

9.1.2 Amendments to the Securities Act and Commodity Futures Act

**Amendments to the Securities Act and Commodity Futures Act
Excerpts from the Keeping the Promise for a Strong Economy Act
(Budget Measures), 2002**

**PART III
COMMODITY FUTURES ACT**

10. (1) Subsection 55 (1) of the *Commodity Futures Act*, as re-enacted by the Statutes of Ontario, 1999, chapter 9, section 39, is amended by striking out the portion after clause (c) and substituting the following:

is guilty of an offence and on conviction is liable to a fine of not more than \$5 million or to imprisonment for a term of not more than five years less a day, or to both.

(2) Subsection 55 (3) of the Act, as re-enacted by the Statutes of Ontario, 1999, chapter 9, section 39, is amended by striking out “to a fine of not more than \$1,000,000 or to imprisonment for a term of not more than two years, or to both” at the end and substituting “to a fine of not more than \$5 million or to imprisonment for a term of not more than five years less a day, or to both”.

12. (1) Subsection 60 (1) of the Act, as re-enacted by the Statutes of Ontario, 1999, chapter 9, section 41, is amended by adding the following paragraphs:

9. If a person or company has not complied with Ontario commodity futures law, an order requiring the person or company to pay an administrative penalty of not more than \$1 million for each failure to comply.
10. If a person or company has not complied with Ontario commodity futures law, an order requiring the person or company to disgorge to the Commission any amounts obtained as a result of the non-compliance.

(2) Section 60 of the Act, as re-enacted by the Statutes of Ontario, 1999, chapter 9, section 41, is amended by adding the following subsection:

Disgorgement order

(2.1) A person or company is not entitled to participate in a proceeding in which an order may be made under paragraph 10 of subsection (1) solely on the basis that the person or company has a right of action against the respondent to the proceeding or the person or company may be entitled to receive any amount disgorged under the order.

13. Part XIII of the Act is amended by adding the following section:

Directors and officers

60.5 For the purposes of this Act, if a company or a person other than an individual has not complied with Ontario commodity futures law, a director or officer of the company or person who authorized, permitted or acquiesced in the non-compliance shall be deemed to also have not complied with Ontario commodity futures law, whether or not any proceeding has been commenced against the company or person under Ontario commodity futures law or any order has been made against the company or person under section 60.

14. Subsection 65 (2) of the Act, as enacted by the Statutes of Ontario, 1999, chapter 9, section 47, is amended by adding the following clause:

- (a.1) the administration and distribution of amounts disgorged under paragraph 10 of subsection 60 (1);

**PART XXVII
SECURITIES ACT**

177. (1) Subsection 1 (1) of the *Securities Act*, as amended by the Statutes of Ontario, 1994, chapter 11, section 349, 1994, chapter 33, section 1, 1997, chapter 19, section 23, 1999, chapter 6, section 60, 1999, chapter 9, section 193 and 2001, chapter 23, section 209, is amended by adding the following definitions:

“investment fund” means a mutual fund or a non-redeemable investment fund; (“fonds d’investissement”)

“investment fund manager” means a person or company who has the power and exercises the responsibility to direct the affairs of an investment fund; (“gestionnaire de fonds d’investissement”)

(2) The definitions of “material change”, “material fact” and “mutual fund” in subsection 1 (1) of the Act are repealed and the following substituted:

“material change”,

- (a) when used in relation to an issuer other than an investment fund, means,
 - (i) 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 any of the securities of the issuer, or
 - (ii) a decision to implement a change referred to in subclause (i) made by the board of directors or other persons acting in a similar capacity or by senior management of the issuer who believe that confirmation of the decision by the board of directors or such other persons acting in a similar capacity is probable, and
- (b) when used in relation to an issuer that is an investment fund, means,
 - (i) 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 continue to hold securities of the issuer, or
 - (ii) a decision to implement a change referred to in subclause (i) made,
 - (A) by the board of directors of the issuer or the board of directors of the investment fund manager of the issuer or other persons acting in a similar capacity,
 - (B) by senior management of the issuer who believe that confirmation of the decision by the board of directors or such other persons acting in a similar capacity is probable, or
 - (C) by senior management of the investment fund manager of the issuer who believe that confirmation of the decision by the board of directors of the investment fund manager of the issuer or such other persons acting in a similar capacity is probable; (“changement important”)

