

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

On December 5, 2001, the *Responsible Choices for Growth and Fiscal Responsibility Act (Budget Measures), 2001* (previously Bill 127) received Royal Assent. The Commission is publishing below amendments to the *Securities Act* and the *Commodity Futures Act* together with an explanation of the amendments.

**I. Amendments to the Securities Act**

This table shows the amendments to the *Securities Act* and provides a brief explanation of each amendment. All the amendments came into force on December 5, 2001, the day the *Responsible Choices for Growth and Fiscal Responsibility Act (Budget Measures), 2001* received Royal Assent.

<b>Provision Before the Amendments</b>	<b><i>Responsible Choices for Growth and Fiscal Responsibility Act (Budget Measures), 2001 - Part XXIV</i></b>	<b>Explanatory Note</b>
<p>"reporting issuer" means an issuer, (b.1) that has filed a securities exchange takeover bid circular under this Act before the date on which the <i>More Tax Cuts for Jobs, Growth and Prosperity Act, 1999</i> receives Royal Assent,</p>	<p><b>209. Clause (b.1) of the definition of "reporting issuer" in subsection 1(1) of the <i>Securities Act</i>, as enacted by the Statutes of Ontario, 1999, chapter 9, section 193, is repealed and the following substituted:</b> (b.1) that has filed a securities exchange take-over bid circular under this Act before December 14, 1999,</p>	<p>The amendment includes the actual date that the <i>More Tax Cuts for Jobs, Growth and Prosperity Act, 1999</i> received Royal Assent.</p>
<p><i>Subsection 17(6) Disclosure in investigation or proceeding - A person appointed to make an investigation or examination under this Act may, for the purpose of conducting an examination or in connection with a proceeding commenced or proposed to be commenced by the Commission under this Act, disclose or produce anything mentioned in subsection (1).</i></p>	<p><b>210. Subsection 17(6) of the Act, as enacted by the Statutes of Ontario, 1999, chapter 9, section 196, is repealed and the following substituted:</b> (6) A person appointed to make an investigation or examination under this Act may disclose or produce anything mentioned in subsection (1), but may do so only in connection with, (a) a proceeding commenced or proposed to be commenced by the Commission under this Act; or (b) an examination of a witness, including an examination of a witness under section 13.</p>	<p>Subsection 17(6) has been amended to clarify that the subsection includes an examination of a witness pursuant to section 13 of the <i>Securities Act</i>.</p>

<p><i>Paragraph 14 of subsection 35(2)</i> Securities issued by a mining company or a mining exploration company as consideration for mining claims where the vendor enters into such escrow or pooling agreement as the Director considers necessary.</p>	<p><b>211. Paragraph 14 of subsection 35(2) of the Act is repealed and the following substituted:</b> 14. Securities issued by a mining company or a mining exploration company as consideration for mining claims, i. where the vendor enters into such escrow or pooling agreement as the Director considers necessary, or ii. where the security that is proposed to be issued, or the security underlying that security, is listed and posted for trading on a stock exchange recognized for the purpose of this paragraph by the Commission and the issuer has received (where required by the by-laws, rules or policies of that stock exchange) the consent of that stock exchange to the issuance of the security.</p>	<p>The amendment to subsection 35(2)14 removes the requirement for the Director to review escrow or pooling arrangements acceptable to a recognized stock exchange.</p>
<p><i>Subsection 62(1)</i> No distribution of a security to which subsection 53(1) applies shall continue longer than 12 months from the date of the issuance of the receipt for the final prospectus relating to the security, which shall be the lapse date, unless a new prospectus that complies with this Part is filed and a receipt therefor is obtained from the Director.</p>	<p><b>212. (1) Subsection 62(1) of the Act, as re-enacted by the Statutes of Ontario, 1997, chapter 19, section 23, is repealed and the following substituted:</b> <b>Refiling of Prospectus</b> (1) In this section “lapse date” means, with reference to a security that is being distributed under subsection 53(1) or this section, the date that is 12 months after the date of the most recent prospectus relating to the security. <b>Same</b> (1.1) No distribution of security to which subsection 53(1) applies shall continue after the lapse date, unless a new prospectus that complies with this Part is filed and a receipt for the new prospectus is obtained from the Director.</p>	<p>Subsection 62(1) has been amended to change the lapse date for a prospectus from 12 months from the date of the final receipt of the prospectus to 12 months from the date of the prospectus. This amendment has been made in order to harmonize the provision in the Ontario <i>Securities Act</i> with that found in other provincial securities legislation.</p>
<p><i>Subsection 62(2)</i> A distribution may be continued for a further twelve months if, (a) a <i>pro forma</i> prospectus prepared in accordance with the regulations is filed not less than thirty days prior to the lapse date of the previous prospectus; (b) a prospectus is filed not later than ten days following the lapse date of the previous prospectus; and (c) a receipt for the prospectus is obtained from the Director within the twenty days following the lapse date of the previous prospectus.</p>	<p><b>(2) Subsection 62(2) of the Act is amended by inserting “after a lapse date” after “twelve months” in the portion before clause (a).</b></p>	<p>Subsection 62(2) has been amended to correspond to the change in the amended subsection 62(1).</p>

