Cooperative Capital Markets Regulatory System Provincial-Territorial Capital Markets Act

September 2014 Consultation Draft: Summary of Comments Received and Ministerial/Regulatory Responses

The following table has been prepared by ministry and regulatory staff of British Columbia, New Brunswick, Ontario, Prince Edward Island, Saskatchewan and Yukon (collectively, the CMR Jurisdictions) to summarize certain section-specific comments received during the 2014 consultation process and the corresponding responses. It is not a complete summary of comments received nor is it a comprehensive list of matters considered by ministry and regulatory staff in developing the revised consultation draft of the Capital Markets Act (CMA). It is intended to serve as a guide to assist readers in reviewing the CMA. It is not an official publication and should not be viewed as an authoritative source or relied upon for legal interpretation.

References to the CMA, the Initial Regulations, the CMA Commentary and the Regulations Commentary refer to the drafts published for comment in August 2015. The CMA is subject to legislative approval and will not become law unless introduced in, and enacted by, the legislatures of the CMR Jurisdictions.

General Comments

	Comment	Response
1.	Several commenters noted the importance of maintaining consistency in drafting with current securities legislation.	We agree the CMA should be consistent with current securities legislation in both CMR Jurisdictions and non-CMR Jurisdictions to the extent feasible. Among other changes, we have revised the CMA to incorporate the Saskatchewan Securities Act (SKSA), Ontario Securities Act (OSA) and New Brunswick Securities Act (NBSA) definitions of "misrepresentation", and align the secondary market liability definition of "responsible issuer" and liability limit in s. 165 with current securities legislation.
		 As discussed further below, some changes were necessary in order to: update or modernize certain provisions of the CMA; and address legislative differences among CMR Jurisdictions.
		Modernizing Certain Provisions Certain provisions have been modernized or updated, which has resulted in the language in the CMA differing from current securities legislation. In particular, an effort has been made to avoid redundant provisions. For example, while some current securities legislation inconsistently includes the wording 'unless a person or company is exempt' by a ruling or regulation, the CMA consistently omits this wording.
		Dealing with legislative differences among CMR Jurisdictions While often substantively similar, current securities legislation in Canada is not uniform. Drafting and substantive inconsistencies needed to be resolved among CMR Jurisdictions while at the same time avoiding inconsistency with non-CMR Jurisdictions' legislation to the extent possible.
		For example, a few commenters expressed concern about the public interest test in the CMA being phrased as "if it considers that" rather than "if in its opinion" it is in the public interest. Both phrases are used in securities legislation, and there is no substantive difference between them. For drafting consistency, "if it considers that" was used throughout the CMA. While the NBSA and OSA primarily use "if in its opinion", the British Columbia Securities Act (BCSA), Prince Edward Island Securities Act (PEISA), Yukon Securities Act (YSA) and Alberta Securities Act (ASA) primarily use "if it considers". The SKSA presently uses both styles.

	Comment	Response
2.	Several commenters expressed concern with the 'platform' approach in the CMA. These commenters recommended that rulemaking authority be limited and that the CMA include established elements of securities law, for example, the 20% threshold for a takeover bid and the two-day cooling off period for a prospectus offering. We received other comments supporting a platform approach. These commenters noted that a platform approach will provide more flexibility to address new developments that will inevitably occur over time.	The platform approach promotes regulatory flexibility, allowing the Capital Markets Regulatory Authority (Authority or CMRA) to respond to market developments in a timely manner and appropriately tailor its regulatory treatment of various entities and activities New regulations and amendments will be subject to the regulation-making requirements of Part 15 of the CMA, including a notice and comment period and submission to the Council of Ministers for approval.
3.	Several commenters highlighted the importance of ensuring that the information gathering powers and prohibitions on obstruction in the CMA do not override privilege. Commenters also recommended that the CMA clarify that the disclosure obligations do not require a person to waive any applicable privilege.	For further clarity, we have revised s. 195(1) to provide that nothing in the CMA affects solicitor-client privilege. A new s. 195(2) provides that consent to disclose a privileged document to the Authority neither negates nor constitutes a waiver of the privilege.

	Comment	Response
4.	Several comments and questions were received about the allocation of decision making authority within the CMA. One commenter suggested that the CMA should be revised to allocate: • all operational regulatory decision-making to the Chief Regulator, • disciplinary and review decision-making to the Tribunal and • supervisory and rulemaking authority to the Board, as indicated in the Memorandum of Agreement Regarding the Cooperative Capital Markets Regulatory System among the CMR Jurisdictions and the Government of Canada (the Memorandum of Agreement). Commenters noted that allocating decision-making authority to the Authority would have the effect of denying the right of appeal to a court that exists under current securities laws for persons directly affected by a final decision of the commission, as well as denying the right to a hearing and review by the Tribunal that is available from a decision of the Chief Regulator under the proposed legislation. Other commenters recommended that any decision affecting the rights of an individual be made by the Tribunal. In certain cases, the CMA provides that those decisions are made by the Chief Regulator.	Decision making authority under the CMA is generally structured to maintain consistency with current securities legislation. For example, operational regulatory decision making and decisions of the "director" or "executive director" under current securities legislation have generally been allocated to the Chief Regulator. Changes from current securities legislation were required to reflect the differences between the structure of the CMRA and the structure of current securities regulatory authorities. In particular: • the separation of the CMRA's regulatory division and adjudicative division represents a change in several CMR Jurisdictions, leading to some adjudicative decisions that are currently made at the commission level being made by the Tribunal under the CMA; and • current securities legislation in several CMR Jurisdictions identifies the chair of the commission as its chief executive, while the Chief Regulator serves as the chief executive officer of the CMRA's regulatory division, leading to some regulatory decisions that are currently made by one or more members of the commission being made by the Chief Regulator under the CMA. Similar to current securities legislation, the role of the board of directors of the Authority goes beyond supervision of the CMRA to address other key policy decisions such as recognition and designation orders, and certain cease-trade orders, in some cases, after consultation with the Chief Regulator. Legislation establishing the CMRA is expected to permit the board to delegate or assign certain decisions to staff of the CMRA's regulatory division. As is the case under other regulatory legislation, these policy decisions may be subject to judicial review.
5.	A majority of commenters highlighted the importance of an "interface" between CMR Jurisdictions and non-CMR Jurisdictions. Most recommended that the current "passport" system be maintained.	As set out in the Memorandum of Agreement, the CMRA will use its best efforts to negotiate and implement an interface mechanism with non-participating jurisdictions such that the Cooperative Capital Markets Regulatory System is effectively of national application. Any required changes to the CMA will be developed following agreement on that mechanism.

Part 1 – Interpretation

	Section Reference	Comment	Response
6.	1 – Purposes of Act	Two commenters expressed concern that the introduction of concepts of competitive capital markets and financial system stability as guiding principles in the interpretation of securities legislation may undermine the primary goal of securities regulation, which is investor protection.	The introduction of references to competitive capital markets and financial system stability, together with the current purposes of investor protection and market efficiency, are reflective of the purposes of the Cooperative System set out in the Memorandum of Agreement between CMR Jurisdictions and reflect the broader mandate of the new regulator. They do not reflect a lesser focus on investor protection.
7.	1 – Purposes of Act	A commenter recommended that the purposes section of the CMA include a reference to fostering efficient capital formation and state that the purpose of the Act is to harmonize securities regulatory regimes across Canada.	The purposes of the Act align with the terms of the Memorandum of Agreement between CMR Jurisdictions.
8.	2 – General comment	Several commenters recommended that the CMA and the draft Capital Markets Stability Act (CMSA) be reviewed to ensure that common definitions are adopted.	We agree that where appropriate and where the terms are used for similar purposes it would be preferable for defined terms to be consistent. We have revised some definitions for consistency with the CMSA. In some cases, applying common definitions was not appropriate. In particular, some CMSA definitions are different as a result of federal drafting standards. We generally opted to maintain CMA continuity with current securities legislation rather than conform to the CMSA.
9.	2 – "Canadian financial institution"	A commenter recommended that the definition of Canadian financial institution include "an authorized foreign bank listed in Schedule III to the Bank Act", to be consistent with the definition of "clearing house".	We do not believe this change is necessary. Sections of the CMA that refer to Canadian financial institutions also refer to Schedule III banks.
10.	2 – "clearing agency"	A commenter recommended that the definition of "clearing agency" specify that "Canadian financial institutions" acting as a custodian or a trustee of a pension fund or investment fund are exempt.	Please refer to s. 2 of proposed CMRA Regulation 11-501 Definitions, Procedure, Civil Liability and Related Matters. This regulation prescribes certain persons not to be a clearing agency, based on the definition of clearing agency in the OSA.

	Section Reference	Comment	Response
11.	2 – "court"	A commenter expressed concern that defining "court" to refer to "the superior court of the province" may be problematic as it relates to the civil liability provisions of the statute.	We have revised the definition so that the term "court" remains undefined in Part 13, consistent with current securities legislation.
12.	2 – "dealer"	A commenter expressed concern that a definition of "dealer" that is not appropriately tailored for the derivatives markets will unnecessarily disrupt energy markets in Canada, as well as impair the operations of energy firms.	The Initial Regulations contain guidance on what constitutes engaging in the business of trading in derivatives (and thereby triggering the dealer registration requirement). Please refer to the Regulations Commentary and the proposed Companion Policy to NI 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations.
13.	2 – "derivative"	A commenter noted the definition of derivative is identical in substance to that set out in the OSA, and supports retaining this definition without change.	We acknowledge the comment.
14.	2 – "derivative"	A commenter recommended that the CMA attempt, wherever possible, to ensure that definitions be consistent with those already in OSA and the <i>Commodity Futures Act</i> (Ontario) (the CFA).	Please refer to the Regulations Commentary. The definitions of "commodity futures contract" and "commodity futures option" in the CFA will not be retained under the CMA. However, exchange-traded commodity futures contracts and commodity futures options will be "exchange contracts" under the CMA and we propose to generally regulate them as they are regulated under the CFA.
15.	2 – "derivative"	A commenter requested that the legislation or commentary provide clarification that commodity-based derivatives are not at risk of being regulated as securities by way of a designation under s. 95(2).	Please refer to the Regulations Commentary for an overview of the proposed derivatives regulatory framework.

	Section Reference	Comment	Response
16.	2 – "derivative"	A commenter recommended that the definition of derivative expressly exclude forward contracts that are intended to be physically settled or that commentary underlying the legislation clarify that these forward contracts are intended to be excluded.	As a result of proposed CMRA Regulation 91-501 <i>Derivatives</i> and <i>Strip Bonds</i> and CMRA Regulation 91-502 <i>Trade Repositories and Derivatives Data Reporting</i> , these contracts would be exempted from positive regulatory requirements (i.e., the prospectus requirement, the registration requirement and trade reporting requirements), but would remain subject to prohibitions contained in the market conduct provisions in the CMA (e.g., the prohibitions on fraud and manipulation). This approach is consistent with current securities legislation in Ontario. Please refer to the Regulations Commentary where we are inviting further comment on this issue.
17.	2 – "investment fund manager"	Several commenters noted that the definition of investment fund manager has been revised to include a person who "directs the business, operations or affairs of an investment fund from outside the province and knows or reasonably ought to know that the investment fund has a security holder resident in the province". The commenters expressed the view that the CMA should not regulate non-resident investment fund managers and adopt the approach to such regulation inherent in Multilateral Policy 31-202.	We thank the commenter for their comments. We decided to follow the approach currently in place in Ontario. Please refer to s. 8 of proposed CMRA Regulation 31-501 Registration Requirements, Exemptions and Related Matters and the related Regulations Commentary. Registration exemptions for non-resident investment fund managers are based on MI 32-102 Registration Exemptions for Non-Resident Investment Fund Managers.
18.	2 – "investment fund manager"	A commenter recommended that the definition of investment fund manager explicitly exempt "Canadian financial institutions" as there are provincial and federal laws already in place.	Canadian financial institutions are not explicitly exempted from this definition in current securities legislation.
19.	2 – "investor relations activities" (para. (c))	A commenter recommended that paragraph (c) in this definition refer to newspapers and similar publications that are distributed "primarily to subscribers for value or purchasers" rather than "only to"	We have revised the CMA to address this comment.
20.	2 – "investor relations activities"	A commenter expressed the view that the regulation of investor relations activities could imply that such activities are no longer considered to be trading (i.e., no longer captured under part (g) of the definition of "trade") but that such activities could potentially capture normal analyst activity, rating agencies and newspaper websites.	This definition is consistent with the definition of "investor relations activities" in the BCSA and other current securities legislation.

	Section Reference	Comment	Response
21.	2 – "market participant" (General)	Several commenters expressed concern about the expansion of the definition of "market participant" to include elements that are not currently included in the definition in the OSA. In particular, commenters recommended that the following elements be removed from the definition: (b) an issuer who has filed a preliminary prospectus for which the Chief Regulator has issued a receipt; (d) a control person; (m) a person who is a director, officer or promoter of a person described in paragraph (r); (q) a person providing record keeping services to a registrant; (r) a person distributing or purporting to distribute securities in reliance on an exemption from section 27 (an exempt issuer)	The persons in question (other than paragraph (b) of the definition) are based on the BCSA's information gathering powers (BCSA s. 141) and record retention requirements (BCSA s. 57.7). In other jurisdictions, equivalent information gathering and compliance review powers exist, but these entities are not subject to ongoing record keeping requirements equivalent to s. 54 of the CMA. To address these concerns, paragraph (b) of the definition has been deleted. In addition, the CMA will permit the Authority to make regulations exempting market participants from the record-keeping requirements in s. 54 of the CMA. Although not included at this time in proposed CMRA Regulation 11-501, we propose to add a provision to this Regulation prescribing the following persons for the purposes of s. 54(1.1) of the CMA so that certain record-keeping requirements will not apply to these persons: a control person of a reporting issuer; a person (other than a reporting issuer) distributing securities in reliance on a prospectus exemption along with its directors, officers, control persons or promoters; a person providing record keeping services to a registrant; and a general partner of any of the above persons. Please also refer to the specific responses below.
22.	2 – "market participant" (exempt registrants – para. (a))	A commenter expressed the view that the reference to "persons exempted from the requirement to be registered" represented an expansion from the current OSA market participant definition (which only includes persons exempted from the registration requirement "by a ruling"). The commenter recommended reverting to those subject to an exemption made pursuant to a ruling.	Following amendments in 2014, the OSA definition of market participant includes any person or company exempted from the requirement to be registered under the Act.