“material fact”, when used in relation to securities issued or proposed to be issued, means a fact that would reasonably be expected to have a significant effect on the market price or value of the securities; (“fait important”)

“mutual fund” includes,

- (a) an issuer,
 - (i) whose primary purpose is to invest money provided by its security holders, and
 - (ii) whose securities entitle the holder to receive on demand, or within a specified period after demand, an amount computed by reference to the value of a proportionate interest in the whole or in part of the net assets, including a separate fund or trust account, of the issuer, or
- (b) an issuer or a class of issuers that is designated as a mutual fund by an order of the Commission in the case of a single issuer or otherwise in a regulation which is made for the purposes of this definition,

but does not include an issuer or a class of issuer that is designated not to be a mutual fund by an order of the Commission in the case of a single issuer or otherwise in a regulation which is made for the purposes of this definition; (“fonds mutuel”)

(3) Subsection 1 (1.1) of the Act, as enacted by the Statutes of Ontario, 1994, chapter 33, section 1, is repealed and the following substituted:

Same

(1.1) For the purposes of this Act, the regulations and the rules, any of “derivatives”, “disclosure controls and procedures”, “future-oriented financial information”, “going private transaction”, “insider bid”, “internal controls”, “non-redeemable investment fund”, “penny stocks”, “related party transactions” and “reverse take-overs” may be defined in the regulations or the rules and if so defined shall have the defined meaning.

178. Subsection 3.4 (2) of the Act, as enacted by the Statutes of Ontario, 1997, chapter 10, section 37, is repealed and the following substituted:

Exceptions

(2) The Commission shall pay into the Consolidated Revenue Fund money received by the Commission pursuant to an order under paragraph 9 or 10 of subsection 127 (1) of this Act or paragraph 9 or 10 of subsection 60 (1) of the *Commodity Futures Act* or as a payment to settle enforcement proceedings commenced by the Commission, other than money,

- (a) to reimburse the Commission for costs incurred or to be incurred by it; or
- (b) that is designated under the terms of the order or settlement for an allocation to or for the benefit of third parties that is approved by the Minister or that belongs to a class of allocations approved by the Minister.

179. Part VII of the Act is amended by adding the following section:

Continuous disclosure reviews

20.1 (1) The Commission or any member, employee or agent of the Commission may conduct a review of the disclosures that have been made or that ought to have been made by a reporting issuer or mutual fund in Ontario, on a basis to be determined at the discretion of the Commission or the Director.

Information and documents

(2) A reporting issuer or mutual fund in Ontario that is subject to a review under this section shall, at such time or times as the Commission or Director may require, deliver to the Commission or Director any information and documents relevant to the disclosures that have been made or that ought to have been made by the reporting issuer or mutual fund.

Freedom of Information and Protection of Privacy Act

(3) Despite the *Freedom of Information and Protection of Privacy Act*, information and documents obtained pursuant to a review under this section are exempt from disclosure under that Act if the Commission determines that the information and documents should be maintained in confidence.

Prohibition on certain representations

(4) A reporting issuer or mutual fund in Ontario, or any person or company acting on behalf of a reporting issuer or mutual fund in Ontario, shall not make any representation, written or oral, that the Commission has in any way passed upon the merits of the disclosure record of the reporting issuer or mutual fund.

