

9.1.2. Amendments to the Securities Act and Commodity Futures Act

Amendments to the Securities Act and Commodity Futures Act Excerpts from the *Budget Measures Act (Fall), 2004* (formerly Bill 149)

EXPLANATORY NOTES

SCHEDULE 6 - Commodity Futures Act

Currently, section 59.2 of the *Commodity Futures Act* prohibits the making of misleading or untrue statements that significantly affect or would reasonably be expected to have a significant effect on the market price or value of a commodity or contract. The section is amended so that it only prohibits the making of misleading or untrue statements that would reasonably be expected to have a significant effect on the market price or value of a commodity or contract.

Subsection 60 (2.1) of the Act provides that, in specified circumstances, a person is not entitled to participate in a proceeding in which an order may be made under paragraph 10 of subsection 60 (1) against another person to disgorge amounts obtained as a result of non-compliance. An amendment provides that, in the specified circumstances, a person is also not entitled to participate in a proceeding in which an order may be made under paragraph 9 of subsection 60 (1) against another person to pay an administrative penalty.

Section 76 of the Act requires the Minister to appoint an advisory committee every five years to review the legislation, regulations and rules relating to commodity futures and make a report to the Minister to be tabled in the Legislature and reviewed by a Select or Standing Committee of the Legislative Assembly. The amendments to the section set a May 31, 2005 deadline for appointing the first advisory committee under that section and provide for a review every four years after the appointment of the previous advisory committee.

SCHEDULE 34 - Securities Act

The definition of "forward-looking information" in section 138.1 of the Act is moved to subsection 1(1) of the Act and is amended to specify that it includes all disclosure regarding possible events, conditions or results of operations, not just future-oriented financial information.

The definition of "mutual fund" in subsection 1(1) of the Act is amended by deleting the authority for the Commission to designate an issuer or class of issuers as mutual funds or designating them not to be mutual funds.

A definition of "non-redeemable investment fund" is added to the Act.

Section 3.4 of the Act is amended in connection with the requirement that the Ontario Securities Commission pay into the Consolidated Revenue Fund certain money received by it to settle enforcement proceedings. The Minister of Finance is authorized to establish guidelines about the allocation of money received by the Commission in specified circumstances.

Clause 75 (3) (a) of the Act is amended to correct an error in a cross-reference.

Currently, section 126.2 of the Act prohibits the making of misleading or untrue statements that significantly affect or would reasonably be expected to have a significant effect on the market price or value of a security. It is amended so that it prohibits misleading or untrue statements that would reasonably be expected to have a significant effect on the market price or value of a security. A further amendment specifies that a breach of this prohibition does not give rise to a cause of action for damages.

Subsection 127 (3.1) of the Act provides that, in specified circumstances, a person is not entitled to participate in a proceeding in which an order may be made under paragraph 10 of subsection 127 (1) of the Act against another person to disgorge amounts obtained as a result of non-compliance. An amendment provides that, in the specified circumstances, a person is also not entitled to participate in a proceeding in which an order may be made under paragraph 9 of subsection 127 (1) of the Act against another person to pay an administrative penalty.

Technical amendments are made to subsections 130(1), 130.1(1) and 131(1) and (2) of the Act concerning liability for misrepresentation in various types of documents.

New section 132.1 of the Act provides that a person or company is not liable for a misrepresentation in forward-looking information contained in specified types of documents in the circumstances described in that section.

Technical amendments are made to sections 138.1 to 138.14 of the Act. They include replacing references to "proceeding" with "action" in those sections.

The definition of “expert” in section 138.1 of the Act is amended to exclude an entity that is an approved rating organization under National Instrument 44-101 of the Canadian Securities Administrators.

An amendment to subsection 142 (2) of the Act provides that the Crown is exempt from liability under sections 126.1 (fraud and market manipulation), 126.2 (misleading or untrue statements) and 130.1 (liability for misrepresentation in offering memorandum) of the Act.

Subsection 138.4 (9) of the Act establishes a statutory defence in specified circumstances for persons and companies when there is a misrepresentation in a public oral statement containing forward-looking information. The new subsections 138.4(9.1) and (9.2) of the Act provide that, in specified circumstances, a person or company shall be deemed to have satisfied certain requirements for the statutory defence.