	Section Reference	Comment	Response
23.	2 – "market participant" (issuer who has filed a preliminary prospectus – para. (b))	A commenter recommended removing paragraph (b) "an issuer who has filed a preliminary prospectus" from the definition of "market participant", given that no public distribution of securities would have been made until a receipt for a final prospectus is issued, such an issuer may never become a "reporting issuer," and to the extent the Authority needs to exercise any power to obtain information from such issuer it can do so though the prospectus review process.	We have deleted paragraph (b).
24.	2 – "market participant" (control persons – para. (d))	Three commenters recommended removing "control persons" from paragraph (d) of the definition of "market participant".	These requirements are consistent with current securities legislation in BC. Proposed CMR Regulation 11-501 will be revised to exempt control persons from the record-keeping requirements of s. 54 of the CMA. For investor protection purposes, the information gathering, compliance review and public interest order powers continue to apply to control persons.
25.	2 – "market participant" (custodian or trustee – para. (h))	A commenter questioned why both a custodian and trustee in the CMA are included in paragraph (h) of the definition of "market participant".	There are many indirect offering structures that become reporting issuers that use trusts as part of their structure. Trustee has been included for clarity in the context of those structures.
26.	2 – "market participant" (directors, officers and promoters of exempt entities – para. (m))	A commenter noted that paragraph (m) of this definition should include control persons of an issuer distributing securities under an exemption, as such persons are included in paragraph (d) relating to reporting issuers.	We have revised the CMA to address this comment.
27.	2 – "market participant" (persons providing record keeping services – para. (q))	A commenter recommended removing paragraph (q) "persons providing record keeping services" from the list of market participants because this term is undefined and could capture law firms which maintain record books or minute books on behalf of clients.	These requirements are consistent with current securities legislation in BC. As noted above, proposed CMR Regulation 11-501 will be revised to exempt persons providing record keeping services from the record-keeping requirements of s. 54 of the CMA.

	Section Reference	Comment	Response
28.	2 – "market place"	A commenter noted that the definition of "market place" in the CMA is narrower than the OSA equivalent in that it applies only to securities.	Paragraph (b) of the definition of "market place" is based on paragraph 3 of the current OSA marketplace definition except that the definition only refers to securities rather than securities and derivatives. We expect that derivatives trading facilities will be addressed by regulation under paragraph (d) of this definition after launch.
29.	2 – "market place"	A commenter recommended that the term "exchange" (as used in s. 8 and elsewhere) be a defined term.	Defining exchange in the CMA would represent a change from current securities legislation (except in Saskatchewan and New Brunswick, where it is defined). Companion Policy 21-101CP continues to provide an overview of the characteristics that securities regulatory authorities consider when determining whether a market place is an exchange for the purposes of securities legislation.
30.	2 – "market place"	A commenter asked what additional entities the broadened definition of market place under the CMA is intended to capture.	We expect that derivatives trading facilities will be captured by this paragraph. To the extent the definition is broadened by paragraph (d), details will be set out in a regulation. New regulations will be subject to the regulation-making requirements of Part 15 of the CMA, including a notice and comment period and submission to the Council of Ministers.
31.	2 – "market place" (definition of ATS)	A commenter asked why the concept of an alternative trading system (ATS) removed from the CMA and how will these entities be regulated going forward.	Please refer to NI 21-101 <i>Marketplace Operation</i> . ATS will be defined in NI 21-101 as it currently is in jurisdictions other than Ontario.
32.	2 – "misrepresentation"	Several commenters requested that the definition of "misrepresentation" found in the OSA be imported into the CMA.	We have revised the CMA to address this comment.
33.	2 – "related financial instrument"	A few commenters raised issues with paragraph (a) of the definition of "related financial instrument". Commenters noted that the definition was inconsistent with the CMSA, represented a change from the definition in NI 55-104 <i>Insider Reporting Requirements and Exemptions</i> , and the references to "vary materially with" caused confusion and should be reversed.	We have revised the CMA to remove the references to "vary materially with", so that it is now consistent with the definition of "related financial instrument" in NI 55-104.

	Section Reference	Comment	Response
34.	2 – "reporting issuer" (transition)	A commenter noted that the definition of "reporting issuer" should be amended to preserve the reporting issuer status of any issuer who is, at the effective time of the Act, a reporting issuer under prior legislation and would not otherwise be deemed a reporting issuer under the CMA.	Reporting issuer status will be preserved through the transition provisions in the CMA.
35.	2 – "reporting issuer" (entities listed on a designated exchange)	Two commenters noted that listed issuers should be included in the definition of "reporting issuer".	Please refer to s. 5 of proposed CMRA Regulation 11-501. An issuer listed on a recognized exchange is prescribed to be a reporting issuer.
36.	2 – "reporting issuer" (para. (b))	A commenter noted that clause (b) of the "reporting issuer" definition should be amended to clarify that only the issuer of the securities being offered as consideration in a take-over bid is deemed a reporting issuer (i.e. it should read: " it offers securities of its own issue as consideration).	We have revised the CMA to address this comment.
37.	2 – "reporting issuer" (para. (c))	A commenter noted that clause (c) of the "reporting issuer" definition should be drafted to exclude a securities exchange transaction that is temporary in nature or is made merely to effect an internal reorganization, and further noted that this clause (c) is missing certain language from the clause on which the current legislation is modelled.	While the drafting is not identical, paragraph (c) of "reporting issuer" is substantively the same as the BCSA, on which it is modelled. An internal reorganization or temporary transaction exemption would fall within the CMRA's regulation-making authority.
38.	2 – "reporting issuer" (para. (e))	A commenter submitted that paragraph (e) of the "reporting issuer" definition should be removed. The necessary authority for designating a reporting issuer as such is already contained in clause (d), which refers to the authority in s. 95(2) of the CMA.	The CMA provides the Authority with the power to designate an issuer to be a reporting issuer by order (s. 95(2) of the CMA) and to prescribe a class of issuers to be reporting issuers by regulation (paragraph (e) of this definition). Paragraph (e) is consistent with current securities legislation in several jurisdictions. The power to designate does not provide the Authority with the ability to designate a class of issuers to be reporting issuers, while the power to prescribe in a regulation enables the Authority to do so.

	Section Reference	Comment	Response
39.	2 – "security"	A commenter expressed disappointment that the CMA does not clarify in the definition of "security" that products that are governed by other regulatory regimes (such as guaranteed investment certificates and segregated funds) are excluded from the definition of security. Several commenters disagreed with the regulation-making authority in paragraph (f) of the definition of "security", which would allow the CMRA to make a regulation to regulate segregated funds under securities legislation, if appropriate. We received other comments supporting a definition of "security" that would allow the CMRA to regulate deposit and insurance based investment products, such as principal protected notes and segregated funds.	Except for the regulation-making authority with respect to segregated funds noted below, the definition of security is consistent with current securities legislation. To address the concerns, we strengthened the degree of government involvement in determining whether and how segregated funds are to be regulated by the CMA. Accordingly, s. 202(2) requires more stringent governmental approvals for the Authority to propose and put in place regulations in this area. It is anticipated that any such request to consult and consider making a regulation would involve consultation with insurance regulators to avoid unnecessary duplication or overlap of requirements.
40.	2 – "subsidiary"	A commenter questioned the broadening of the definition of "subsidiary" to include an issuer who is "controlled by <i>one or more other issuers</i> ". Guidance on the application of this concept is required – the commenter supports the inclusion of a "jointly or in concert" concept.	This definition is consistent with current securities legislation in BC, PEI and Yukon. This definition is intended to capture the same relationships that are generally contemplated by current securities legislation, but is broader than some provincial securities acts (for example the OSA), which only capture companies rather than issuers.
41.	2 – "take-over bid"	Several commenters noted that, as a fundamental component of the bid regime, the 20% take-over bid threshold should be in the CMA itself and not the regulations.	This approach is consistent with current securities legislation in all jurisdictions except Ontario.
42.	2 – "trade"	A commenter noted that, under paragraph (b) of the definition of "trade", it is not clear how the termination of a derivative can constitute a "trade" or why it is necessary to treat such termination as a trade separate from the sale or distribution of such derivative.	This paragraph is consistent with current securities legislation in Ontario and some other jurisdictions. It is appropriate to include the termination of a derivatives transaction in the definition of trade because a person is able to dispose of its economic interest in a derivative by terminating the derivative.
43.	2 – "trade"	A commenter asked why paragraph (d) of the definition of "trade" includes only "any participation as a trader in any transaction in a security through the facilities of an <i>exchange</i> " and not "market place"?	This paragraph is consistent with current securities legislation. Expanding this paragraph to refer to "market place" rather than "exchange" would represent a substantive change in all jurisdictions.

	Section Reference	Comment	Response
44.	2 – "trade repository"	A commenter recommended that the definition of trade repository explicitly exempt "Canadian financial institutions" as there are provincial and federal laws already in place.	This definition is consistent with the OSA. Canadian financial institutions are not explicitly exempted from this definition.
45.	7 – special relationship	A commenter expressed the view that the definition of "special relationship" in s. 7 is unduly broad.	This definition is consistent with the OSA

Part 2 – Recognized Entities

	Section Reference	Comment	Response
46.	Part 2/3 – General comment	A commenter asked, regarding market places, (i) why there will now be "recognized", "designated" and "other" marketplaces; (ii) what entities are intended to be captured under each; and (iii) how each category will be treated differently, including with respect to regulation and oversight?	Please refer to the Initial Regulations and the Regulations Commentary. No immediate change to regulation and oversight of market places is contemplated. Entities, including exchanges, that perform a core market infrastructure or subordinate regulatory function under the oversight of the CMRA may be "recognized" under Part 2 of the CMA, consistent with current provincial securities legislation.
			Designated entities and "other" market places are not subject to an equivalent to CMA s. 13, which allows decisions of recognized entities to be appealed to the Tribunal. At launch, alternative trading systems will not be designated, but will be subject to the provisions dealing with "other" market places.
			This regime provides flexibility to appropriately regulate market places in Canada as they evolve.
47.	8 – Requirement to be recognized	A commenter questioned why, unlike current securities legislation, s. 8 of the CMA does not include a territorial scope in relation to the requirement to be recognized.	This is an example of a correction to a drafting inconsistency in current securities legislation. While the requirements to be recognized in current securities legislation refer to "carrying on business in the [province]", most similar requirements (for example, the prospectus and registration triggers) do not refer to a territorial scope.
48.	9 – Recognition of entities; 14 – delegation to self- regulatory organization	A commenter asked whether the Authority will automatically recognize existing self-regulatory organizations (SROs), exchanges, clearing agencies etc. and explain what the CMRA intends to delegate to SROs under s. 14 of the CMA.	Please refer to the transition discussion in the CMA Commentary. Our objective is to ensure a relatively seamless transition for market participants. It is expected that entities currently recognized or designated will, in most cases, be recognized or designated on CMRA launch. Existing delegations to SROs will be considered prior to launch.
49.	9 – Recognition of entities	A commenter noted that the requirement in s. 9(2) for an opportunity to make representations about potential conditions, restrictions or requirements on a recognition appears to be a lower standard that the requirement for a hearing in the BCSA.	We have revised the CMA to provide for an opportunity to be heard (OTBH) rather than an opportunity to make representations. Current securities legislation in several CMR Jurisdictions does not specifically require a hearing.

	Section Reference	Comment	Response
50.	9(1)(d) – Recognition of entities – auditor oversight organization	A commenter expressed the view that the CMA created (via s.2 and s.9) a new type of entity – the "recognized auditor oversight organization" (RAOO).	Supervision of recognized oversight organizations is consistent with current securities legislation. Please refer to the BCSA, NBSA and the <i>Canadian Public Accountability Board Act</i> (Ontario). Substantive comments on the recognized auditor oversight framework are set out below.
51.	9(1)(e) – Recognition of entities – prescribed activity	A commenter noted that the CMA extends the recognition power by allowing the Authority (if it believes it to be in the public interest) to "make an order recognizinga person engaged in a prescribed activity" (s. 9(1)). While any "prescribed activity" must be set out in the regulations, these could easily be drawn sufficiently broadly to allow the Authority to make a "recognition" of virtually anyone connected with capital markets.	We are not currently proposing any regulations in this area; however, this regulation-making authority is important as it allows the Authority to respond to market developments in a timely manner. Regulations proposed to be made will be published for public comment and must be submitted to the Council of Ministers for approval. We note that the recognition power is limited to recognizing those who apply for recognition. The CMRA cannot recognize an entity on its own initiative.
52.	11 – Duty of recognized self- regulatory organizations, recognized exchanges	A commenter expressed support for the reference to SROs and exchanges regulating "with a view to the public interest" in s. 11 of the CMA.	We thank all commenters for their feedback.
53.	13(1) – Review of decisions of recognized entities	A commenter noted that there is no indication of the level of deference that will be given to the decision of a recognized entity under s. 13(1) of the CMA.	This provision is consistent with current securities legislation.
54.	13(2) – Time	A commenter recommended that there be a clear limitation period on the review of decisions of exchanges.	We believe that it is appropriate for the Tribunal to have the power to permit an extension of the review period if such extension is not prejudicial to the public interest.
55.	13(6) – Stay of clearing agency decision	A commenter recommended that the CMRA ensure that its processes and actions do not conflict with the <i>Payment Clearing and Settlement Act</i> (Canada) (PCSA) or the IOSCO Principles for Financial Market Infrastructures (PFMI) which principles have been adopted and implemented in many jurisdictions already, including in the United States and in Europe.	We agree with this comment. We have revised s. 13 of the CMA to remove the Tribunal's authority to grant a stay of a decision of a recognized clearing agency.