180. (1) Clauses 75 (3) (a) and (b) of the Act are repealed and the following substituted:

- (a) in the opinion of the reporting issuer, and if that opinion is arrived at in a reasonable manner, the disclosure required by subsection (2) would be unduly detrimental to the interests of the reporting issuer; or
- (b) the material change consists of a decision to implement a change made by senior management of the issuer who believe that confirmation of the decision by the board of directors is probable and senior management of the issuer has no reason to believe that persons with knowledge of the material change have made use of that knowledge in purchasing or selling securities of the issuer,

(2) Section 75 of the Act, as amended by the Statutes of Ontario, 1994, chapter 11, section 349, is amended by adding the following subsection:

Same

(5) Although a report has been filed with the Commission under subsection (3), the reporting issuer shall promptly generally disclose the material change in the manner referred to in subsection (1) upon the reporting issuer becoming aware, or having reasonable grounds to believe, that persons or companies are purchasing or selling securities of the reporting issuer with knowledge of the material change that has not been generally disclosed.

181. (1) Subsection 122 (1) of the Act, as re-enacted by the Statutes of Ontario, 1994, chapter 11, section 373, is amended by striking out the portion after clause (c) and substituting the following:

is guilty of an offence and on conviction is liable to a fine of not more than \$5 million or to imprisonment for a term of not more than five years less a day, or to both.

(2) Subsection 122 (3) of the Act, as re-enacted by the Statutes of Ontario, 1994, chapter 11, section 373, is amended by striking out “to a fine of not more than \$1,000,000 or to imprisonment for a term of not more than two

years, or to both” at the end and substituting “to a fine of not more than \$5 million or to imprisonment for a term of not more than five years less a day, or to both”.

(3) Clause 122 (4) (a) of the Act, as re-enacted by the Statutes of Ontario, 1994, chapter 11, section 373, is repealed and the following substituted:

- (a) \$5 million; and

183. (1) Subsection 127 (1) of the Act, as re-enacted by the Statutes of Ontario, 1994, chapter 11, section 375 and amended by 1999, chapter 9, section 215, is amended by adding the following paragraphs:

- 9. If a person or company has not complied with Ontario securities law, an order requiring the person or company to pay an administrative penalty of not more than \$1 million for each failure to comply.
- 10. If a person or company has not complied with Ontario securities law, an order requiring the person or company to disgorge to the Commission any amounts obtained as a result of the non-compliance.

(2) Section 127 of the Act, as re-enacted by the Statutes of Ontario, 1994, chapter 11, section 375 and amended by 1999, chapter 9, section 215, is amended by adding the following subsection:

Disgorgement order

(3.1) A person or company is not entitled to participate in a proceeding in which an order may be made under paragraph 10 of subsection (1) solely on the basis that the person or company has a right of action against the respondent to the proceeding or the person or company may be entitled to receive any amount disgorged under the order.

184. Part XXII of the Act is amended by adding the following section:

Directors and officers

129.2 For the purposes of this Act, if a company or a person other than an individual has not complied with Ontario securities law, a director or officer of the company or person who authorized, permitted or acquiesced in the non-compliance shall be deemed to also have not complied with Ontario securities law, whether or not any proceeding has been commenced against the company or person under Ontario securities law or any order has been made against the company or person under section 127.

186. Subsection 142 (2) of the Act, as amended by the Statutes of Ontario, 1994, chapter 11, section 378, is amended by striking out the portion before clause (a) and substituting the following:

Exceptions

(2) Subsections 13 (1), (3) and (4), sections 60, 122, 126, 129, 130, 131, 134 and 135, Part XXIII.1 and section 139 do not apply to,

187. (1) Paragraph 25 of subsection 143 (1) of the Act, as re-enacted by the Statutes of Ontario, 1994, chapter 33, section 8, is amended by striking out “and” at the end of subparagraph iv, by adding “and” at the end of subparagraph v and by adding the following subparagraph:

- vi. defining auditing standards for attesting to and reporting on a reporting issuer’s internal controls.

