
 - (i) a person be prohibited from being registered;
 - (ii) registration granted to a person under securities laws be suspended and the duration of the suspension;
 - (iii) registration be restricted or limited to such period as is specified in the order;
 - (iv) registration be terminated;
- (b) that
 - (i) recognition granted to a recognized entity be suspended and the duration of the suspension;
 - (ii) recognition be restricted or limited to such period as is specified in the order;
 - (iii) recognition be terminated;
- (c) that trading in or purchasing any securities by or of a person cease permanently or for such period as is specified in the order;

- (d) that any exemptions contained in securities laws do not apply to a person permanently or for such period as is specified in the order;
- (e) that a market participant submit to a review of their practices and procedures and institute such changes as may be ordered by the securities regulatory authority;
- (f) that any record described in the order,
 - (i) be provided by a market participant to a person,
 - (ii) not be provided by a market participant to a person, or
 - (iii) be amended by a market participant to the extent that amendment is practicable;
- (g) reprimanding a person;
- (h) that a person resign one or more positions that the person holds as
 - (i) a registrant,
 - (ii) an investment fund manager,
 - (iii) a promoter, or
 - (iv) a person involved in investor-relations activities;
- (i) that a person is prohibited from becoming or acting as
 - (i) a registrant,
 - (ii) a investment fund manager,
 - (iii) a promoter, or
 - (iv) person involved in investor-relations activities;
- (j) that a person resign one or more positions that the person holds as a director or officer of
 - (i) an issuer,
 - (ii) a registrant,
 - (iii) an investment fund manager,

- (iv) a promoter, or
 - (v) a person involved in investor-relations activities;
- (k) that a person is prohibited from becoming or acting as a director or officer of
- (i) an issuer,
 - (ii) a registrant,
 - (iii) an investment fund manager,
 - (iv) a promoter, or
 - (v) a person involved in investor-relations activities;
- (l) if a person has contravened securities laws, that the person pay an administrative penalty of not more than \$1 million for each contravention;
- (m) if a person has contravened securities laws, an order requiring the person to disgorge to the securities regulatory authority any amounts obtained or losses avoided by reason of the contravention;
- (n) that a person comply with
- (i) a rule, policy or other similar instrument of a recognized entity; or
 - (ii) a decision, order, ruling or direction of a recognized entity under a rule, policy or other similar instrument of a recognized entity,
- (o) that a person comply with securities laws.

(2) A person is not entitled to participate in a proceeding in which an order may be made under subsection (1)(l) or (m) solely on the basis that the person who is seeking standing has a right of action against the person who is the subject of the proceeding or that the person who is seeking standing may be entitled to receive amounts ordered to be paid.

Culpability of directors, officers and others

6.17(1) If a person, other than an individual, contravenes securities laws, whether or not any proceeding has been commenced or any decision has been made in respect of that person under securities laws

- (a) every director of that person and
- (b) every officer of that person

who authorized, permitted or acquiesced in the contravention also contravenes securities laws.

(2) If a person, other than an individual, contravenes securities laws, whether or not any proceeding has been commenced or any decision has been made in respect of that person under securities laws, every person, other than an officer or director of the person, who authorized, permitted in the contravention, also contravenes securities laws.

(3) A person who, by an act or omission, incites, counsels, induces, aids or orders a person to contravene securities laws, whether or not any proceeding has been commenced or any decision has been made with respect to that person under securities laws, also contravenes securities laws.

Investigation and hearing costs

6.18(1) If, in respect of a person whose affairs were the subject of an investigation, the securities regulatory authority

- (a) is satisfied that the person has contravened or is contravening securities laws, or
- (b) considers that the person has not acted or is not acting in the public interest,

the securities regulatory authority may, after conducting a hearing, order the person to pay, subject to the rules, the costs of or related to the investigation, including any costs incurred in respect of services provided by persons appointed or engaged under section 3.12 [*Inquiry by securities regulatory authority*] or the attendance of witnesses in an investigation or proceeding under securities laws.