	Section Reference	Comment	Response
56.	Part 2 – Recognized auditor oversight organization (RAOO) Framework - Disclosure of privileged information	Two commenters recommended the inclusion of a right equivalent to s. 11(4) of the <i>Canadian Public Accountability Board Act</i> (Ontario) (the CPAB Act), allowing a recognized auditor oversight organization to require the provision of information that is the subject of solicitor-client privilege if access to such information is "absolutely necessary" to the purpose of the review of the audit. The commenters expressed the view that the "absolutely necessary" model has worked well in practice and is generally favoured by the major audit firms and reporting issuers.	We thank the commenters for their comment. In section 15(3) of the CMA, we adopted the "consent" approach that exists in current securities legislation in CMR Jurisdictions other than Ontario.
57.	Part 2 – RAOO Framework - Restrictions on disclosure of information	Two commenters recommended that the CMA include an equivalent to s. 11(2) of the CPAB Act, which restricts the disclosure of documents and other information prepared for or received by CPAB in the course of its mandate without the written consent of all persons whose interests might be reasonably affected or without a court order. In the US context, s. 105(b)(5) of the Sarbanes-Oxley Act similarly contains a provision exempting such documents or information from production except in defined circumstances.	We have revised s. 15(3) of the CMA to add a general confidentiality requirement with respect to records provided to a RAOO equivalent to s. 11(2) of the CPAB Act.
58.	Part 2 – RAOO Framework - Preservation of privilege	A commenter expressed the view that the CMA ensure that when privileged documents and information are disclosed to the CPAB, the privilege is not waived but continues for all other purposes (CPAB Act, s. 11(5)). For example, s. 15(3) of the CMA should be made expressly subject to s. 16(5).	Given the revisions to s. 15(3) and s. 195 of the CMA, s. 16(5) has been deleted. Section 16(4) of the CMA, which is equivalent to s. 11(5) of the CPAB Act, has been retained.

	Section Reference	Comment	Response
59.	Part 2 – RAOO Framework - Provision of information to the CMRA	Two commenters expressed the view that, as a general proposition, it is more appropriate for the CMRA to obtain information from reporting issuers directly, rather than via CPAB via the auditor. Further, a commenter recommended that the "prescribed class" be defined so as to preserve the balance between confidentiality of communications between CPAB and participating audit firms, and disclosure to the public and to regulators (including provincial Institutes, securities regulators and OSFI).	Similar to s. 105(b)(5)(B) of the Sarbanes-Oxley Act, s. 15(3.1) of the CMA provides an exception to the general confidentiality requirement for disclosure of prescribed classes of information to the CMRA. It is anticipated that a regulation in this area could address material prepared by the recognized auditor oversight organization in the exercise of its powers and duties. Any such regulation could also include related information such as a list of audit firms and audit files that have been inspected or investigated in any given period and the findings from any inspection or investigation.
60.	Part 2 – RAOO Framework - International cooperation	A commenter recommended that the CMA include an equivalent to s. 14 of the CPAB Act, authorizing CPAB to provide information to a foreign auditor oversight body.	We have revised the CMA to address this comment.
61.	Part 2 – RAOO Framework - FOI exemption	A commenter recommended that consideration be given to providing a freedom of information exemption such as those that the OSFI enjoys by being classified in Schedule 1 of the Access to Information Act.	The approach to access to information remains under development, but it is anticipated that one or more of the current freedom of information and protection of privacy regimes will apply. It is also anticipated that legislative provisions providing carve-outs from freedom of information disclosure under the applicable regime(s) will be proposed in implementation legislation.
62.	Part 2 – RAOO Framework - Clarifying authority, process and accountability	A commenter noted that s. 15(1) of the CMA is not an accurate description of what CPAB does. For example, CPAB does not set standards of practice. The commenter recommended improved clarity around the manner in which a recognized auditor oversight organization may adopt regulatory instruments and their legal effect.	We have revised s. 15(1) and s. 15(2) to clarify a RAOO's oversight role. The RAOO's recognition order can provide any further clarification if necessary.

	Section Reference	Comment	Response
63.	Part 2 – RAOO Framework - Testimony in civil proceedings	A commenter noted that, unlike s. 11(3) of the CPAB Act, which exempts CPAB and its representatives from giving evidence about information obtained in the performance of its duties in any proceeding (other than a proceeding under the CPAB Act), s.16(6) of the CMA only provides for such an exemption in respect of civil proceedings in which the recognized auditor oversight body is not a party.	This provision is consistent with current securities legislation in CMR Jurisdictions other than Ontario.

Part 3 – Designated Entities

	Section Reference	Comment	Response
64.	17 – Designation of entities (trade repositories)	A commenter questioned the connection between the CMSA and CMA in relation to trade repositories and recommended that only one of the Acts require trade repositories to apply to be designated.	Please refer to proposed CMRA Regulation 91-502. Except as described in the Regulations Commentary, no immediate changes to the regulation and oversight of trade repositories or trade reporting requirements are contemplated. The CMA serves a different purpose than the CMSA. The complementary federal CMSA empowers the Authority to collect data and manage systemic risk related to capital markets on a national basis and modernizes capital markets-related criminal offences.
65.	17 – Designation of entities (dispute resolution services)	Several commenters recommended that if an order is made "designating" a dispute resolution services provider under s. 17(1)(d), or any other legal services provider under s. 17(1)(g), that entity's obligation to provide information under s. 18 must exclude privileged information, including information protected by settlement privilege or by a contractual confidentiality requirement.	We have revised the CMA to resolve any inconsistencies relating the protection of solicitor-client privileged information. Section 18 is not intended to override privilege. Please see s. 195 The CMA does not include statutory limits on the provision of information protected by a contractual confidentiality requirement.

Part 4 – Registration

	Section Reference	Comment	Response
66.	Part 4 – General comment – incorporation of registered representatives	Several commenters recommended that the CMA be revised to build in the platform required to permit registered representatives of dealers and advisers to operate their dealing and advising businesses through a professional corporation.	We have revised the CMA to insert regulation-making authority to allow the Council of Ministers to request that the CMRA consult and consider making a regulation allowing for incorporation of registered representatives. Similar to the process for developing a regulation relating to segregated funds under the CMA, s. 202(2) requires stringent governmental approvals for the Authority to propose and put in place regulations in this area. It may also require consultations with other parts of government.
67.	Part 4 – General comment – exemption for banks	Two commenters noted that the CMA does not contain the exemption for banks currently found in s. 35.1 of the OSA that exempts banks from the requirements to be registered as a dealer, underwriter, adviser or investment fund manager and strongly urged the CMR Jurisdictions to include this important exemption in the CMA for consistency.	Consistent with current securities legislation in jurisdictions other than Ontario, no bank-specific registration exemption is included. Banks may continue to rely on a number of registration exemptions contained in the Initial Regulations and they can also apply for exemptive relief under s. 94 of the CMA.
68.	Part 4 – General comment – regulation of financial planners	A commenter noted that one of the potential benefits of the Cooperative Capital Markets Regulatory System is that it would create an opportunity to adopt unified standards and qualification requirements for financial planners, at least within the securities sector, and asked that the CMRA commit to making the regulation of planners a reality, realizing that the scope of their activities goes well beyond securities.	Regulation of financial planners is outside the scope of this project.
69.	23(2) – Conditions, etc. of registration	A commenter recommended that s. 23(2) clarify whether the conditions, restrictions or requirements that can be imposed are at the discretion of the Chief Regulator or whether there is a prescribed list of conditions, restrictions or requirements. It would also be helpful to list the conditions that can be imposed by the Chief Regulator, even if such list is not exhaustive (similar to OSA s. 27(3) and BCSA s. 36(1)).	The conditions that may be imposed under this subsection are at the discretion of the Chief Regulator. Note that an illustrative list is not included in the Director's power to impose conditions on a registration under s. 28 of the OSA.

	Section Reference	Comment	Response
70.	25(2) – Discretionary suspension	A commenter recommended that a Tribunal hearing be required in all disciplinary decision making, including s. 25(2), leaving appropriate procedures to be determined in light of the issues in specific proceedings. In circumstances where a suspension is based on a need for immediate action, the Chief Regulator should retain authority to make a temporary order.	This subsection is consistent with current securities legislation. In particular, these decisions are decisions of the Director under the OSA and the Executive Director under the BCSA and NBSA, in each case following an opportunity to be heard.
71.	25(2) – Discretionary suspension	A commenter expressed concern, in s. 25(2) of the CMA and elsewhere, about the reference to an affected person's "opportunity to make representations" as compared to the "opportunity to be heard" available under current securities legislation.	We have revised the CMA to provide for an OTBH rather than an opportunity to make representations.

Part 5 – Prospectus Requirements

	Section Reference	Comment	Response
72.	Part 5 – General comment – "prescribed disclosure document" regime	Two commenters expressed interest in the "prescribed disclosure document" regime included in Part 5 of the CMA, which contemplates that securities can be distributed by filing with the Chief Regulator a "prescribed disclosure document" as an alternative to a prospectus filing. The commenters indicated that they cannot provide meaningful comments without details on how the prescribed disclosure document would function within the CMA regime and asked that any effort to further broaden the range of disclosure documents available for use in Canada be approached with caution.	Because no offering documents will be prescribed for the purposes of s. 27(1)(b) on launch of the CMRA, the provision does not represent any immediate change to the prospectus regime. If a decision is made in the future to prescribe alternative offering documentation, it will be subject to notice and comment as well as Council of Ministers approval. Note that the revised CMA uses the term "prescribed offering document" for these purposes rather than "prescribed disclosure document".
73.	27(1) – Requirement to file prospectus	A commenter recommended that the prescribed period for the distribution concept included in s. 27(1) should be enshrined in the CMA rather than left to the regulations, similar to the current s. 62(1) of the OSA.	Please refer to the general comment above regarding the "platform" nature of the CMA.
74.	27(1) – Requirement to file prospectus	A commenter noted an inconsistency between the current prospectus requirements and those contemplated in the CMA. The commenter expressed the view that in current provincial securities law (such as Part XV of the OSA) the trigger for requiring prospectus registration is "trading", while in the CMA, the trigger is referred to as "distribution".	Distribution is defined in current securities legislation and is the current trigger for the prospectus requirement. For example, OSA s. 53 states "no person or company shall trade if the trade would be a distribution"
75.	27(1) – Requirement to file prospectus	A commenter recommended that the CMA make reference to the exemptions set out in NI 45-106 <i>Prospectus Exemptions</i> .	We did not make this change as this is covered by the CMRA's regulation-making authority.
76.	28 – Restriction on distribution of information, record or thing	Two commenters noted that the concept of restricting the distribution of any "information, record or thing" in s. 28 is very broad and likely unnecessary given that the prospectus requirement should be sufficient alone and particularly given the new range of "pre-marketing" exceptions that have been codified into NI 41-101 <i>General Prospectus Requirements</i> .	We have revised the CMA to limit this restriction to the distribution of any record respecting the security that is prohibited by the regulations. This is generally consistent with current securities legislation. See, for example, OSA s. 69. Please also refer to s. 4 of proposed CMRA Regulation 41-501 <i>Prospectus Requirements and Exemptions</i> .
77.	30(2) – Receipt for prospectus	A commenter recommended that the CMA specify the circumstances in which the Chief Regulator may refuse to issue a receipt for a prospectus in order to provide certainty to potential issuers.	Please refer to s. 2 of proposed CMRA Regulation 41-501. This regulation is based on current BC securities legislation and prescribes circumstances where the Chief Regulator must not issue a receipt for a prospectus.

	Section Reference	Comment	Response
78.	32 – Requirement to provide further information, etc.	Two commenters questioned why s. 32 of the CMA is required given that the Chief Regulator already has the ability to refuse a receipt for a prospectus under s. 30(2) of the CMA. A commenter also recommended that issuers be given an OTBH prior to imposing additional filing requirements under s. 32.	This provision is consistent with current securities legislation in BC and New Brunswick. The circumstances under which the Chief Regulator will rely on s. 30(2) as opposed to s. 32 will be an operational decision. With respect to the commenter's second point, note that s. 99 of the CMA provides a person directly affected by a decision of the Chief Regulator, including a decision under s. 32, with a right to apply to the Tribunal for a hearing and review of that decision.
79.	33 – Order to provide information re distribution of previously Issued securities	A commenter noted that s. 33 of the CMA tracks s. 64(1) of the OSA, and asked why s. 64(2) of the OSA was not incorporated into the CMA.	Section 64(2) of the OSA was unnecessary because these situations can be addressed through the general exemptive relief power (CMA s. 94).
80.	34 – Permitted activities under a preliminary prospectus	A commenter proposed that s. 28 be revised to expressly include the activities that are currently permissible pursuant to s. 65(2) of the OSA, modified to further permit any activity (not merely "trading activities" which term is not defined) that is permitted by the regulations. The basic marketing rights provided in s. 65(2) of the OSA should be enshrined in the CMA rather than by way of regulation.	Please refer to s. 3 of proposed CMRA Regulation 41-501. Based on current securities legislation, this regulation prescribes permitted activities under a preliminary prospectus.
81.	35(1) – Opportunity to make representations (receipt refusal)	A commenter recommended that an issuer should have a hearing prior to the Chief Regulator ordering that trading activities permitted under s. 34 cease.	This provision is consistent with current securities legislation. See, for example, BCSA s. 81, NBSA s. 85, OSA s. 68, and SKSA s. 76.
82.	37 – Obligation to send prospectus, etc.	A commenter urged the Governments to reconsider the phrase "other than a person acting as a purchaser's agent". This phrase has not ever been completely understood and clouds the delivery mechanics under existing legislation. Also, s. 37(3) could be combined with s. 37(1).	This provision is consistent with current securities legislation. Similar to OSA s. 71(1) and OSA s. 71(1.3) (not yet proclaimed), the phrase "other than a person acting as a purchaser's agent" remains intentionally included in s. 37(1) and intentionally excluded in s. 37(3).
83.	37 – Obligation to send prospectus, etc.	Several commenters noted that s. 37 does not contain any reference to the time period in which the prospectus must be sent to the purchaser of the security. It would be helpful to clarify if there is any intention to change the existing two day delivery requirement under current securities legislation.	We retained the existing two business day delivery requirement in s. 5 of proposed CMRA Regulation 41-501.

