

## Chapter 9

# Legislation

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### 9.1.1. Notice of Proposed Amendments to the Securities Act and Commodity Futures Act

#### NOTICE OF AMENDMENTS TO THE SECURITIES ACT AND COMMODITY FUTURES ACT

On December 16, 2004, the *Budget Measures Act (Fall), 2004* (Bill 149) received Royal Assent. The amendments to the *Securities Act* contained in Schedule 34 of Bill 149 are mostly technical in nature and relate to statutory amendments previously introduced by the *Keeping the Promise for a Strong Economy Act (Budget Measures), 2002* (Bill 198).

Certain sections in Schedule 34 of Bill 149 came into force on December 16, 2004. Other sections will come into force on a day to be named by proclamation of the Lieutenant Governor. These unproclaimed sections relate to the civil liability for secondary market disclosure regime enacted in Part XXIII.1 and to sections 126.1 and 126.2 of the *Securities Act*.<sup>1</sup> Certain terms used in Part XXIII.1 of the *Securities Act* are to be defined in the regulations. As such, we anticipate that Part XXIII.1 and section 126.1 and 126.2 of the *Securities Act*, as they are to be amended by Schedule 34, will be proclaimed into force once the necessary amendments to Regulation 1015 have been made by the Lieutenant Governor in Council.

#### SIGNIFICANT CHANGES TO THE SECURITIES ACT NOW IN EFFECT:

Among the most significant changes to the *Securities Act*, which are now in effect, are amendments to:

- Introduce a safe harbour for forward-looking information contained in a prospectus, offering memorandum, take-over bid circular, directors' circular or a director's and officer's circular.
- Broaden the definition of "forward-looking information" to include all disclosure regarding possible events, conditions or results of operations.
- Eliminate the Commission's ability to designate an issuer or class of issuers as mutual funds or to designate them not to be mutual funds.
- Create a statutory definition for a "non-redeemable investment fund".
- Eliminate the requirement for the Minister to approve an allocation or a class of allocations, for the benefit of third parties, of money received by the Commission in connection with enforcement proceedings. Instead, a provision has been enacted authorizing the Minister to establish guidelines with respect to the allocation of money received by the Commission pursuant to an order issued under section 127 of the *Securities Act* or pursuant to a settlement agreement.
- Provide that an advisory committee will be appointed to review securities legislation and rules every four years after the appointment of the previous advisory committee.

#### SIGNIFICANT CHANGES TO THE SECURITIES ACT NOT YET IN EFFECT:

Among the most significant changes to the *Securities Act*, which will come into effect upon proclamation of Schedule 34, are:

- Amend the definition of "expert" in section 138.1 of the Act to exclude approved rating organizations.
- Clarify the application of the safe harbour for oral forward-looking information in the context of the secondary market civil liability regime. These changes have been introduced to parallel the safe harbour for oral forward-looking information that exists in the United States.
- Revise the wording in subsection 126.2(b) of the Act to make it similar to the definition of material change contained in the Act, and to clarify that section 126.2 does not create a further and separate right of action to the rights available under Part XXIII and Part XXIII.1 of the Act.

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<sup>1</sup> Part XXIII.1 and sections 126.1 and 126.2 were enacted under Bill 198 and have not yet been proclaimed in to force.

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Parallel amendments contained in Schedule 6 of Bill 149 have been made, where appropriate, to the *Commodity Futures Act*. The amendments to subsections 60(2.1) and 76(1) of the *Commodity Futures Act* are now in effect. The amendment to clause 59.2(b) of the *Commodity Futures Act* will come into force on a day to be named by proclamation of the Lieutenant Governor.

The relevant portions of the *Budget Measures Act (Fall), 2004* are reprinted below and may also be viewed on the Ontario Legislative Assembly's web site at [www.ontla.on.ca](http://www.ontla.on.ca) and the Commission's web site at [www.osc.gov.on.ca](http://www.osc.gov.on.ca).

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