(2) If, in respect of a person whose affairs were the subject of a hearing, the securities regulatory authority, after conducting the hearing,

- (a) is satisfied that the person has contravened or is contravening securities laws, or
- (b) considers that the person has not acted or is not acting in the public interest,

the securities regulatory authority may order the person to pay, subject to the rules, the costs of or related to the hearing that are incurred by or on behalf of the securities regulatory or SRA delegate, including any costs incurred in respect of services provided by persons

appointed or engaged under section 3.12 [*Inquiry by securities regulatory authority*] or the attendance of witnesses in an investigation or proceeding under securities laws.

(3) If a person is guilty of an offence under securities laws, the securities regulatory authority may, after conducting a hearing, order the person to pay, subject to the rules, the costs of or related to an investigation carried out in respect of that offence, including any costs incurred in respect of services provided by persons appointed or engaged under section 3.12 [*Inquiry by securities regulatory authority*] and the attendance of witnesses in the investigation or proceeding under securities laws.

(4) The *Alberta Rules of Court* do not apply to costs and the taxation of costs referred to in this section.

Division 4 Appeals to Court of Appeal

Appeal from securities regulatory authority decisions

6.19(1) Subject to subsection (2), a person directly affected by a final decision of the securities regulatory authority, including a decision of the securities regulatory authority under a power, function or duty delegated to it by an extra-provincial SRA, may appeal to the Court of Appeal.

(2) No person may appeal to the Court of Appeal

- (a) a decision of an SRA delegate, other than
 - (i) a decision made by an extra-provincial SRA acting under a power, function or duty delegated to the extra-provincial SRA by the securities regulatory authority, or
 - (ii) a decision made by a member of the securities regulatory authority acting under delegated authority;
- (b) an order of the securities regulatory authority to grant an exemption under section 11.2 [*Exemption from securities laws*] of the *Uniform Securities Act* or a refusal to grant an exemption;
- (c) a decision of the securities regulatory authority under section 2.13(1) [*Supervision of recognized entities*] of the *Uniform Securities Act*;
- (d) the issue of an investigation order or production order under Part 4 [*Investigations*] or a refusal to issue an order;

- (e) the taking of or refusal to take enforcement proceedings under securities laws;
- (f) the disclosure of or refusal to disclose information collected, received or obtained by the securities regulatory authority or SRA delegate under securities laws.

(3) A person directly affected by an extra-provincial decision may appeal to the court of competent jurisdiction in the jurisdiction in which the extra-provincial decision was made.

(4) Notice of appeal must be sent to the securities regulatory authority within 30 days after the date that the securities regulatory authority serves notice of its decision on the person appealing the decision.

(5) The securities regulatory authority is the respondent to an appeal to the Court of Appeal.

(6) Despite an appeal under this section, the decision appealed takes effect immediately, unless the securities regulatory authority or the Court of Appeal grants a stay pending disposition of the appeal.

Powers on appeal

6.20(1) On hearing an appeal, the Court of Appeal may direct the securities regulatory authority to make any decision that the securities regulatory authority is empowered to make.

(2) Despite an order of the Court of Appeal, the securities regulatory authority may make further decisions

- (a) on receipt of new evidence, or
- (b) if there is a significant change in circumstances,

and every further decision is subject to appeal to the Court of Appeal.

Division 5 Court Declarations and Enforcement

Court declarations

6.21(1) The securities regulatory authority may apply to the court for a declaration that a person has contravened or is contravening securities laws.

(2) The securities regulatory authority is not required, before making the application, to hold a hearing to determine whether the person has contravened or is contravening securities laws.

(3) If the court makes the declaration, the court may, despite

- (a) the imposition of an administrative penalty under section 6.16(1)(l) [*Securities regulatory authority orders*],
- (b) an order under section 6.16(1)(m) [*Securities regulatory authority orders*],
- (c) an order under section 7.8 [*Applications to the court*] of the *Uniform Securities Act*, or
- (d) an order under section 12.19 [*Additional remedies*] of the *Uniform Securities Act*

make any order under this section that the court considers appropriate.