	Section Reference	Comment	Response
84.	37 – Obligation to send prospectus, etc.	A commenter expressed the view that, by imposing an obligation on any person who trades in securities and who receives a purchase order for a security offered in a distribution to deliver a prospectus, s. 37 appears to broaden the delivery obligation beyond dealers to others that may be involved in the offering.	This obligation is no broader than the corresponding obligation in current securities legislation. For example, the definition of "dealer" for the purposes of Parts XV and XVI of the OSA is "a person or company who trades in securities as principal or agent" (OSA s. 1(1.2)).
85.	Two day cooling-off period/withdrawal right	Two commenters noted that the CMA does not include the two day "cooling-off period" found in s. 71(2) of the OSA and recommended that this this provision be enshrined in the CMA rather than the regulations.	Note that the equivalent rescission rights are found in ss. 138 to 142 of the CMA. We retained the existing two day period in s. 18 of proposed CMRA Regulation 11-501.

Part 6 – Trading in Derivatives

	Section Reference	Comment	Response
86.	Part 6 – General comment	Two commenters expressed support for the general principles set out in Part 6 of the CMA and commentary, and expressed interest in reviewing further details on the planned regulatory approach to be set out in the initial regulations.	We thank all commenters for their feedback. For additional information about the proposed regulatory approach please refer to proposed CMRA Regulations 91-501 and 91-502 as well as the Regulations Commentary.
87.	Part 6 – General comment	A commenter expressed the view that a new registration category for advisers that is based solely on an asset class is not necessary and that a new registration category for advisers should not be predicated on the type of assets being advised on as opposed to the established business triggers set out in NI 31-103. If an individual is already registered as an adviser under securities regulation, there should be no additional registration requirements under a derivatives regime.	Please refer to the Regulations Commentary. While we are not proposing a new registration category for derivatives advisers, advisers who trade derivatives require knowledge of "the type of asset" (i.e., derivatives) to meet their suitability obligations. This is reflected in new proficiency requirements for advisers who advise on exchange contracts, which are based on existing requirements in the Ontario Commodity Futures Act.
88.	39 – Duty to provide information	A commenter questioned whether the breadth of s. 39, extending to any person who "trades inderivatives" is appropriate.	This is consistent with the Ontario approach. See, for example, proposed CMRA Regulation 91-502 which is based on OSC Rule 91-507 <i>Trade Repositories and Derivatives Data Reporting</i> .
89.	40 – Exemption from Part 5 for trades in derivatives	A commenter noted that the revisions to s. 40, relative to the comparable provision proposed for the OSA, result in some uncertainty as to whether certain exchange traded and other derivatives would be subject to a prospectus requirement (or perhaps the expectation is that those derivatives will not be designated as securities).	We have revised the CMA to remove s. 40. Please also refer to s. 2 of proposed CMRA Regulation 91-501, which prescribes that all OTC derivatives that are not otherwise securities are securities for the purposes of Part 5 of the CMA.
90.	41 – Derivatives that are securities for prescribed purposes	A commenter asked whether it was the intent that derivatives in a prescribed class in paragraph (p) of the definition of "security" are "securities" for all purposes, but all other derivatives are only to be treated as securities for more limited, prescribed provisions.	Yes, derivatives prescribed under s. 41 will only be treated as securities for more limited, prescribed provisions.

	Section Reference	Comment	Response
91.	42 – Effect of failure to comply	A commenter questioned whether, from a public policy perspective, there may be a basis to carve out certain widely distributed or "retail" derivatives from the scope of this clause, for example, where there is a failure to deliver a prescribed disclosure document to an investor. Alternatively, rules could establish the remedies available in the event of non-compliance.	This section is consistent with current securities legislation in Ontario (OSA s. 64.2 – not yet in force).

Part 7 – Disclosure and Proxies

	Section Reference	Comment	Response
92.	Part 7 – General comment	A commenter urged CMR Jurisdictions to adopt the existing harmonized National Instruments relating to disclosure obligations and proxy rules as regulations without substantive change.	We agree with this comment. Please refer to the Initial Regulations. We have proposed changes to the existing National and Multilateral Instruments only as necessary to fit them under the CMA and to eliminate differences in requirements among the CMR Jurisdictions.
93.	44 – Reports, etc., by insiders	Two commenters noted that s. 44(b) and s. 43(c) should be drafted consistently.	We have revised the CMA to address this comment.
94.	44 – Reports, etc., by insiders	A commenter questioned whether s. 44 is intended to enable the early warning type of disclosure currently required under s. 102.1 of the OSA and under s. 5.2 of MI 62-104 <i>Take-Over Bids and Issuer Bids</i> .	Section 44 is not intended to enable the "early warning" disclosure requirements required under OSA s. 102.1 and MI 62-104. Those requirements have been included in MI 62-104. Section 44 is intended to enable insider reporting currently addressed in current securities legislation (see, for example, BCSA s. 87(2), OSA s. 107).
95.	45 – Information from directors, etc.	Two commenters expressed the view that the information gathering power in s. 45 of the CMA is overly broad. One of the commenters recommended that the CMA provide (a) that the officer or director is relieved of the obligation to provide information that is protected by a privilege, (b) that oral information or written narratives that are compelled from an individual under this section are inadmissible in a civil or criminal proceeding under the laws of any jurisdiction, or in any prosecution under s. 112 of the CMA, and (c) that if an oral statement or written narrative is compelled from an individual under this section, disclosure of it shall be governed by s. 196 and the evidence shall be treated as if it was given pursuant to s. 104 for that purpose.	This provision is consistent with current securities legislation in British Columbia. Please refer to the general comment above regarding privilege.
96.	46 – Requirement to solicit proxies	A commenter expressed the view that s. 46 appears to broaden the scope of the requirement to send proxies beyond that of current securities legislation. The requirement to send proxies in s. 46 of the CMA should be limited to holders of voting securities in "participating provinces or territories".	This provision is consistent with s. 9.1 of NI 51-102 Continuous Disclosure Obligations, which requires management of a reporting issuer to send forms of proxy to all registered holders, irrespective of jurisdiction of residence. We revised s. 46 of the CMA so it refers to "registered holder" rather than "holder".

Part 8 – Take-over Bids and Issuer Bids

	Section Reference	Comment	Response
97.	Part 8 – General comment	A commenter urged CMR Jurisdictions to adopt MI 62-104 as a regulation without substantive change (other than to address the changes proposed by the CSA on September 11, 2014) in order to minimize disruption in the transition to the new regime and to preserve harmony with the legislation in those jurisdictions that do not opt-in to the cooperative system.	We agree with this comment. Please refer to the Initial Regulations. We have proposed changes to the existing national and multilateral instruments only as necessary. We are monitoring the proposed amendments to MI 62-104 and will incorporate them if and when they are adopted.
98.	51– Power to vary period; 52 – Application to Tribunal – compliance orders	A commenter noted that the Chief Regulator and Tribunal are given overlapping discretion to vary time periods required with respect to takeover bids (ss. 51-52). Such variations, unless necessary for a compliance order, are largely operational and should be made in the first instance by the Chief Regulator with overlapping authority to allow the Tribunal to tailor compliance orders in appropriate circumstances.	Tribunal orders under s. 52 are already limited to circumstances where, after a hearing, the Tribunal considers that a person has not complied or is not complying with Part 8 or the regulations related to it.
99.	52 – Application to Tribunal – compliance orders	A commenter noted in connection with s. 52 of the CMA that the Tribunal should be informed by existing jurisprudence and expertise built upon the regulatory decisions of the major capital markets jurisdictions.	As is the case with regulatory decisions today, prior decisions made by the predecessor regulators will not be binding on the Tribunal. It is anticipated, however, that prior decisions will have significant persuasive value, as is also the case today.

Part 9 – Market Conduct

	Section Reference	Comment	Response
100.	54 – Requirement to keep records	A commenter expressed the view that requiring a control person to maintain the records required by s. 54 of the CMA goes beyond the scope of the purposes of the CMA. In addition, a market participant should not be required to disclose any requested records where it would otherwise be prohibited by law from disclosing the information.	Proposed CMR Regulation 11-501 will be revised to exempt control persons from the record-keeping requirements of s. 54 of the CMA.
101.	54 – Requirement to keep records	A commenter expressed the view that the Initial Regulations should include a more robust description of the recordkeeping requirements so that companies can provide comment on the proposed requirements and begin to prepare for potential obligations.	We thank all commenters for their feedback.
102.	55 – Duty to client; 56 – Duty to investment fund	A commenter expressed the view that the standards of conduct set out in s. 55 and s. 56 of the CMA are appropriate and should be enshrined in legislation, rather than in regulations.	We thank all commenters for their feedback. We have retained the standards of conduct in s. 55 and s. 56, but added flexibility in s. 55 to prescribe additional standards, which are consistent with the "platform" nature of the CMA.
103.	55 – Duty to client	A commenter expressed the view that s. 55 of the CMA extends the duty of good faith and fair dealing from that imposed by OSC Rule 31-505 <i>Conditions of Registration</i> on dealers and advisors to underwriters. As the underwriter's client is the issuer these words would import into the relationship between an underwriter and its client a statutory quasi-fiduciary duty of good faith and fair dealing. The prevailing view among practitioners is that today underwriters do not owe such a duty to their clients.	This provision is consistent with current securities legislation in several jurisdictions (see, for example, BC Securities Rules s. 14, NBSA s 54(1), SKSA s. 33.1, ASA s. 75.2(1)).
104.	55 – Duty to client	Two commenters noted that a best interest standard coupled with an enhanced proficiency standard should be the norm, not the exception for the rapidly growing wealth management industry and expressed the view that s. 55 of the CMA should be revised to reflect this standard.	Adoption of a best interest standard is outside the scope of this project, but within the CMRA's regulation-making authority. We have revised s. 55 to clarify this regulation-making authority.

	Section Reference	Comment	Response
105.	57 – Conflicts of interest – registrant, etc.	A few commenters expressed concern about the reference to an "investment fund" in the obligation to identify, manage and disclose conflicts of interest set out in s. 57 of the CMA. The commenters believe that the reference to an "investment fund" is confusing and does not reflect the actual legal relationships that are contemplated under existing rules, including NI 81-107 Independent Review Committee for Investment Funds, as investment funds are not typically self-managed and are therefore unable to identify, disclose and manage conflicts of interest.	The reference to investment funds in s. 57 is intended to provide a platform for prescribing prohibitions and restrictions relating to conflicts of interest of investment funds consistent with current securities legislation. The prohibitions and restrictions are set out in Part 1 of proposed CMRA Regulation 81-501 <i>Investment Funds</i> .
106.	57 – Conflicts of interest – registrant, etc.	A commenter questioned why the CMA omits a number of provisions contained in Part XXI of the OSA and believes that these should be included in the framework legislation, rather than left to the regulations.	Please refer to the general comment above regarding the "platform" nature of the CMA. Note that these provisions are included in the rules in other jurisdictions (see, for example, BC Instrument 81-513 <i>Self-Dealing</i>). We have included them in Part 1 of proposed CMRA Regulation 81-501.
107.	57 – Conflicts of interest – registrant, etc.	A commenter suggested that NI 31-103 be adopted without modification as the regulations dealing with conflicts of interest for registrants.	Please refer to the Initial Regulations. We have proposed changes to the existing national and multilateral instruments only as necessary.
108.	58 – Conflicts of interest – offeror, etc.	Two commenters noted that s. 58 of the CMA imposes new obligations on directors, officers and others to manage conflicts of interest in respect of various transactions and recommended re-casting this as a head of regulation-making power and not as an obligation.	We have revised the CMA to address this comment.
109.	60(3) – Prohibited representation – future value or price	A commenter recommended that the word "assurance" in s. 60(3) of the CMA be defined or changed to "guarantee". Advice that the price of a security is likely to increase should not constitute a prohibited representation.	We thank the commenter for their comment. We have not changed s. 60(3).
110.	60(4) – Prohibited representation – exchange	A commenter recommended that the prohibition on making listing representations in s. 60(4) of the CMA be codified in the rules as opposed to the CMA.	This provision is codified in current securities legislation; however, we have revised the CMA to include regulation-making authority to provide for exemptions from this prohibition (see s. 60(5)). Please refer to s. 13 of proposed CMRA Regulation 11-501.

	Section Reference	Comment	Response
111.	62 – Market manipulation	Several commenters recommended s. 62 of the CMA mirror the language in s. 126.1 of the OSA such that the person engaging in the conduct must know or ought reasonably to know that the conduct would result in market manipulation.	We thank the commenters for their comments. We have not changed s. 62.
112.	63 – Unjust deprivation, fraud	Several commenters noted that the term "unjust deprivation" in s. 63 of the CMA is not defined nor is it a concept under current securities legislation and that this concept is capable of multiple (and extended) interpretations. The commenters recommended that the section mirror the language in s. 126.1 of the OSA such that the person engaging in the conduct must know or ought reasonably to know that the conduct perpetuates a fraud.	This "unjust deprivation" language is derived from case law interpreting the meaning of fraud in current securities legislation and under the <i>Criminal Code</i> in order to capture the <i>actus reus</i> of fraud without the requirement to establish subjective knowledge of the fraud.
113.	63 – Unjust deprivation	A commenter expressed support for the introduction of an unjust deprivation provision.	We thank all commenters for their feedback.
114.	64 – Benchmark – false or misleading information	A commenter noted that there are no stated defences to the new prohibitions for benchmark manipulation in s. 64 and s. 65 of the CMA as there are, for example, to the insider trading and tipping prohibitions in s. 68.	Similar to the approach we have taken for the prohibitions on market manipulation and other prohibitions in the CMA, we did not include a statutory defence.
115.	64 – Benchmark – false or misleading information; 65 – Benchmark manipulation	Two commenters expressed support for the introduction of the prohibitions on benchmark manipulation in s. 64 and s. 65 of the CMA.	We thank all commenters for their feedback.