An amendment to subsection 143 (1) of the Act specifies that the Commission may make rules under the Act to provide that Part XXIII.1 (Civil Liability for Secondary Market Disclosure) of the Act applies to certain acquisitions or dispositions of an issuer’s security, and to provide that the Part does not apply to certain transactions or classes of transactions.

The enactment of subsection 143.12 (1.1) of the Act provides for the appointment by the Minister of advisory committees to review securities legislation and rules every four years after the appointment of the previous advisory committee.

SCHEDULE 6

AMENDMENTS TO THE COMMODITY FUTURES ACT

1. Clause 59.2 (b) of the *Commodity Futures Act*, as enacted by the Statutes of Ontario, 2002, chapter 22, section 11, is repealed and the following substituted:

(b) would reasonably be expected to have a significant effect on the market price or value of a commodity or contract.

2. Subsection 60 (2.1) of the Act, as enacted by the Statutes of Ontario, 2002, chapter 22, section 12, is repealed and the following substituted:

Exception

(2.1) A person or company is not entitled to participate in a proceeding in which an order may be made under paragraph 9 or 10 of subsection (1) solely on the basis that the person or company may be entitled to receive any amount paid under the order.

3. Subsection 76 (1) of the Act, as enacted by the Statutes of Ontario, 1999, chapter 9, section 47, is repealed and the following substituted:

Review by Select or Standing Committee

Appointment of first advisory committee

(1) On or before May 31, 2005, the Minister shall appoint an advisory committee to review the legislation, regulations and rules relating to matters dealt with by the Commission and the legislative needs of the Commission.

Appointment of subsequent advisory committees

(1.1) The Minister shall appoint an advisory committee to perform the functions described in subsection (1) not later than 48 months after the appointment of the previous advisory committee appointed under subsection (1) or this subsection.

Commencement

4. (1) Subject to subsection (2), this Schedule comes into force on the day the *Budget Measures Act (Fall), 2004* receives Royal Assent.

Same

(2) Section 1 comes into force on a day to be named by proclamation of the Lieutenant Governor.

SCHEDULE 34

AMENDMENTS TO THE SECURITIES ACT

1. (1) Subsection 1 (1) of the *Securities Act*, as amended by the Statutes of Ontario, 1994, chapter 11, section 350, 1994, chapter 33, section 1, 1997, chapter 19, section 23, 1999, chapter 6, section 60, 1999, chapter 9, section 193, 2001, chapter 23, section 209 and 2002, chapter 22, section 177, is amended by adding the following definition:

“forward-looking information” means disclosure regarding possible events, conditions or results of operations that is based on assumptions about future economic conditions and courses of action and includes future oriented financial information with respect to prospective results of operations, financial position or cash flows that is presented either as a forecast or a projection; (“information prospective”)

(2) The definition of “mutual fund” in subsection 1 (1) of the Act, as re-enacted by the Statutes of Ontario, 2002, chapter 22, section 177, is repealed and the following substituted:

“mutual fund” means an issuer whose primary purpose is to invest money provided by its security holders and 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; (“fonds mutuel”)

(3) Subsection 1 (1) of the Act, as amended by the Statutes of Ontario, 1994, chapter 11, section 350, 1994, chapter 33, section 1, 1997, chapter 19, section 23, 1999, chapter 6, section 60, 1999, chapter 9, section 193, 2001, chapter 23, section 209 and 2002, chapter 22, section 177, is amended by adding the following definition:

“non-redeemable investment fund” means an issuer,

- (a) whose primary purpose is to invest money provided by its security holders,
- (b) that does not invest,
 - (i) for the purpose of exercising or seeking to exercise control of an issuer, other than an issuer that is a mutual fund or a non-redeemable investment fund, or
 - (ii) for the purpose of being actively involved in the management of any issuer in which it invests, other than an issuer that is a mutual fund or a non-redeemable investment fund, and
- (c) that is not a mutual fund; (“fonds d’investissement à capital fixe”)

(4) Subsection 1 (1.1) of the Act, as re-enacted by the Statutes of Ontario, 2002, chapter 22, section 177, is amended by striking out ““non-redeemable investment fund””.