(4) The orders the court may make include, without limitation,

- (a) that a person produce to the court or an interested person financial statements in the form required by securities law or an accounting in such other form as the court may determine;
- (b) rectifying the registers or other records of a person;
- (c) that a person rectify past contravention of securities laws to the extent that rectification is practicable;
- (d) that a person comply with securities laws;
- (e) that a person purchase securities of a security holder;
- (f) rescinding any transaction relating to securities;
- (g) requiring the issuance, cancellation, purchase, exchange or disposition of a security;
- (h) prohibiting the voting or exercise of any other right attaching to a security;
- (i) appointing officers and directors in place of or in addition to all or any of the directors and officers of an issuer that is the subject of the application;
- (j) directing a person to repay to a security holder any part of the money paid by the security holder for a security;

- (k) requiring a person to compensate or make restitution to an aggrieved person;
- (l) requiring a person to pay general or punitive damages;
- (m) requiring a person to pay to the Government any amounts obtained by reason of the contravention of securities laws.

(5) An application under this section may be made *ex parte*, unless the court otherwise directs.

Enforcement of decisions

6.22(1) On filing with the clerk of the court,

- (a) a decision made by the securities regulatory authority,
- (b) a decision made by an SRA delegate,
- (c) a settlement agreement made between the securities regulatory authority and a person, or
- (d) a notice certifying the costs a person is required to pay under section 6.18 [*Investigation and hearing costs*],

the decision, settlement agreement or notice has the same effect as if it were a judgment of the court.

(2) When a decision, settlement agreement or notice is filed under subsection (1)

- (a) the amount certified in the notice,
- (b) any financial penalty imposed in a decision, and
- (c) any amount payable to the securities regulatory authority or SRA delegate,

may be collected as a judgment of the court for the recovery of debt.

PART 7: REGULATIONS, RULE-MAKING AND LIMITATION OF ACTIONS

Lieutenant Governor in Council regulations

7.1 The Lieutenant Governor in Council may make regulations:

- (a) on the same subject matter in respect of which the securities regulatory authority may make rules subject to such modifications as are considered necessary;
- (b) respecting any matter considered advisable to carry out the purposes of the *Uniform Securities Act* or this Act;
- (c) amending or repealing a rule;
- (d) governing the procedures to be followed by the securities regulatory authority with respect to making, amending or repealing rules;
- (e) governing the publication requirements for rules or proposed rules;
- (f) respecting the criteria or guidelines as to what constitutes non-substantive or non-controversial changes to unpublished rules under section 2.4 [*Quorum*];
- (g) respecting the fees payable to the securities regulatory authority for any service or function and respecting the refund of fees;
- (h) respecting fees and charges, or limits on the fees and charges, that may be imposed with respect to
 - (i) a person being investigated or whose financial affairs are being examined under this Act,
 - (ii) an expert or other person appointed under securities laws, and
 - (iii) a market participant subject to a review under securities laws;
- (i) respecting the administration, distribution and expenditure of disgorgement funds received by the securities regulatory authority;
- (j) varying the provisions of securities laws as they apply to a person.