(2) Subsection 143 (1) of the Act, as re-enacted by the Statutes of Ontario, 1994, chapter 33, section 8 and amended by 1997, chapter 19, section 23, 1997, chapter 43, Schedule F, section 13, 1999, chapter 9, section 220 and 2001, chapter 23, section 217, is amended by adding the following paragraphs:

- 55.1 Prescribing documents for the purposes of the definition of “core document” in subsection 138.1 (1).
- 55.2 Prescribing exemptions from the prospectus requirement under this Act for the purposes of clause 138.2 (b), take-over bids and issuer bids for the purposes of clause 138.2 (c) and transactions or classes of transactions for the purposes of clause 138.2 (d).
- 55.3 Prescribing the meaning of “market capitalization”, “trading price” and “principal market” and such other terms as are used in Part XXIII.1 and are not otherwise defined in this Act.

(3) Subsection 143 (1) of the Act, as re-enacted by the Statutes of Ontario, 1994, chapter 33, section 8 and amended by 1997, chapter 19, section 23, 1997, chapter 43, Schedule F, section 13, 1999, chapter 9, section 220 and 2001, chapter 23, section 217, is amended by adding the following paragraphs:

57. Requiring reporting issuers to appoint audit committees and prescribing requirements relating to the functioning and responsibilities of audit committees, including requirements in respect of,
 - i. the standard of review to be applied by audit committees in their review of documents filed under Ontario securities law,
 - ii. the certification or other evidence of review by audit committees,
 - iii. the scope and content of an audit committee's review, and
 - iv. the composition of audit committees and the qualifications of audit committee members, including independence requirements.
58. Requiring reporting issuers to devise and maintain a system of internal controls related to the effectiveness and efficiency of their operations, including financial reporting and asset control, sufficient to provide reasonable assurances that,
 - i. transactions are executed in accordance with management's general or specific authorization,
 - ii. transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles or any other criteria applicable to those statements,
 - iii. transactions are recorded as necessary to maintain accountability for assets,
 - iv. access to assets is permitted only in accordance with management's general or specific authorization, and
 - v. the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences.
59. Requiring reporting issuers to devise and maintain disclosure controls and procedures sufficient to provide reasonable assurances that,
 - i. information required to be disclosed under Ontario securities law is recorded, processed, summarized and reported, within the time periods specified under Ontario securities law, and
 - ii. information required to be disclosed under Ontario securities law is accumulated and communicated to the reporting issuer's management, including its chief executive and financial officers, as appropriate, to allow timely decisions regarding required disclosure.
60. Requiring chief executive officers and chief financial officers of reporting issuers, or persons performing similar functions, to provide a certification that addresses the reporting issuer's internal controls, including a certification that addresses,
 - i. the establishment and maintenance of the internal controls,
 - ii. the design of the internal controls, and
 - iii. the evaluation of the effectiveness of the internal controls.
61. Requiring chief executive officers and chief financial officers of reporting issuers, or persons performing similar functions, to provide a certification that addresses the reporting issuer's disclosure controls and procedures, including a certification that addresses,
 - i. the establishment and maintenance of the disclosure controls and procedures,
 - ii. the design of the disclosure controls and procedures, and
 - iii. the evaluation of the effectiveness of the disclosure controls and procedures.

(4) Subsection 143 (2) of the Act, as enacted by the Statutes of Ontario, 1994, chapter 33, section 8, is amended by striking out “and” at the end of clause (a) and by adding the following clause:

- (a.1) the administration and distribution of amounts disgorged under paragraph 10 of subsection 127 (1);

Bill 179 – *Government Efficiency Act, 2002*

188. (1) This section applies only if Bill 179 (*Government Efficiency Act, 2002*, introduced on September 25, 2002) receives Royal Assent.

(2) References in this section to provisions of Bill 179 are references to those provisions as they were numbered in the first reading version of the Bill.

(3) On the later of the day subsection 194 (3) of this Act comes into force and the day section 11 of Schedule H to Bill 179 comes into force, clause 122 (4) (a) of the *Securities Act* is repealed and the following substituted:

- (a) \$5 million; and