2. (1) Clause 3.4 (2) (b) of the Act, as re-enacted by the Statutes of Ontario, 2002, chapter 22, section 178, is repealed and the following substituted:

(b) that is designated under the terms of the order or settlement for allocation to or for the benefit of third parties.

(2) Section 3.4 of the Act, as enacted by the Statutes of Ontario, 1997, chapter 10, section 37 and amended by 2002, chapter 22, section 178, is amended by adding the following subsection:

Same

(2.1) The Minister may establish guidelines respecting the allocation of money received by the Commission pursuant to an order described in subsection (2) or money received by the Commission as a payment to settle enforcement proceedings commenced by the Commission.

3. Clause 75 (3) (a) of the Act, as re-enacted by the Statutes of Ontario, 2002, chapter 22, section 180, is amended by striking out “subsection (2)” and substituting “subsections (1) and (2)”.

4. (1) Clause 126.2 (b) of the Act, as enacted by the Statutes of Ontario, 2002, chapter 22, section 182, is repealed and the following substituted:

(b) would reasonably be expected to have a significant effect on the market price or value of a security.

(2) Section 126.2 of the Act, as enacted by the Statutes of Ontario, 2002, chapter 22, section 182, is amended by adding the following subsection:

Same

(2) A breach of subsection (1) does not give rise to a statutory right of action for damages otherwise than under Part XXIII or XXIII.1.

5. Subsection 127 (3.1) of the Act, as enacted by the Statutes of Ontario, 2002, chapter 22, section 183, is repealed and the following substituted:

Exception

(3.1) A person or company is not entitled to participate in a proceeding in which an order may be made under paragraph 9 or 10 of subsection (1) solely on the basis that the person or company may be entitled to receive any amount paid under the order.

6. Subsection 130 (1) of the Act is amended by striking out the portion before clause (a) and substituting the following:

Liability for misrepresentation in prospectus

(1) Where a prospectus, together with any amendment to the prospectus, contains a misrepresentation, a purchaser who purchases a security offered by the prospectus during the period of distribution or during distribution to the public has, without regard to whether the purchaser relied on the misrepresentation, a right of action for damages against,

7. Subsection 130.1 (1) of the Act, as enacted by the Statutes of Ontario, 1999, chapter 9, section 218, is repealed and the following substituted:

Liability for misrepresentation in offering memorandum

(1) Where an offering memorandum contains a misrepresentation, a purchaser who purchases a security offered by the offering memorandum during the period of distribution has, without regard to whether the purchaser relied on the misrepresentation, the following rights:

1. The purchaser has a right of action for damages against the issuer and a selling security holder on whose behalf the distribution is made.
2. If the purchaser purchased the security from a person or company referred to in paragraph 1, the purchaser may elect to exercise a right of rescission against the person or company. If the purchaser exercises this right, the purchaser ceases to have a right of action for damages against the person or company.

8. (1) Subsection 131 (1) of the Act is amended by striking out the portion before clause (a) and substituting the following:

Liability for misrepresentation in circular

(1) Where a take-over bid circular sent to the security holders of an offeree issuer as required by Part XX, or any notice of change or variation in respect of the circular, contains a misrepresentation, a security holder may, without regard to whether the security holder relied on the misrepresentation, elect to exercise a right of action for rescission or damages against the offeror or a right of action for damages against,

(2) Subsection 131 (2) of the Act is repealed and the following substituted:

Same

(2) Where a directors' circular or a director's or officer's circular delivered to the security holders of an offeree issuer as required by Part XX, or any notice of change or variation in respect of the circular, contains a misrepresentation, a security holder has, without regard to whether the security holder relied on the misrepresentation, a right of action for damages against every director or officer who signed the circular or notice that contained the misrepresentation.