	Section Reference	Comment	Response
116.	65 – Benchmark manipulation	The application of s. 65(1) and s. 65(2) is potentially very broad. The commenter recommended the inclusion of a knowledge requirement in s. 65(1) and s. 65(2) by way of a defence. This could take the form of a new s. 65(3) that reads: A person does not contravene either of subsections 65(1) or (2) unless, at the time, the person knew or reasonably ought to have known that the conduct related to a benchmark. or A person does not contravene either of subsections 65(1) or (2) unless, at the time, the person knew or reasonably ought to have known that the conduct could influence the determination of the benchmark or produce or contribute to the production of a false or misleading determination of the benchmark.	We did not make this change. Conduct would only be prohibited if it "improperly" influences the determination of a benchmark.
117.	66(1) – Insider trading	A commenter expressed the view that nothing but prosecutorial and judicial discretion protects the insider from being charged under both the provincial and the federal statutes, allowing the prosecutor "two kicks at the can".	This is consistent with current securities legislation and the <i>Criminal Code</i> .
118.	66(1) – Insider trading	Several commenters noted that the insider trading prohibition has been extended beyond the status quo to prohibit the purchase or "trade" of a security and should not be included in the new legislation without a full airing of the purpose of the change and a full appreciation of the implications.	Section 66 of the CMA was based on the most expansive insider trading provisions in current securities legislation of CMR Jurisdictions — namely, BCSA s. 57.2 and NBSA s. 147. Rather than referring to entering into a transaction involving a security or a related financial instrument (as is the case in s. 57.2(2) of the BCSA), or describing in detail how each security, option or related financial instrument may be acquired (as is the case in s. 147(2) of the NBSA), s. 66 prohibits a person from purchasing or trading a security or entering into a transaction involving a related financial instrument. The phrases "purchase or trade a security" and "enters into a transaction involving a related financial instrument" (drawn from ss. 147(2) and 147(4.1) of the NBSA) were incorporated into ss. 68 to 70 to clarify the scope of the transactions covered by these provisions.

	Section Reference	Comment	Response
119.	66(1) – Insider trading	Several commenters expressed concern about the insider trading prohibitions applying to both "reporting issuers" and "issuer[s] whose securities are publicly traded" as this term is not defined.	"Publicly traded" is used but not defined in the secondary market liability framework and insider trading framework of all CMR Jurisdictions.
120.	66(2) – Tipping	A commenter noted that s. 66(2) of the CMA provides an exemption from the tipping prohibition where it is "necessary in the course of business". Under the OSA, the phrase employed in the tipping provisions is "in the necessary course of business". The commenter recommended reverting to "in the necessary course of business" in this section of the CMA.	Current securities legislation in several jurisdictions use the words "necessary in the course of business".
121.	66(3), 66(4) – Tipping – take-over or other action	A commenter recommended that s. 66(3) and s. 66(4) be amended to include the "considering or evaluating" language used elsewhere in the insider trading prohibitions. This would follow the recent amendments to s. 76(3) of the OSA, and would be consistent with the definition of "special relationship" in s. 7 of the CMA.	We have revised the CMA to address this comment.
122.	66(3) – Tipping – take- over or other action	A commenter noted that s. 66(3) introduces a new and evidently more limited exception to the tipping prohibition in Ontario by requiring that the tipper prove that the disclosure was "necessary to effect the proposed action". The section on its face appears to the commenter to be overly narrow and as a drafting matter it seems undesirable to have two different standards for permissible tipping in the section.	We have revised the CMA to address this comment.

	Section Reference	Comment	Response
123.	66(4) – Recommending	A commenter noted that the prohibition on recommending found in s. 66(4) of the CMA was a positive change from the status quo in Ontario as it clarifies an ambiguity under the existing statute and because it makes sense that a person in a special relationship be prohibited from "recommending", not just disclosing the material fact or material change. However, the commenter noted that the marketing efforts of the issuer or agent recommending or encouraging an investor to participate in the private placement should be excluded from this prohibition in the same fashion that the disclosure is excluded from the tipping prohibition. Consideration must also be given to whether other ordinary course business activities that involve recommending an issuer's securities (such as investor relations activities, non-deal road shows, etc.) should be excepted. Similarly, another commenter noted that s. 66(4) of the CMA should be carefully drafted and given proper consideration (with a specific request for comments) prior to implementation.	This provision is consistent with current securities legislation in several jurisdictions. Having said that, we note that the ability to prescribe circumstances where a person does not contravene the CMA is within the CMRA's regulation-making authority if the policy need for inclusion of a defence is established at a later date.
124.	67(2) – Connection to investor	A commenter expressed the view that the definition of "connected to an investor" found in s. 67(2) of the CMA is overly broad and should exclude an issuer's personnel as well as persons engaged in a distribution.	This definition is consistent with current securities legislation in BC (BCSA s. 57.3(2)).
125.	67(2)(f) – Connection to investor	A commenter noted that paragraph 67(2)(f) of the CMA does not include sub-tippees.	We have revised the CMA to address this comment.
126.	68 – Defences	A commenter expressed the view that the defences to insider trading and tipping should not be codified in the CMA and strongly urged CMR Jurisdictions to consider a more flexible approach that allows for these provisions to be more easily adapted as capital markets activities continue to evolve.	These defences have been included in s. 68 of the CMA to provide for a complete code with respect to insider trading and front-running, recognizing that liability for insider trading or front-running may subject defendants to penal consequences under Part 10 and, potentially, civil liability under Part 12. With the comment in mind we have added a regulation-making power to enable the CMRA to prescribe additional defences if necessary in the future. No such defences are contemplated at this time.

	Section Reference	Comment	Response
127.	68 – Defences	A commenter noted that the CMA omits the "policies and procedures" defence to insider trading that is contained in s. 175(3) of the General Regulation under the OSA.	We do not to carry forward this "policies and procedures" defence. This provision does not exist in CMR Jurisdictions other than Ontario.
128.	70 – Unfair practice	Several commenters questioned the breadth of the prohibition against unfair practices in s. 70. In particular, commenters sought guidance on the expectations relating to compliance with such a requirement.	We have revised the CMA for consistency with current securities legislation of all CMR jurisdictions except Ontario (see, for example, BCSA s. 50(4)(b), NBSA s. 58.2(b), SKSA s. 44.1).
129.	70 – Unfair practice	A commenter supported the introduction of s. 70 of the CMA.	We thank all commenters for their feedback.
130.	70(c) – Unfair practice	A commenter noted that the ability of the Authority to formulate rules defining anything at all as an "unfair practice" represents an abandonment of the current legislative practice of expressly defining the matters in respect of which the regulator can make rules. The OSA equivalent (s.143(1)13) is restricted to "trading in or advising" activities that are unfairly detrimental "to investors". The CMA has no corresponding restrictions.	We have revised the CMA to address this comment. In particular, paragraph 70(c) has been revised to refer to prescribing practices that are fraudulent, manipulative, deceptive or unfairly detrimental to investors, consistent with the rulemaking authority in NBSA s. 200(1)(bb) and OSA s. 143(1)13.
131.	71 – Using name of another registrant	A commenter noted that the clause beginning with the word "unless" in s. 71 of the CMA does not include employees.	This provision is consistent with current securities legislation (see, for example, BCSA s. 50(4), NBSA s. 63, OSA s. 43, SKSA s. 49).
132.	74 – Investor relations activities	A commenter expressed support for including the disclosure of investor relations activities requirement in s. 74 of the CMA, in that it enhances transparency.	We thank all commenters for their feedback.

	Section Reference	Comment	Response
133.	76 – Obstruction	Several commenters expressed concern about the introduction of a general "obstruction" prohibition in s. 76 of the CMA without discussion and consultation. In particular, commenters noted that: • including the concept of "withholding" within its scope may create positive obligations; and • the obligation might apply to lawyers dealing with the CMRA (for example, in asserting privilege on behalf of a client or counselling a client not to cooperate on a voluntary basis in an investigation). A commenter queried what "reasonably ought to know" means in the context of the obstruction prohibitions in s. 76 of the CMA and further queried whether a person can "reasonably ought to know" that an investigation "is likely to be conducted".	Except for the reference to "is likely to be conducted", this provision is consistent with current securities legislation in all CMR Jurisdictions except Ontario (see, for example, BCSA s. 57.5 and SKSA s. 135.7).
134.	77 – No reprisal by employer	 A commenter recommended the following changes to the whistleblower protections in s. 77 of the CMA. Specifically, the CMA should: require "up the ladder" reporting to the employer before information is disclosed to the CMRA; provide that an individual who was responsible for, or complicit in, the alleged misconduct that is being reported be carved out of protections in s. 77 and s. 188 of the CMA; clarify that actions against an employee are permitted that are unrelated to whistleblowing; require reasonable whistleblower disclosures and not afford protections to whistleblower disclosures that are frivolous, vexatious or made in bad faith; and prohibit the receipt of certain categories of information, in particular, privileged information. 	 We have revised the CMA to reflect some of the comments raised. In particular, s. 77 has been revised to: provide that anti-reprisal protections only apply to an employee who "reasonably" believes that their employer, or a director, officer or employee of the employer, acted contrary to capital markets law; and provide that internal reporting (i.e., 'up the ladder' disclosure) is also protected (but not required prior to disclosure to the Authority, law enforcement agency or a recognized self-regulatory organization). Section 77 only precludes actions against an employee that relate to whistleblowing. Other changes are outside the scope of this project, but could be considered in the implementation of a whistleblower program.

	Section Reference	Comment	Response
135.	77 – No reprisal by employer	Several commenters expressed support for the CMRA proposals relating to whistleblowers, in particular, the protections in s. 77 of the CMA. The commenters recommended that the CMR Jurisdictions examine whether a more comprehensive whistleblower protection and reward-based regime similar to the United States should be implemented and recommended that identity protection for whistleblowers be considered.	We thank all commenters for their feedback. We do not believe that further amendments to the CMA would be necessary in order to implement a reward-based whistleblower program.
136.	78 – Breach of trust	A commenter noted that s. 78 of the CMA is a prohibition that does not appear in current securities legislation. While the commenter does not object to this provision, it would question underlying reasons behind the new prohibition.	This prohibition is based on the "criminal breach of trust by market intermediary" offence in the CMSA and a breach could arise because of the misconduct of a registrant, investment fund, or custodian of the portfolio assets of an investment fund.
137.	81(3) – Onus	A commenter expressed the view that subsection 81(3) of the CMA seems to create a new reverse onus provision whereby a person who wishes to rely on the exception to the rule must prove that they did not know that he/she/it had made a false or misleading statement. This section should be subject to a detailed request for comments.	This is not a substantive change from current securities legislation. The onus is codified for consistency with the parallel CMSA provision.
138.	83 – Contravention re: actions of employees, agents; 114 – Offences re: actions of employees, agents	Two commenters questioned s. 83 and s. 114 of the CMA, which provide that an employer is vicariously liable if it can be established that an employee acting within the scope of his or her employment, or an agent acting within the scope of its authority, contravenes capital markets law. One of the commenters suggested that s. 114 be redrafted to mirror s. 22.2 of the <i>Criminal Code</i> , which makes an organization a party to an offence only if one of its senior officers (a) acting within the scope of his authority is a party to the offence, (b) has the <i>mens rea</i> for the offence and directs others within the organization to perform the <i>actus reus</i> of the offence, or (c) knows that another representative of the organization is or is about to become a party to the offence and does not take reasonable steps to stop the commission of the offence by the representative.	We thank the commenters for their comments. We decided to follow an approach that was similar to the regulatory precedents in other legislation, including the Business Practices and Consumer Protection Act (BC), the Mining Act (Ontario), and the Proceeds of Crime (Money Laundering) and Terrorist Financing Act (Canada).

	Section Reference	Comment	Response
139.	84 – Aiding and abetting, counselling; 85 – Conspiracy	Two commenters noted that the aiding and abetting, counselling and conspiracy prohibitions in s. 84 and s. 85 of the CMA do not appear in current securities legislation. The commenters questioned the underlying reasons behind the new prohibitions and recommended that such offences be subject to a detailed request for comments.	These prohibitions are based on similar provisions of the <i>Criminal Code</i> (which apply to CMSA offences), the securities legislation of other jurisdictions (including Quebec and the United States) and other regulatory legislation (including the <i>Competition Act</i> (Canada)). This will fill a gap in regulatory prosecutions where existing language may not capture the full range of misconduct.

Part 10 – Orders, Reviews and Appeals

	Section Reference	Comment	Response
140.	86 – Cease-trade order — extraordinary circumstances	A commenter expressed the view that s. 86 of the CMA is a new power that did not previously exist under the OSA. The commenter questioned why a cease-trade order would only be applied to recognized exchanges and not to other market places and suggested that there be a more specific and high threshold for a disturbance before such a drastic measure be taken.	This power is consistent with current securities legislation in Ontario (OSA s. 2.2). Like s. 2.2 of the OSA, its application would not be limited to recognized exchanges. The provision refers to "a recognized exchange or otherwise".
141.	86 – Cease-trade order — extraordinary circumstances	A commenter recommended that s. 86 of the CMA be revised to provide the entity against which the order is granted the ability, for a period of time after the order is granted, to make representations to the Tribunal as to why the cease-trade should be lifted.	Section 86(6) of the CMA provides an opportunity to be heard to any person who is directly affected by the order. Section 86(7) allows the Authority to revoke or vary the order or exempt a person or class of persons from the order.
142.	87 – Cease-trade order – market fluctuations	A commenter expressed the view that s. 87 of the CMA is reasonable and appropriate. However, it notes that the interaction of s. 87 and s. 89(4), as currently drafted, raises some ambiguities and potential conflicts. These issues could be very simply addressed by making it clear that ss. 87 and 88 are intended to be a complete code for all circumstances in which a cease-trade order may be issued by the Tribunal without a hearing. Accordingly, s. 89(1)(b) should be carved out of s. 89(4).	This provision is consistent with current securities legislation in BC. The purpose of s. 89(4) of the CMA is to address situations where an administrative proceeding is pending, but a more immediate remedy is necessary. By contrast, the purpose of the temporary cease-trade order power in s. 87 of the CMA is to protect the stability or integrity of the capital markets by allowing the CMRA to respond quickly to unexplained or unusual fluctuations in the market price of a security or derivative or to the other enumerated circumstances in ss. 87(1)(a) to (d) or 87(2)(a) to (d).
143.	87 – Cease-trade order – market fluctuations	A commenter recommended that an issuer that could be affected by a cease-trade order under s. 87 be provided with reasonable advance notice and disclosure of the basis for the proposed order, and a right to a hearing to contest the proposal to make such an order, or this power should be removed from the legislation.	This provision is consistent with current securities legislation in BC. As noted above, the purpose of this power is to allow the CMRA to respond quickly to market fluctuations in enumerated circumstances. The initial order is limited to 15 days and the affected person may apply to revoke the order prior to the expiry of that 15 day period.
144.	87 – Cease-trade order – market fluctuations; 88 – Cease-trade order – non-compliance	A commenter recommended that s. 87 of the CMA be revised to provide the entity against which the order is granted the ability, for a period of time after the order is granted, to make representations to the Tribunal as to why the cease-trade should be lifted.	Please refer to s. 174(2) of the CMA for the Tribunal power to revoke or vary its decision on application of a person directly affected by the decision.