Rule-making authority**7.2** The securities regulatory authority may make rules

- (a) respecting the conduct of the securities regulatory authority, SRA delegate, the regulator and officers, employees, appointees or agents of the securities regulatory authority in relation to their powers, functions and duties under securities laws;
- (b) governing what constitutes a conflict of interest for members of the securities regulatory authority, the regulator and the officers, employees, appointees and agents of the securities regulatory authority and the procedure for disclosing or otherwise dealing with conflicts;
- (c) respecting the practice and procedure for investigations, examinations or inspections under securities laws;
- (d) respecting the initiation of hearings, reviews or inquiries, and matters relevant to the conduct of hearings, reviews and inquiries, including pre-hearing disclosure, and the rules and procedures applicable to a review, hearing or inquiry;
- (e) respecting the operation of the securities regulatory authority, including, without limitation:
 - (i) respecting the costs of investigations, reviews, hearings and other proceedings, the payment of witness fees, the calculation of costs, and the matters in respect of which costs may be awarded;
 - (ii) respecting undertakings to, and agreements or arrangements made by, the securities regulatory authority and respecting the administration and disposition of money received under an undertaking, agreement or arrangement;
- (f) specifying when a hearing must be held before the securities regulatory authority or SRA delegate makes a decision;
- (g) providing for the collection and remission, by recognized entities, of fees payable to the securities regulatory authority;
- (h) respecting the disclosure or confidentiality of personal information, and authorizing the securities regulatory authority to disclose personal information, the manner of the disclosure and to whom;

- (i) authorizing the securities regulatory authority to collect personal information indirectly from a person in Alberta or elsewhere, not otherwise contemplated by securities laws;
- (j) respecting the public availability or confidentiality of records filed with, or provided to, deposited with, produced to or obtained by the securities regulatory authority or SRA delegate;
- (k) authorizing the securities regulatory authority to enter into an arrangement or agreement with a person in Alberta or elsewhere, regarding or involving the collection, sharing or disclosure of personal information, not otherwise contemplated by this Act.

What the rules can do

7.3(1) In making rules respecting a matter described or referred to in section 7.2 [*Rule-making authority*], the securities regulatory authority may

- (a) prohibit, regulate, restrict, limit or control a person, an action, activity or conduct;
- (b) adopt or incorporate, as amended from time to time, whether amended before or after the adoption or incorporation, with or without modification, any code, standard, procedure or guideline;
- (c) impose or provide for the imposition of terms, conditions, restrictions and limitations, or any of them, before, during or after an action, activity or conduct is taken, in addition to any other terms, conditions, restrictions and limitations that may be imposed by the securities regulatory authority;
- (d) if circumstances warrant, make rules or any provision of them, having retroactive, retrospective or prospective effect.

(2) Rules may

- (a) be of general or specific application and applicable to classes, categories or sub-categories of persons, securities, trades, transactions or other matters or things;
- (b) be limited as to time or place, or both.

(3) The securities regulatory authority may amend or repeal rules and make others.

Procedure for making rules

7.4 The securities regulatory authority must follow the requirements of the regulations made by the Lieutenant Governor in Council under section 7.1 [*Lieutenant Governor in Council regulations*] respecting the procedure to be followed in making, amending or repealing rules and their publication.

Effect of rules

7.5 For the purposes of the *Alberta Evidence Act*, a rule must be treated as if it were a regulation.

Inconsistencies between rules and regulations

7.6 In the event of an inconsistency between a regulation made by the Lieutenant Governor in Council under section 7.1 [*Lieutenant Governor in Council regulations*] and a rule, the regulation prevails to the extent of the inconsistency.

Application of Regulations Act

7.7 The *Regulations Act* does not apply to rules.

Limitation period

7.8 Unless otherwise provided by securities laws, no proceeding under securities laws may be commenced in a court or before the securities regulatory authority later than six years from the date of the occurrence of the last event on which the proceeding is based.

PART 8: TRANSITIONAL AND CONSEQUENTIAL PROVISIONS AND COMING INTO FORCE

Transitional provisions

8.1

Explanatory note: This Part would include provisions for the transition from existing legislation to new securities laws.

Amendments to legislation

8.2

Explanatory note: *Securities Act* references in other legislation would be reviewed and changed as necessary, and amendments to other legislation may be required as a consequence of this Act and the *Uniform Securities Act*.

Repeal

8.3 The *Securities Act* is repealed on a date or dates to be fixed by Proclamation.

Coming into force

8.4 This Act comes into force on a date or dates to be fixed by Proclamation.