9. The Act is amended by adding the following section:

Defence to liability for misrepresentation

132.1 (1) A person or company is not liable in an action under section 130, 130.1 or 131 for a misrepresentation in forward-looking information if the person or company proves all of the following things:

1. The document containing the forward-looking information contained, proximate to that information,
 - i. reasonable cautionary language identifying the forward-looking information as such, and identifying material factors that could cause actual results to differ materially from a conclusion, forecast or projection in the forward-looking information, and
 - ii. a statement of the material factors or assumptions that were applied in drawing a conclusion or making a forecast or projection set out in the forward-looking information.
2. The person or company had a reasonable basis for drawing the conclusions or making the forecasts and projections set out in the forward-looking information.

Exception

(2) Subsection (1) does not relieve a person or company of liability respecting forward-looking information in a financial statement or forward-looking information in a document released in connection with an initial public offering.

10. (1) The definition of “core document” in section 138.1 of the Act, as enacted by the Statutes of Ontario, 2002, chapter 22, section 185, is repealed and the following substituted:

“core document” means,

(a) where used in relation to,

- (i) a director of a responsible issuer who is not also an officer of the responsible issuer,
- (ii) an influential person, other than an officer of the responsible issuer or an investment fund manager where the responsible issuer is an investment fund, or
- (iii) a director or officer of an influential person who is not also an officer of the responsible issuer, other than an officer of an investment fund manager,

a prospectus, a take-over bid circular, an issuer bid circular, a directors' circular, a rights offering circular, management's discussion and analysis, an annual information form, an information circular, annual financial statements and interim financial statements of the responsible issuer,

(b) where used in relation to,

- (i) a responsible issuer or an officer of the responsible issuer,
- (ii) an investment fund manager, where the responsible issuer is an investment fund, or
- (iii) an officer of an investment fund manager, where the responsible issuer is an investment fund,

a prospectus, a take-over bid circular, an issuer bid circular, a directors' circular, a rights offering circular, management's discussion and analysis, an annual information form, an information circular, annual financial statements, interim financial statements and a report required by subsection 75 (2) of the responsible issuer, and

(c) such other documents as may be prescribed by regulation for the purposes of this definition; (“document essentiel”)

(2) The definition of “expert” in section 138.1 of the Act, as enacted by the Statutes of Ontario, 2002, chapter 22, section 185, is repealed and the following substituted:

“expert” means a person or company whose profession gives authority to a statement made in a professional capacity by the person or company including, without limitation, an accountant, actuary, appraiser, auditor, engineer, financial analyst, geologist or lawyer, but not including an entity that is an approved rating organization for the purposes of National Instrument 44-101 of the Canadian Securities Administrators; (“expert”)

(3) The definition of “forward-looking information” in section 138.1 of the Act, as enacted by the Statutes of Ontario, 2002, chapter 22, section 185, is repealed.

(4) Clause (g) of the definition of “liability limit” in section 138.1 of the Act, as enacted by the Statutes of Ontario, 2002, chapter 22, section 185, is repealed and the following substituted:

(g) in the case of each person who made a public oral statement, other than an individual referred to in clause (d), (e) or (f), the greater of,

(i) \$25,000, and

(ii) 50 per cent of the aggregate of the person’s compensation from the responsible issuer and its affiliates;

(5) The definition of “responsible issuer” in section 138.1 of the Act, as enacted by the Statutes of Ontario, 2002, chapter 22, section 185, is repealed and the following substituted:

“responsible issuer” means,

(a) a reporting issuer, or

(b) any other issuer with a real and substantial connection to Ontario, any securities of which are publicly traded; (“émetteur responsable”)

11. Clauses 138.2 (a) and (b) of the Act, as enacted by the Statutes of Ontario, 2002, chapter 22, section 185, are repealed and the following substituted:

(a) the purchase of a security offered by a prospectus during the period of distribution;

(b) the acquisition of an issuer’s security pursuant to a distribution that is exempt from section 53 or 62, except as may be prescribed by regulation;

12. (1) The English version of subsection 138.3 (1) of the Act, as enacted by the Statutes of Ontario, 2002, chapter 22, section 185, is amended by striking out “a person or company who acquires or disposes of an issuer’s security” in the portion before clause (a) and substituting “a person or company who acquires or disposes of the issuer’s security”.