	Section Reference	Comment	Response
145.	88 – Cease-trade order – non- compliance	A commenter recommended that s. 88 of the CMA be revised to provide the entity against which the order is granted the ability, for a period of time after the order is granted, to make representations to the Tribunal as to why the cease-trade should be lifted.	Please refer to s. 99 of the CMA. A person directly affected by the Chief Regulator's decision under s. 88 may apply to the Tribunal for a hearing and review.
146.	88 – Cease-trade order – non- compliance	A commenter recommended that some concept of materiality should be included before the Chief Regulator may issue a cease-trade order under s. 88.	This provision is consistent with current securities legislation in several CMR Jurisdictions.
147.	89 – Orders of Tribunal – general	A commenter noted that the CMA does not address when, and if ever, it is appropriate for a private litigant to commence proceedings before the Tribunal seeking relief (and to advance its personal interests) under s. 89. The commenter suggested that the CMA should provide guidance / clarification on this point and that it would not be unreasonable for the CMA to provide that: (a) the Chief Regulator may commence proceedings before the Tribunal for relief under s. 89 as of right; (b) private litigants may commence proceedings before the Tribunal only for relief under s. 89 and only with leave of the Tribunal; and (c) leave shall be granted to private litigants in circumstances only where: (i) the relief sought is future-looking, and not regulatory or enforcement in nature; (ii) the private litigants have a direct interest in the outcome (for example, as a bidder or target shareholder in a poison pill or other defensive tactics hearing); and (iii) the Tribunal, considering any other matters it deems relevant, including the Chief Regulator's reasons for not commencing the proceedings, is satisfied that it is in the public interest to grant leave.	This provision is consistent with current securities legislation. Note the distinction between this section and s. 52 of the CMA, which provides a specific right to any interested person to make applications to the Tribunal in the take-over / issuer bid context.

	Section Reference	Comment	Response
148.	89(1)(I) – Orders of Tribunal – general	Two commenters expressed the view that paragraph 89(1)(I) should not be included in the CMA, on the basis that it deviates in meaningful ways from the current securities enforcement framework, that it is overly broad, and that it would be better to undertake a full assessment of the proposed enforcement provisions separately, once the CMRA has been fully operational for some time.	This provision is consistent with current securities legislation in several jurisdictions (see, for example, BCSA s. 161(1)(d)(iv), NBSA s. 184(1)(c)(ii)(B), ASA s. 198(1)(e.3)).
149.	89(4) – (7) – Order without delay	A commenter expressed the view that the scope of the types of temporary orders currently authorized in s. 89(4) is overbroad and suggested that it would be appropriate to carve ss. 89(1)(a), (h), (i), (j), (k), (l) and (m) out of s. 89(4) as these provisions imply a finding of breach (e.g., s. 89(1)(a) – an order that a person comply with the Act) or have potentially significant ramifications to a person's livelihood (e.g., ss. 89(1)(h), (i), (j), (k) and (l)). The commenter notes that, as currently drafted, s. 89(4) fails to require the Tribunal to take steps to expedite a hearing. It strongly recommends the inclusion of a provision similar to s. 127(7) of the OSA. Fairness requires that the legislation mandate an expedited hearing where a temporary order is issued.	The types of temporary orders authorized are limited when compared to current securities legislation in several CMR Jurisdictions. See, for example, BCSA s. 161(2), which allows for temporary orders in respect of the equivalents of all orders under CMA s. 89(1) other than ss. 89(1)(p) and 89(1)(q). CMA s. 89(6) provides that a temporary order under s. 89(4) may only be extended beyond 15 days after a Tribunal hearing.
150.	90 – Costs order	A commenter recommended that CMA authorize payment of costs to the CMRA in any proceeding (for consistency with CMSA s. 51(2)(c)).	No costs are payable in the context of a proceeding under the CMA.
151.	90(2) – Compensation or restitution	A commenter expressed support for the inclusion of the ability of the Tribunal to order restitution under s. 90(2) of the CMA.	We thank all commenters for their feedback.
152.	90(2) – Compensation or restitution	A few commenters expressed concern about the new restitution power in s. 90(2) of the CMA for the Tribunal. The commenters expressed the view that the granting of restitution is a function that is best suited for the courts and, given the existence of other penalties, which may include compensation (see for example, ss. 115, 129, 130(2) and 132 of the CMA), this may lead to inappropriate penalties. There are also no parameters to this new power, such as regarding indirect, consequential, punitive or other damages. This section should be subject to a detailed request for comments	A commission/tribunal power to order compensation or restitution exists in securities legislation in Saskatchewan and New Brunswick (see SKSA ss. 135.6-135.65 and NBSA s. 188.1).

	Section Reference	Comment	Response
153.	90(4) – Order on consent	A commenter expressed the view that under CMA s. 90(4), approval of settlements by the Tribunal should be required, but the process should be transparent.	The current process is consistent with current securities legislation in BC.
154.	90(4) – Order on consent	A commenter recommended that s. 90(4) expressly state that the payment may be greater than the maximum amount provided in s. 90(1).	We have revised the CMA to address this comment.
155.	90(4) – Order on consent	A commenter expressed the view that the intent behind s. 90(4) is unclear.	The purpose of s. 90(4) is to provide an efficient and expeditious process by which the Chief Regulator can enter into settlements. We have revised s. 90(4) to provide additional clarity.
156.	91 – Freeze order	A commenter noted that there are some significant differences between s. 91 of the CMA and s. 126 of the OSA. Given the intrusiveness of a freeze order the commenter believes that there should be a requirement to have such an order reviewed by a court and any extension of such order should be made subject to court approval, as with s. 126(5) of the OSA.	This is consistent with current securities legislation in British Columbia. All Tribunal decisions may be appealed to court pursuant to s. 100 of the CMA.
157.	91 – Freeze order	A commenter expressed the view that the freeze order power of the Tribunal under s. 91 does not contain sufficient standards of proof. Rather than "expedient", the commenter recommended that s. 91 include some further element, for example, such as when the Chief Regulator has made or is about to commence an investigation or commence a proceeding against the person. The commenter also recommended that s. 91 be revised to provide the person against which the order is granted, for a period of time after the order is granted, the right to make representations to the Tribunal to have the restrictions lifted.	The standard of proof for freeze orders is consistent with current securities legislation in Ontario (OSA s. 126). Please refer to s. 174(2) of the CMA for the Tribunal power to revoke or vary its decision on application of a person directly affected by the decision.

	Section Reference	Comment	Response
158.	93 – Court appointment of receiver	A commenter expressed the view that the powers of a court under s. 93 do not contain sufficient standards of proof. Given the impact on the property rights of the person, the commenter recommended that s. 93 be revised to include provisions similar to those contained in current securities legislation in Saskatchewan, i.e. a person may apply to court for the appointment of a receiver in defined circumstances, for example (a) when the commission (i) has or is about to make an order investigating the person, (ii) has or is about to issue a cease-trade order against the person, or (iii) has or is about to suspend the registration of the person, or (b) when certain prosecutions or other proceedings are about to be commenced against the person.	The circumstances for the appointment of a receiver under s. 93 of the CMA are generally consistent with current securities legislation in New Brunswick and Ontario (NBSA s. 188, OSA s. 129).
159.	95(2) – According status	A few commenters recommended that affected parties be given the right to make representations before the CMRA makes an order under s. 95.	We have revised the CMA to address this comment.
160.	95(2) – According status	A commenter recommended that the issuance of an "according status" order under s. 95(2) should, when being made on the initiative of the Authority, be (i) required to be issued by the Tribunal, and (ii) made only after the person against whom the order is being granted has been permitted to make representations to the Tribunal. A second commenter expressed the view that the ability to designate a person as a "market participant" is an example of excessive discretionary authority.	We have revised the CMA to provide an opportunity to be heard before the Authority in these circumstances.
161.	95 – Designation orders	A commenter recommended that the Authority's discretion to designate a person to be a market participant be limited to persons who perform roles similar to those of the enumerated market participants. In particular, the ability of the CMRA to designate a person as an insider should be limited to the specific limitations contemplated in s. 1(11) of the OSA.	We thank the commenter for their comment. We did not make any change. The limitations found in s. 1(11) of the OSA do not exist in the equivalent designation powers in other CMR Jurisdictions (see, for example, BCSA s. 3.2, NBSA s. 1.1, SKSA s. 11.1).

	Section Reference	Comment	Response
162.	96 – Duration of class orders	Two commenters expressed the view that it is not necessary for the CMRA to have the authority to make class (blanket) orders in certain circumstances under the CMA and that the authority to make class rulings should be limited to regulations.	The ability to make class orders will allow the CMRA to respond quickly to provide the general exemptive relief that it determines is appropriate until a regulation can be made through the normal process, rather than requiring market participants to individually apply for exemptions. The framework for class orders in the CMA represents a middle ground between different approaches in CMR Jurisdictions. While some jurisdictions have an unlimited ability to make class orders, such orders are not permitted under the OSA despite the recommendation of Ontario's Five Year Review Committee in 2003. The CMA approach provides for an 18 month sunset on any class order, with an ability to make a regulation extending the order for an additional 18 months.
163.	96(1) – Duration of class orders	A commenter queried whether s. 96(1)(b) of the CMA is intended to create a hard 36 month maximum and further queried whether this is a desirable outcome.	Please refer to the previous comment. Section 96 is intended to create a hard 36 month maximum.
164.	99(1) – Review of Chief Regulator's decision	The standard of appeal should be specifically stated to be "correctness" rather than "reasonableness".	This provision is consistent with current securities legislation.
165.	100(1) – Appeal of Tribunal's decision	The standard of appeal should be specifically stated to be "correctness" rather than "reasonableness".	This provision is consistent with current securities legislation.
166.	100(1) – Appeal of Tribunal's decision	A commenter recommended that the 30 day appeal period should start to run only from the later of the making of the decision or the issuance of reasons for the decision.	We have revised the CMA to address this comment.
167.	100(6) – New material	A commenter expressed the view that the Tribunal should not be able to make a further decision on new material under s. 100(6) of the CMA unless the person affected has had an opportunity to be heard.	This provision is consistent with current securities legislation.

Part 11 – Administration and Enforcement

	Section Reference	Comment	Response
168.	Part 11 – General comment	A commenter expressed the view that notices of hearings should not be published in the public domain. It stated that the reputational damage done by the notice is irreparable. The appropriate time to publish is following a fair hearing, if an adjudicator finds the claim to be substantiated.	We thank the commenter for the comment. We are not proposing to make any changes to address the comment.
169.	Part 11 – General comment	Two commenters expressed support for the introduction of the new evidence gathering tools found in Part 11 of the CMA	We thank all commenters for their feedback.
170.	102 – Order to provide information, etc.	A commenter expressed the view that there is no obvious check on the ability of the CMRA to use its new information-gathering powers under s. 102 to conduct any number of speculative fishing expeditions into the affairs of anyone connected with the capital markets, looking for violations of securities laws — or perhaps other laws.	This provision is consistent with current securities legislation in BC. Note that it is specifically limited to the administration or enforcement of capital markets law or the regulation of the capital markets or to assist in the administration or enforcement of the securities or derivatives laws or the regulation of the capital markets of another jurisdiction.
171.	102, 103 and 104 – Reviews and investigations	A commenter expressed the view that ss. 102, 103 and 104 should specifically provide that these orders cannot be made for the purpose of investigating the commission of quasi-criminal or criminal offences.	In light of Supreme Court jurisprudence on this issue, we have not included such a statement.
172.	103 and 104 – Reviews and investigations	 A commenter recommended the following in respect of ss. 103 and 104 of the CMA: the language in ss. 103(4)(a) and 104(8)(a) that provides for an examination of "anything in the place" should be narrowed to "anything in the place that reasonably relates to" the review or investigation; ss. 103(4)(f) and 104(8)(f) should provide for the return of records or things removed from the place, similar to the language found in s. 14(2) of the OSA; the words "and may claim any privilege to which the person is entitled" should be added to s. 104(6) as is found in s. 13(2) of the OSA. 	A designated person's ability to examine "anything in the place" in s. 103(4) is already limited to the purposes set out in s. 103(1), i.e. the administration or enforcement of capital markets law or the regulation of the capital markets. Similarly, s. 104(8) is limited to the purposes set out in s. 104(1). The addition of provisions dealing with the return of records or things removed from the place is currently being considered. Please refer to the general comment above regarding privilege. A specific reference to privilege was not added in s. 104(6) as its inclusion would be inconsistent with drafting elsewhere in the CMA.