<p><i>Subsection 62(3)</i> The continued distribution of securities after the lapse date does not contravene subsection (1) unless and until any of the conditions of subsection (2) are not complied with.</p>	<p><b>(3) Subsection 62(3) of the Act is amended by striking out “subsection (1)” and substituting “subsection (1.1)”.</b></p>	<p>Subsection 62(3) has been amended to correspond to the change in the amended subsection 62(1).</p>
<p><i>Subsection 72(1)(c)</i> the party purchasing as principal is a company or a person, other than an individual, and is recognized by the Commission as an exempt purchaser;</p>	<p><b>213. Clause 72(1)(c) of the Act is amended by striking out “other than an individual”.</b></p>	<p>Clause 72(1)(c) has been amended to permit appropriately sophisticated individuals to qualify as “exempt purchasers”. This change was made to fix this glitch in the 1999 Budget Bill amendments but this amendment has now been superseded by the new OSC Exempt Distributions Rule 45-501 which eliminated the exemption in 72(1)(c).</p>
<p><i>Section 85</i> Subject to section 88, if the management of a reporting issuer gives or intends to give to holders of its voting securities notice of a meeting, the management shall, concurrently with or prior to giving the notice to the security holders whose latest address as shown on the books of the reporting issuer is in Ontario; send by prepaid mail to each such security holder who is entitled to notice of meeting, at the security holder’s latest address as shown on the books of the reporting issuer, a form of proxy for use at the meeting that complies with the regulations.</p>	<p><b>214. Section 85 of the Act is amended by striking out “by prepaid mail”.</b></p>	<p>Section 85 has been amended to delete the references to “prepaid mail” as the required method of delivery; this will allow for electronic delivery of proxy materials in accordance with the guideline set out in National Policy 11-201 - Delivery of Documents by Electronic Means. However, please refer to National Policy Statement 41 - Shareholder Communication which is a deemed rule and which contains requirements for delivery of certain materials to non-registered shareholders by first class mail or by personal delivery; NP 41 is to be replaced by NI 54-101 and 54-102 which are expected to remove this obstacle to electronic delivery when they come into effect.</p>
<p><i>Clause 86(1)(a)</i> in the case of a solicitation by or on behalf of the management of a reporting issuer, an information circular, either as an appendix to or as a separate document accompanying the notice of the meeting, is sent by prepaid mail to each such security holder of the reporting issuer whose proxy is solicited at the security holder’s latest address as shown on the books of the reporting issuer;</p>	<p><b>215. Clause 86(1)(a) of the Act is amended by striking out “by prepaid mail”.</b></p>	<p>Clause 86(1)(a) has been amended to delete the references to “prepaid mail” as the required method of delivery; this will allow for electronic delivery information circulars in accordance with the guideline set out in National Policy 11-201 - Delivery of Documents by Electronic Means.</p>

<p><i>Subsection 130.1(8)</i> This section only applies, (a) to an offering memorandum which has been furnished to a prospective purchaser in connection with a distribution of a security under an exemption from section 53; and (b) in the circumstances specified in the regulations for the purposes of this section.</p>	<p><b>216. Subsection 130.1(8) of the Act, as enacted by the Statutes of Ontario, 1999, chapter 9, section 218, is repealed and the following substituted:</b> (8) This section applies only with respect to an offering memorandum which has been furnished to a prospective purchaser in connection with a distribution of a security under an exemption from section 53 of the Act that is specified in the regulations for the purposes of this section.</p>	<p>Subsection 130.1(8) has been amended to clarify when the statutory right of action against an issuer or selling security holder for a misrepresentation in an offering memorandum applies.</p>
<p><i>Paragraph 36 of subsection 143(1)</i> Varying this Act to foreign issuers to facilitate distributions, compliance with requirements applicable or relating to reporting issuers and the making of takeover bids, issuer bids, insider bids, going-private transactions and related party transactions where the foreign issuers are subject to requirements of the laws of other jurisdictions that the Commission considers are adequate in light of the purposes and principles of this Act.</p>	<p><b>217. The English version of paragraph 36 of subsection 143(1) of the Act, as amended by the Statutes of Ontario, 1999, chapter 9, section 220, is further amended by striking out “to foreign issuers” and substituting “with respect to foreign issuers”.</b></p>	<p>Paragraph 36 of subsection 143(1) has been amended by adding the phrase “with respect to”.</p>
	<p><b>218. This Part comes into force on the day this Act receives Royal Assent.</b></p>	<p>The Act received Royal Assent on December 5, 2001</p>

## II. Amendments to the Commodity Futures Act

This table shows the amendment to the *Commodity Futures Act* with an explanation of the amendment. The amendment came into force on the day the Act received Royal Assent.

### Summary of the Changes to the CFA

<p><b>Provision Before the Amendments</b></p>	<p><b><i>Commodity Futures Act - Part III</i></b></p>	<p><b>Explanatory Note</b></p>
<p><i>Subsection 9(4)</i> A person making an investigation or examination under section 7 or 8 may apply to a judge of the Superior Court of Justice in the absence of the public and without notice for an order authorizing the person or persons named in the order to enter and search any building, receptacle or place specified and to seize anything described in the authorization that is found in the building, receptacle or place and to bring it before the judge granting the authorization or another judge to be dealt with by him or her according to law.</p>	<p><b>8. Subsection 9(4) of the <i>Commodity Futures Act</i>, as enacted by the Statutes of Ontario, 1999, chapter 9, section 30, is amended by striking out “Superior Court of Justice” and substituting “ Ontario Court of Justice”.</b></p>	<p>Subsection 9(4) of the Act has been amended to change the name of the court referred to in the subsection.</p>

	<b>9. This Part comes into force on the day this Act receives Royal Assent.</b>	The Act received Royal Assent on December 5, 2001.
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