(2) The English version of subclause 138.3 (1) (d) (i) of the Act, as enacted by the Statutes of Ontario, 2002, chapter 22, section 185, is repealed and the following substituted:

(i) the responsible issuer or any person or company acting on behalf of the responsible issuer to release the document, or

(3) The English version of subsection 138.3 (2) of the Act, as enacted by the Statutes of Ontario, 2002, chapter 22, section 185, is amended by striking out “a person or company who acquires or disposes of an issuer’s security” in the portion before clause (a) and substituting “a person or company who acquires or disposes of the issuer’s security”.

(4) Subsection 138.3 (3) of the Act, as enacted by the Statutes of Ontario, 2002, chapter 22, section 185, is amended by striking out the portion before clause (a) and substituting the following:

Influential persons

(3) Where an influential person or a person or company with actual, implied or apparent authority to act or speak on behalf of the influential person releases a document or makes a public oral statement that relates to a responsible issuer and that contains a misrepresentation, a person or company who acquires or disposes of the issuer’s security during the period between the time when the document was released or the public oral statement was made and the time when the misrepresentation contained in the document or public oral statement was publicly corrected has, without regard to whether the person or company relied on the misrepresentation, a right of action for damages against,

(5) The English version of subsection 138.3 (4) of the Act, as enacted by the Statutes of Ontario, 2002, chapter 22, section 185, is amended by striking out “a person or company who acquires or disposes of an issuer’s security” in the portion before clause (a) and substituting “a person or company who acquires or disposes of the issuer’s security”.

(6) Subsection 138.3 (5) of the Act, as enacted by the Statutes of Ontario, 2002, chapter 22, section 185, is amended by striking out “a proceeding” and substituting “an action”.

(7) Subsection 138.3 (6) of the Act, as enacted by the Statutes of Ontario, 2002, chapter 22, section 185, is amended by striking out “a proceeding” in the portion before clause (a) and substituting “an action”.

(8) Subsection 138.3 (7) of the Act, as enacted by the Statutes of Ontario, 2002, chapter 22, section 185, is repealed and the following substituted:

No implied or actual authority

(7) In an action under subsection (2) or (3), if the person who made the public oral statement had apparent authority, but not implied or actual authority, to speak on behalf of the issuer, no other person is liable with respect to any of the responsible issuer’s securities that were acquired or disposed of before that other person became, or should reasonably have become, aware of the misrepresentation.

13. (1) Subsection 138.4 (1) of the Act, as enacted by the Statutes of Ontario, 2002, chapter 22, section 185, is amended by striking out “a proceeding” in the portion before clause (a) and substituting “an action”.

(2) Subsection 138.4 (2) of the Act, as enacted by the Statutes of Ontario, 2002, chapter 22, section 185, is amended by striking out “a proceeding” and substituting “an action”.

(3) Subsection 138.4 (3) of the Act, as enacted by the Statutes of Ontario, 2002, chapter 22, section 185, is amended by striking out “a proceeding” in the portion before clause (a) and substituting “an action”.

(4) Subsection 138.4 (4) of the Act, as enacted by the Statutes of Ontario, 2002, chapter 22, section 185, is amended by striking out “a proceeding” in the portion before clause (a) and substituting “an action”.

(5) Subsection 138.4 (5) of the Act, as enacted by the Statutes of Ontario, 2002, chapter 22, section 185, is amended by striking out “a proceeding” in the portion before clause (a) and substituting “an action”.

(6) Subsection 138.4 (6) of the Act, as enacted by the Statutes of Ontario, 2002, chapter 22, section 185, is amended by striking out “a proceeding” in the portion before clause (a) and substituting “an action”.

(7) Subsection 138.4 (7) of the Act, as enacted by the Statutes of Ontario, 2002, chapter 22, section 185, is amended by striking out “the courts” in the portion before clause (a) and substituting “the court”.

(8) The English version of clause 138.4 (7) (e) of the Act, as enacted by the Statutes of Ontario, 2002, chapter 22, section 185, is repealed and the following substituted:

(e) the existence, if any, and the nature of any system designed to ensure that the responsible issuer meets its continuous disclosure obligations;

(9) Subsection 138.4 (8) of the Act, as enacted by the Statutes of Ontario, 2002, chapter 22, section 185, is amended by striking out “a proceeding” in the portion before clause (a) and substituting “an action”.