	Section Reference	Comment	Response
173.	103 and 104 – Reviews and investigations	A commenter recommended that reviews and investigations under Part 11 be commenced only upon the approval of the Tribunal.	The Tribunal will operate independently of the Chief Regulator and so requiring Tribunal approval would not be appropriate.
174.	103 – Review of market participant	A commenter recommended that the review power in s. 103(1) be restricted to permit a review of a market participant's business for the purpose of ensuring compliance with capital markets law.	Limiting the purpose of reviews under s. 103 to ensuring compliance with capital markets law would not be appropriate. For example, s. 103 is necessary for oversight reviews of recognized entities, which have a broader purpose than simply ensuring compliance with capital markets law.
175.	103 – Review of market participant	A commenter recommended that a market participant's obligation to provide information pursuant to s. 103(3) should extend only to what is reasonably required for the purpose of the review.	A designated person's ability to require information pursuant to s. 103(3) is already limited to the purposes set out in s. 103(1).
176.	103 – Review of market participant	A commenter recommended that oral information and written narratives compelled from an individual under s. 103 should not be admissible in any civil or criminal proceeding under the laws of any jurisdiction, or in any prosecution under s. 112 of the CMA. Disclosure of such oral information or written narratives should be governed by s. 196 and the evidence treated as if it was given pursuant to s. 104 for that purpose.	Admissibility of evidence will be governed by other legislation and constitutional and common law jurisprudence. Currently, information obtained under a compliance review power similar to that in s. 103 is not subject to a statutory disclosure restriction similar to that in s. 196.
177.	103(6) – Review of market participant – authority to inquire	A commenter questioned whether there is a compelling reason to include control persons in s. 103(6) and whether persons whose only participation in capital markets is as investors should be held to the same high standards as market participants.	Section 103(6) provides authority to make inquiries of a control person of a person under review concerning business or conduct that reasonably relates to the review. Many securities enforcement proceedings have involved control persons of reporting issuers who were accused of improper behaviour relating to their control of the reporting issuer.
178.	104(8) – Authority to search, etc.	A commenter recommended that the Chief Regulator be required to obtain an order from the Tribunal authorizing a search of the premises of a non-market participant under s. 104(8), possibly on an ex parte basis.	We are not proposing to require the Chief Regulator to obtain an order from the Tribunal authorizing these types of regulatory searches at this time. We note that a warrant must be sought from a judge for a search of a dwelling house.

	Section Reference	Comment	Response
179.	104(11) – Prohibition on communication	A commenter recommended that a person affected by an order under s. 104(11) of the CMA have the ability to seek a variation of the order by the Chief Regulator. A provision like s. 38(12) of the CMSA should be included in the CMA.	A general power to revoke or vary such a decision already exists in CMA s. 171(2).
180.	105 – Duty to assist	Several commenters noted that the duty to assist in s. 105 of the CMA is worded too broadly and should only apply when the Authority is exercising powers of compulsion contained in the CMA.	We have revised the CMA to limit this duty to assist to the owner or person who is in charge of a place that is entered under ss. 103(4), 104(7) or 104(8) and every person in that place, consistent with similar duties to assist in some federal regulatory legislation.
181.	111 – Order for production of information, etc.	A commenter noted that although the s. 111 power permits the judge or justice to include terms to protect privileged communications, none of the other powers to compel information in this Part contain similar protections. The commenter noted that it is vitally important that all powers to compel information in the CMA not entrench upon privilege.	Please refer to the general comment above regarding privilege.
182.	112 – Offences and penalties	A commenter expressed the view that the words "directly or indirectly" found in s. 112(3)(b) give rise to uncertainty and should be deleted.	We have revised the CMA to address this comment.
183.	112 – Offences and penalties	A commenter questioned whether the order to pay in s. 112(3) is in addition to the penalties prescribed by s. 112(1). See s. 122.1 of the OSA. The commenter also suggested that the language in s. 122.1(6) and s. 122.1(7) of the OSA be added.	We have revised the CMA to clarify that an order to pay s. 112(3) is in addition to any penalty and added an equivalent to s. 122.1(6) of the OSA. We did not add an equivalent to 122.1(7) of the OSA.
184.	115 – Increased fines for specified contraventions	A commenter suggested that the maximum fine set out in s. 115(1) of the CMA accord with s. 122(4) of the OSA such that these fines are based on the profits made and losses avoided by the person that has contravened the insider trading provisions of the CMA, rather than by "all persons".	The reference to "all persons" is consistent with current securities legislation in BC. This reference means that, for example, a court may consider the profits made by a "tippee" when imposing a fine on a "tipper".
185.	112 and 115 – Offences and penalties	A commenter expressed the view that the Tribunal could order both the increased fines under s. 115 and compensation / restitution / disgorgement under s. 112(3).	Consistent with current securities legislation in Ontario, a court may order restitution or compensation in addition to any penalty. We note that orders under s. 112 and 115 are made by the court, not the Tribunal.

Part 12 – Civil Liability

	Section Reference	Comment	Response
186.	Part 12 – General comment – definition of "plaintiff"	A commenter suggested that the CMR Jurisdictions may wish to consider making the word "plaintiff" a statutorily defined term which includes either a group of plaintiffs or a plaintiff class under a class proceeding.	Plaintiff is not defined in current securities legislation.
187.	Part 12 – General comment – new right of action for misrepresentation in sales literature or verbal misrepresentations	A commenter recommended that investors be given a specific statutory right of action for misrepresentations in marketing materials or for verbal misrepresentations similar to those that currently exist in Saskatchewan and New Brunswick.	The effect of s. 15 of proposed CMRA Regulation 11-501 is to extend liability for misrepresentations to all disclosure documents provided to a purchaser in the course of a prospectus exempt distribution, whether provided voluntarily or not. The rationale for this approach relates to investor protection: an issuer should be liable for any misrepresentations in a disclosure document provided to an investor in a prospectus-exempt distribution by that issuer. Although we have not carried forward the Saskatchewan and New Brunswick provisions relating to verbal misrepresentations, s. 150 of the CMA will continue to impose liability for certain public oral statements.
188.	Part 12 – General comment – civil remedy for reprisal against whistleblowers	A commenter recommended that the CMA include a civil remedy or statutory cause of action protecting whistleblowers from reprisals.	We thank the commenter for their comment. We are not proposing a civil remedy or statutory cause of action at this time.
189.	117(1) – Actions relating to prospectus or prescribed disclosure document	A commenter noted that s. 117(1) provides for a right of action where the prospectus or prescribed disclosure document contains a misrepresentation "at the time of purchase". These words are not found in s. 130(1) of the OSA. <i>Danier</i> confirmed that the time of filing is the appropriate time to assess whether a prospectus contains a misrepresentation. The commenter expressed the view that substantive changes should not be introduced into the CMA without an appropriate explanation of the policy rationale and an opportunity to fully canvass the implications of the change.	This provision is consistent with current securities legislation in BC and New Brunswick.

	Section Reference	Comment	Response
190.	118 – Actions relating to special warrants	Two commenters recommended that s. 118 be revised to reflect that the <u>purchase</u> of the special warrants – and not their subsequent exercise – be the rescinded transaction or that the action be for damages rather than rescission.	We have revised the CMA to address this comment.
191.	119(2)(b) – No liability – other circumstances	A commenter recommended that s. 119(2)(b) of the CMA be revised to permit persons to withdraw their consent upon becoming aware of "any misrepresentation" rather than requiring the discovery of a particular misrepresentation.	We have revised the CMA to address this comment.
192.	119(3) – Liability - purported authority of expert; (4) – Liability - no purported authority of an expert	A commenter expressed the view that the imposition of the onus on experts and directors in ss. 119(3) and 119(4) is a desirable change.	We thank all commenters for their feedback.
193.	119(3) – Liability - purported authority of expert; (4) – Liability - no purported authority of an expert; 121(3) – Liability - purported authority of expert; (4) - Liability - no purported authority of an expert; 123 – No liability	Two commenters expressed concern with the shift in the burden of proof for experts in ss. 119(3), 119(4), 121(3), 121(4) and 123.	Changing the onus in these sections makes the defences that refer to a reasonable investigation consistent throughout Part 12 (i.e., with s. 119(2)(d)(i) and s. 121(2)(d)(i)) and with the defences that refer to a reasonable investigation in Part 13 (ss. 158(1) and 159(2)).
194.	122(1) – Actions relating to prescribed disclosure document	A commenter noted that s. 122(1) represents an expansion from s. 130.1(1) of the OSA by creating a new statutory right of action against directors of the issuer and persons who signed the prescribed disclosure document. The commenter recommended that this change not be enacted in the absence of the articulation of a persuasive policy rationale and extensive consultation with market participants.	This provision is consistent with current securities legislation in all CMR Jurisdictions except Ontario.

	Section Reference	Comment	Response
195.	122(1) – Actions relating to prescribed disclosure document	A commenter expressed support for the decision to broaden s. 122(1) beyond the comparable right of action in s. 130.1 of the OSA, to include directors and signatories as potential defendants. In doing so, this right of action has been brought closer into line with the prospectus right of action in s. 117 of the CMA. However, unlike a prospectus offering, the right of action under s. 122 is not available against underwriters involved in the private placement distribution. The commenter expressed the view that there is no justification for the preferential treatment of underwriters in the private placement context.	This provision is consistent with current securities legislation in all CMR Jurisdictions except Ontario.
196.	128 – Liability of trader, offeror or issuer	A commenter noted that under s. 133 of the OSA, a purchaser of a security to whom a prospectus is not delivered has a statutory right of action against a dealer. Under s. 128 of the CMA, such a purchaser's right of action would be against "a person who traded in a security". Section 128 also introduces a statutory right against issuers that may be exercised by a purchaser of a security to whom a prescribed disclosure document was not sent. The rationale for these changes should be explained and issuers and other market participants should have an opportunity to consider the implications and provide input.	The reference to a person instead of a dealer is due to the fact that dealer is defined as a person who is in the business of trading, and the obligation to deliver various documents does not only rest with a dealer. It applies to any person who trades in securities (see CMA s. 37). The definition of "dealer" for the purposes of s. 133 of the OSA is "a person or company who trades in securities as principal or agent" (OSA s. 1(1.2)). A reference to delivery of a prescribed disclosure document does not exist in the OSA because Ontario securities law does not include the offering memorandum exemption that exists in other CMR jurisdictions.

	Section Reference	Comment	Response
197.	129 – Action for damages – insider trading, etc.	Several commenters noted that s. 129 of the CMA represents a substantive expansion of the existing insider trading liability regime under the OSA. Under s. 129(1), damages would be payable to every person who purchases or trades in a security of the issuer during the period from the time the contravention occurred to the time when the material change or material fact is generally disclosed, not just persons who traded with the defendant. Further, there would be liability not only in respect of purchases and "sales", but purchases and "trades". As a result, any person who engaged in any act in furtherance of, among other things, a sale of a security, would be subject to insider trading liability. Commenters expressed the view that this formulation not only expands the scope of insider trading liability, but creates uncertainty as to its application due to the inherent subjectivity of applying the definition of "trade", and that such a change warrants a clear articulation of the policy rationale and an opportunity for market participants to consider its potential implications, including those that may be unintended. The commenters urged the CMR Jurisdictions to reconsider the expansion of the civil right of action for insider trading beyond its current form in the OSA. However, if the expanded right is to be maintained, careful consideration as to whether it can or should facilitate class actions and further delineation of both the basis for damages and the method for quantifying such damages is warranted.	Section 129 provides a market-based remedy for insider trading that is new to jurisdictions other than BC. This right of action is available to all persons who purchased a security during the period described, regardless of whether they purchased the securities from, or sold them to, a person who contravened s. 66. Most provincial securities acts provide a right of action only for those persons who directly purchased securities from, or sold securities to, the person who violated the insider trading prohibition or a person tipped by the violator. The broader right of action in s. 129 (based on s. 136 of the BCSA) resolves the following two issues associated with the direct right of action: • it can be difficult or impossible to establish the identity of the person on the other side of the trade when trading is conducted through an exchange; and • even when the identity of the person on the other side of the purchase or trade can be established, the direct right of action is only available to the person whose order, purely by chance, can be matched with the order of the violator or tippee. The damages formula in s. 129 allows the plaintiff to recover an amount equal to his or her own losses subject to an overall liability limit for each defendant equal to triple the profit made or the losses avoided by all persons as a result of the defendant's contravention. We acknowledge the concerns raised about uncertainty in the application of s. 129, and have revised the calculation of damages under s. 129 to provide additional certainty (see below).

	Section Reference	Comment	Response
198.	129 – Action for damages – insider trading, etc.	Two commenters expressed support for s. 129 of the CMA. A party who engages in insider trading / tipping / recommending should be liable to any person who traded during the relevant period, regardless of whether they purchased the securities from, or sold them to, the defendant. The commenters viewed the elimination of the privity requirement as a very significant improvement in investor protection. The commenters recommended joint and several liability in respect of defendants' liability under s. 129, consistent with the approach to the rights of action under ss. 117, 118, 120 and 122 of the CMA.	We thank all commenters for their feedback. For consistency with other civil liability provisions, we have revised s. 129 of the CMA to provide for joint and several liability, subject to the overall liability limits.
199.	129(2) – Amount of damages	Two commenters expressed concern that the lack of specificity regarding the basis for a damages claim raises uncertainties that will needlessly complicate, delay and increase the costs associated with such actions and potentially give rise to opportunistic proceedings. For example, where damages are to be measured in accordance with s. 129(2)(b), would each class member be entitled to recover three times the profit or loss avoided as a result of the contravention or would this be the maximum amount available to the class as a whole?	We acknowledge the concerns raised about uncertainty in the application of s. 129, and have revised the calculation of damages under s. 129 to provide additional certainty. The revised s. 129 provides that a plaintiff's damages are equal to the loss incurred by the plaintiff. The overall liability limit applicable to a defendant is set out in a separate subsection, similar to CMA s. 165(1) with respect to secondary market liability, and similar to CMA s. 117(3) with respect to an underwriter's liability in a prospectus misrepresentation action. In the case of an insider who traded based on an undisclosed material fact or change, this liability limit would equal triple the amount the defendant profited or avoided losing. In the case of a tipper who traded and shared the information with others, this liability limit would equal triple the amount of profits or losses avoided by the tipper and all tippees who traded based on the tip, whether or not those tippees violated s. 66.