(10) Subsections 138.4 (9) and (10) of the Act, as enacted by the Statutes of Ontario, 2002, chapter 22, section 185, are repealed and the following substituted:

Forward-looking information

(9) A person or company is not liable in an action under section 138.3 for a misrepresentation in forward-looking information if the person or company proves all of the following things:

1. The document or public oral statement containing the forward-looking information contained, proximate to that information,

i. reasonable cautionary language identifying the forward-looking information as such, and identifying material factors that could cause actual results to differ materially from a conclusion, forecast or projection in the forward-looking information, and

ii. a statement of the material factors or assumptions that were applied in drawing a conclusion or making a forecast or projection set out in the forward-looking information.

2. The person or company had a reasonable basis for drawing the conclusions or making the forecasts and projections set out in the forward-looking information.

Same

(9.1) The person or company shall be deemed to have satisfied the requirements of paragraph 1 of subsection (9) with respect to a public oral statement containing forward-looking information if the person who made the public oral statement,

(a) made a cautionary statement that the oral statement contains forward-looking information;

(b) stated that,

(i) the actual results could differ materially from a conclusion, forecast or projection in the forward-looking information, and

(ii) certain material factors or assumptions were applied in drawing a conclusion or making a forecast or projection as reflected in the forward-looking information; and

(c) stated that additional information about,

(i) the material factors that could cause actual results to differ materially from the conclusion, forecast or projection in the forward-looking information, and

(ii) the material factors or assumptions that were applied in drawing a conclusion or making a forecast or projection as reflected in the forward-looking information,

is contained in a readily-available document or in a portion of such a document and has identified that document or that portion of the document.

Same

(9.2) For the purposes of clause (9.1) (c), a document filed with the Commission or otherwise generally disclosed shall be deemed to be readily available.

Exception

(10) Subsection (9) does not relieve a person or company of liability respecting forward-looking information in a financial statement required to be filed under this Act or forward-looking information in a document released in connection with an initial public offering.

(11) Subsection 138.4 (11) of the Act, as enacted by the Statutes of Ontario, 2002, chapter 22, section 185, is amended by striking out “a proceeding” in the portion before clause (a) and substituting “an action”.

(12) Subsection 138.4 (12) of the Act, as enacted by the Statutes of Ontario, 2002, chapter 22, section 185, is amended by striking out “a proceeding” and substituting “an action”.

(13) Subsection 138.4 (13) of the Act, as enacted by the Statutes of Ontario, 2002, chapter 22, section 185, is amended by striking out “a proceeding” and substituting “an action”.

(14) Subsection 138.4 (14) of the Act, as enacted by the Statutes of Ontario, 2002, chapter 22, section 185, is amended by striking out “a proceeding” in the portion before clause (a) and substituting “an action”.

(15) Subsection 138.4 (15) of the Act, as enacted by the Statutes of Ontario, 2002, chapter 22, section 185, is amended by striking out “a proceeding” in the portion before clause (a) and substituting “an action”.

14. Subparagraph 3 i of subsection 138.5 (2) of the Act, as enacted by the Statutes of Ontario, 2002, chapter 22, section 185, is repealed and the following substituted:

i. if the issuer's securities trade on a published market, the trading price of the issuer's securities on the principal market (as such terms are defined in the regulations) for the 10 trading days following the public correction of the misrepresentation or the disclosure of the material change in the manner required under this Act, or

15. (1) Subsection 138.6 (1) of the Act, as enacted by the Statutes of Ontario, 2002, chapter 22, section 185, is amended by striking out “a proceeding” and substituting “an action”.

(2) Subsection 138.6 (2) of the Act, as enacted by the Statutes of Ontario, 2002, chapter 22, section 185, is amended by striking out “a proceeding” and substituting “an action”.

16. Subsection 138.7 (1) of the Act, as enacted by the Statutes of Ontario, 2002, chapter 22, section 185, is amended by striking out “a proceeding” in the portion before clause (a) and substituting “an action”.

17. Subsection 138.8 (1) of the Act, as enacted by the Statutes of Ontario, 2002, chapter 22, section 185, is amended by striking out “No proceeding” at the beginning and substituting “No action”.

18. (1) Section 138.9 of the Act, as enacted by the Statutes of Ontario, 2002, chapter 22, section 185, is amended by striking out “a proceeding” in the portion before clause (a) and substituting “an action”.

(2) Clause 138.9 (a) of the Act, as enacted by the Statutes of Ontario, 2002, chapter 22, section 185, is amended by striking out “a proceeding” and substituting “an action”.

19. Section 138.10 of the Act, as enacted by the Statutes of Ontario, 2002, chapter 22, section 185, is repealed and the following substituted:

Restriction on discontinuation, etc., of action

138.10 An action under section 138.3 shall not be discontinued, abandoned or settled without the approval of the court given on such terms as the court thinks fit including, without limitation, terms as to costs, and in determining whether to approve the settlement of the action, the court shall consider, among other things, whether there are any other actions outstanding under section 138.3 or under comparable legislation in other provinces or territories in Canada in respect of the same misrepresentation or failure to make timely disclosure.

20. Section 138.11 of the Act, as enacted by the Statutes of Ontario, 2002, chapter 22, section 185, is amended by striking out “a proceeding” and substituting “an action”.

21. Section 138.12 of the Act, as enacted by the Statutes of Ontario, 2002, chapter 22, section 185, is amended by striking out “a proceeding” and substituting “an action”.

22. Section 138.13 of the Act, as enacted by the Statutes of Ontario, 2002, chapter 22, section 185, is repealed and the following substituted:

No derogation from other rights

138.13 The right of action for damages and the defences to an action under section 138.3 are in addition to, and without derogation from, any other rights or defences the plaintiff or defendant may have in an action brought otherwise than under this Part.

23. (1) Section 138.14 of the Act, as enacted by the Statutes of Ontario, 2002, chapter 22, section 185, is amended by striking out “proceeding” in the portion before clause (a) and substituting “action”.

(2) Subclause 138.14 (a) (ii) of the Act, as enacted by the Statutes of Ontario, 2002, chapter 22, section 185, is amended by striking out “a proceeding” and substituting “an action”.

(3) Subclause 138.14 (b) (ii) of the Act, as enacted by the Statutes of Ontario, 2002, chapter 22, section 185, is amended by striking out “a proceeding” and substituting “an action”.

(4) Subclause 138.14 (c) (ii) of the Act, as enacted by the Statutes of Ontario, 2002, chapter 22, section 185, is amended by striking out “a proceeding” and substituting “an action”.

24. Subsection 142 (2) of the Act, as amended by the Statutes of Ontario, 1994, chapter 11, section 378 and 2002, chapter 22, section 186, 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, 126.1, 126.2, 129, 130, 130.1, 131, 134 and 135, Part XXIII.1 and section 139 do not apply to,

25. Paragraph 55.2 of subsection 143 (1) of the Act, as enacted by the Statutes of Ontario, 2002, chapter 22, section 187, is repealed and the following substituted:

55.2 Providing for the application of Part XXIII.1 to the acquisition of an issuer's security pursuant to a distribution that is exempt from section 53 or 62 and to the acquisition or disposition of an issuer's security in connection with or pursuant to a takeover bid or issuer bid.

55.2.1 Prescribing transactions or classes of transactions for the purposes of clause 138.2 (d).

26. Subsection 143.12 (1) of the Act, as enacted by the Statutes of Ontario, 1994, chapter 33, section 8, is repealed and the following substituted:

Review by Select or Standing Committee

Appointment of first advisory committee

(1) On or before May 31, 2007, the Minister shall appoint an advisory committee to review the legislation, regulations and rules relating to matters dealt with by the Commission and the legislative needs of the Commission.

Appointment of subsequent advisory committees

(1.1) The Minister shall appoint an advisory committee to perform the functions described in subsection (1) not later than 48 months after the appointment of the previous advisory committee appointed under subsection (1) or this subsection.

Commencement

27. (1) Subject to subsection (2), this Schedule comes into force on the day the *Budget Measures Act (Fall), 2004* receives Royal Assent.

Same

(2) Sections 4 and 10 to 23 come into force on a day to be named by proclamation of the Lieutenant Governor.