	Section Reference	Comment	Response
200.	129(2) – Amount of damages	A commenter recommended that the reference to "all persons" in s. 129(2) be qualified to read "all persons who have contravened Section 66" in order to link the remedy to the contravention.	The reference to "all persons" (now in s. 129(3.3)) is intentional. Consistent with current securities legislation in BC, the liability limit on a "tipper" is intended to equal triple the amount of profits or losses avoided by the "tipper" and all "tippees" who traded based on that tip, whether or not those tippees contravened s. 66.
201.	129(2) – Amount of damages	A commenter noted that the cap on damages in s. 129(2)(a) may be insufficient in discouraging insider trading, as the damages (or civil penalty for insider trading) is the "lesser" of the two subsections proposed.	We thank the commenter for their comment. The cap is consistent with current securities legislation in BC.
202.	129(3) – Loss incurred by the plaintiff	A commenter expressed concern about how a plaintiff's "loss" is to be measured under s. 129(2)(a). If this "loss" is to be calculated as the difference between the market price at which a plaintiff actually purchased or sold securities and the price at which the same securities would have traded if the material information or material change at issue had been generally disclosed, damages could be extremely significant, especially if the cause of action may be pursued on behalf of a class. Section 129(3) should instead read "In determining the loss incurred by the plaintiff, the court must not include an amount that the defendant proves is attributable to a change in the market price of the securities that is unrelated to the contravening transactions" as opposed to being unrelated to "the material change or material fact".	We have revised s. 129(3) to refer to changes that are "not as a result of the contravention".
203.	129(4) – Other measure of damages	Two commenters expressed the view that the judicial discretion afforded under s. 129(4) will make it difficult if not impossible for parties to reasonably quantify potential damages and reach negotiated solutions before trial. The commenters noted that the BCSA equivalent does not establish a judicial discretion to depart from the "amount of damages" payable to a plaintiff.	We have revised the CMA to address this comment. Section 129(4) has been deleted.

	Section Reference	Comment	Response
204.	130(1) – Payment of benefit – insider trading, etc.; 130(2) – Payment of benefit – front-running	A few commenters recommended that the reference to "the insider, affiliate or associate and all other persons" in s. 130(1) be changed to "such insider, affiliate or associate" and that the reference to "the person and all other persons" in s. 130(2) be changed to "such person", in order to ensure that the remedy (which is of a restitutionary nature) is tied to the contravention.	These provisions are consistent with current securities legislation in BC (BCSA s. 136.1).
205.	130(3) – Payment of benefit – improper use of information, investment funds; 130(4) – Payment of benefit – improper use of information, discretionary investment portfolios	A commenter asked whether there was a policy reason to base liability for front running in this section on actual use of information for a person's direct benefit or advantage. The approach with respect to insider trading based on knowledge of non-public information should be followed with respect to front running, as well.	These provisions are consistent with current securities legislation in Ontario (OSA s. 134(3)(b)(ii), s. 134(3.1)(b)(ii)).
206.	131 – Action on behalf of issuer — insider trading, etc.	A commenter noted that the CMA does not contain a provision analogous to s. 135(9) of the OSA, which provides for a right of appeal, and recommended that such a provision be added.	This provision is consistent with current securities legislation in BC (BCSA s. 137).
207.	131(1) – Action on behalf of the issuer – insider trading, etc.	In ss. 131(1), 132(1) and 133(1), a commenter recommended that the phrase "authorizing the Chief Regulator or the applicant" be replaced with "authorizing the applicant" given that the Chief Regulator would also be an "applicant".	We have revised the CMA to address this comment.
208.	138-142 – Rescission rights	A commenter urged CMR Jurisdictions to consider submissions made over the past twenty years on rescission rights, particularly in the context of mutual funds, and work to rationalize ss. 138-142. The commenter also urged CMR Jurisdictions to reconsider the continued need for these rescission rights, particularly if prospectus documents are to be provided to investors in advance of a trade. The theory supporting a post-trade delivery mechanism is that investors have a right to "rescind" once they receive the prospectus document and have an opportunity to review it. There does not appear to be such a need if the document is provided to the purchaser before the trade.	Sections 138 to 142 consolidate in Part 12 the rescission and withdrawal rights that appear in various places in current securities legislation and replace contractual rights of rescission required in several national instruments. CMR jurisdictions aimed to minimize substantive changes to the existing framework.

	Section Reference	Comment	Response
209.	138 – Rescission of purchase — prospectus or prescribed disclosure document; 139 – Rescission of purchase — continuous distribution	A commenter asked what the purchaser is entitled to receive back if it exercises its rescission right under ss. 138 and 139 – particularly in the case of mutual fund securities.	Section 138 is consistent with current securities legislation, although in some acts the right is referred to as a right of withdrawal or a right of revocation. Given that the different terms all refer to the circumstances in which a purchase is not binding on the purchaser or may be cancelled, and to be consistent with ss. 140 and 142, the rights are described as rights of rescission in the CMA. Please refer to s. 18 of proposed CMRA Regulation 11-501 for additional information. Section 139 replaces the rights to cancel a purchase in s. 17.2(6) of NI 41-101 and s. 2.5(6) of NI 81-101 <i>Mutual Funds Prospectus Disclosure</i> .
210.	140 – Rescission of purchase — mutual fund security	A commenter expressed the view that s. 140 appears to be unnecessary in light of the CSA proposals that investors in mutual funds receive the prescribed disclosure document in advance of any trade.	We thank the commenter for their comment.
211.	141 – Rescission of purchase — scholarship plan, etc.	A commenter expressed the view that s. 141 is appropriate so long as it is clarified that this right is not to be combined with s. 138.	We thank the commenter for their comment.
212.	142 – Rescission of purchase — prescribed disclosure document	A commenter questioned what s. 142 is intended to accomplish.	Under s. 142, a purchaser of securities pursuant to a prescribed disclosure document has a right of rescission in prescribed circumstances. Section 21 of proposed CMRA Regulation 11-501 provides that the prescribed disclosure document is the offering memorandum required to be delivered under s. 2.9 of NI 45-106. This right is consistent with current securities legislation and a contractual right of rescission in NI 45-106.
213.	143 – Class proceeding	A commenter recommended that ss. 143 and 166(5) clarify that the obligation to send any material filed with the court to the Chief Regulator rests solely upon the plaintiff or applicant that has initiated the action.	We have clarified that the obligation to provide information to the Chief Regulator lies on the person who filed the material.

	Section Reference	Comment	Response
214.	145 – Intervention by Chief Regulator	A commenter expressed the view that providing the Chief Regulator with a statutory right of intervention in a proceeding to enforce a right or obligation created by Part 12 constitutes an unjustified intrusion by the Chief Regulator into the private, civil liability regime created under the CMA. Providing an unqualified statutory right to intervene may compromise the CMRA's role as an independent regulatory body. A second commenter recommended that the ability to intervene be restricted to issues of interpretation of capital markets law which may impact upon the administration of the Act.	This provision has been added for consistency with the secondary market civil liability provisions.
215.	146 – Limitation period; 171 – Limitation period	A commenter expressed the view that the absence of a discoverability principle in ss. 146 and 171 of the CMA is unduly harsh to investors. The commenter recommended that these limitation periods be lengthened to the ultimate limitation period and to incorporate a discoverability principle, consistent with the <i>Limitations Act, 2002</i> (Ontario).	The limitation periods are consistent with current securities legislation in BC and Ontario. Any change to these limitation periods is outside the scope of this project.

Part 13 – Civil Liability for Secondary Market Disclosure

	Section Reference	Comment	Response
216.	Part 13 – General comment	A commenter expressed support for the decision to incorporate into the CMA the provisions of the OSA relating to civil liability for secondary market disclosure with no substantive changes (other than that found in s. 172(2) of the CMA which corrects judicial interpretation of the limitation period in s. 138.14(1) of the OSA).	We thank all commenters for their feedback.
217.	147 – Definitions	A commenter recommended that the definition of "responsible issuer" be revised to parallel the OSA.	We have revised the CMA to address this comment.
218.	152 – Failure to make timely disclosure	A commenter noted that s. 152 of the CMA speaks to circumstances where a responsible issuer "fails to make timely disclosure", however, such phrase is not defined for the purposes of the CMA.	"Failure to make timely disclosure" is defined in s. 147 of the CMA for the purposes of Part 13.
219.	163 – Assessment of damages – acquisition of securities	A commenter noted that, consistent with s. 138.5 of the OSA, s. 163 of the CMA prescribes formulas for the presumptive assessment of damages in secondary market cases. Section 163(3) of the CMA confers on the defendant the ability to reduce damages by an amount that "is attributable to a change in the market price of securities that is unrelated to the misrepresentation or the failure to make timely disclosure." As currently drafted, the plaintiffs would have no opportunity to prove that the change in the market price of securities would have been greater had the unrelated, materially positive information not been released contemporaneously with the corrective disclosure. Defendants and plaintiffs should have corresponding rights to establish that the presumptive damages generated by the formulas may be too little or too great depending on the effect of confounding information. Finally, in respect of the damages provisions, there is no definition of "published market" in the CMA even though that term is used in various places.	This provision is consistent with current securities legislation.

	Section Reference	Comment	Response
220.	165 – Liability limit	A commenter noted that Part 13 of the CMA has the potential to penalize issuers and other defendants who face parallel proceedings in a CMR jurisdiction and a non-CMR Jurisdiction because the liability limit in s. 165 does not incorporate damages and amounts paid in settlement in the non-CMR Jurisdiction. This is a departure from s. 138.7 of the OSA.	We have revised the CMA to address this comment.
221.	165 – Liability limit	 A commenter recommended the following changes to the liability limits in Part 13 of the CMA: the monetary liability limits in s. 165(1) of the CMA have not changed since they were first proposed in 1995. The failure to adjust for inflation amounts, over time, to an effective reduction in the liability limits; the liability limit for responsible issuers of the greater of \$1 million and 5% of the issuer's market capitalization (which applies even in cases of fraud) has the effect of immunizing small-cap issuers from liability for misrepresentations in their continuous disclosure; the liability limit for experts of the greater of \$1 million and the revenues earned by the expert from the issuer over a 12-month period is unreasonably low (even if adjusted for inflation). That is particularly true for auditors. 	Any changes to the liability limits are outside the scope of this project.
222.	166(2) – Conditions for leave	A commenter expressed concern that based on recent interpretations the leave test in s. 166(2) provides too low of a standard for plaintiffs to be granted leave to proceed with an action and accordingly too much scope for unmeritorious actions to proceed, resulting in unnecessary cost and expense for reporting issuers.	Any changes to the leave test are outside the scope of this project.
223.	168 – Restriction on discontinuation	A commenter noted that the CMA requires notice of proceedings related to an action based on secondary market disclosure to be given to the Chief Regulator. Notice of a hearing to approve a settlement of such an action should also have to be given to the Chief Regulator.	We have revised the CMA to address this comment.

	Section Reference	Comment	Response
224.	169 – Intervention by Chief Regulator	A commenter recommended that the Chief Regulator's ability to intervene under s. 169 be restricted to issues of interpretation of capital markets law which may impact upon the administration of the Act.	This provision is consistent with current securities legislation.
225.	171 – Limitation period	A commenter recommended that the secondary market limitation period in s. 171 be suspended from the date of filing the claim rather than from the date when the plaintiff files a notice of application seeking leave to proceed with the action. The commenter further recommended that a review be undertaken of corrective disclosure to assess whether investors are being unfairly harmed as a result of there being a three year limitation period for misrepresentations without any discoverability principle accompanying the limitation period. If corrective disclosure is provided in a significant number of instances after the three year limitation period has expired, the limitation period should be rethought.	Any changes to the limitation periods are outside the scope of this project.

Part 14 – General

	Section Reference	Comment	Response
226.	Part 14 – General comment	A commenter noted that it is important to clarify how and where any prescribed notice, regulation or form must be "published" or made "accessible to the public" for purposes of Part 14 and, at a minimum, the CMRA website. Further, any notice or statement should be published in a consistent and predictable manner reasonably designed to put any affected person on notice of its contents.	We thank the commenter for their comment. Please refer to CMA s. 197.
227.	Part 14 – General comment	A commenter recommended that provisions should be included in Part 14 that make it clear that all decisions of the Chief Regulator under the CMA are reviewable by the courts whether or not such decisions have also been reviewed by the Tribunal and that all decisions of the Tribunal under the CMA are reviewable by the courts.	Please refer to ss. 99 and 100 of the CMA. All decisions of the Tribunal (including a Tribunal's review of a Chief Regulator decision) are subject to appeal to a court.
228.	172(2) – Power to revoke or vary decisions	Two commenters recommended that s. 172 be revised to clarify that a decision of the Authority made on notice to affected parties cannot be varied or revoked without similar notice.	We have revised the CMA to address this comment.
229.	174 – Powers of Tribunal re: decisions	A commenter expressed the view that s. 174 as currently drafted is unfair to persons which may be affected by such a variation and contrary to principles of natural justice.	This section is consistent with current securities legislation. Procedural requirements relating to a proceeding under s. 174(2) will be reflected in the Tribunal rules.
230.	176 – Privative clauses	Two commenters recommended a general right of appeal to the Tribunal from operational decisions of the Authority.	Judicial review is available with respect to decisions of the Authority.

	Section Reference	Comment	Response
231.	187 – Duty to provide records to Authority	Two commenters expressed the view that s. 187 of the CMA is unduly broad, could be used to circumvent the safeguards in Part 11 of the CMA, and does not restrict the onward sharing of information obtained pursuant to this section with, for example, criminal and regulatory enforcement agencies. The commenters recommend that the CMA be revised to clearly segregate the multiple functions of the Authority to ensure that information shared between these functions adequately protects the procedural rights and privacy of market participants or that the CMA specify that s. 187 is exclusive of the powers of the Authority set out in Part 11 and could not be used by the Authority as a means of circumventing the due process safeguards associated with reviews and inquiries.	The information gathering powers in this section are intended to support the CMRA's systemic risk mandate and policy making function and the Authority is limited to requesting information for those purposes. Such information would not normally give rise to enforcement concerns. Moreover, the approach taken in s. 187 is consistent with that taken in the rest of the CMA and in current securities regulation, which relies on the common law and constitutional jurisprudence to address any misuse of regulatory powers.
232.	193(1) – Duty of confidentiality	A commenter recommended that s. 193(1) be amended by adding "or the Chief Regulator" and deleting the words "and the regulations."	We have revised the CMA to delete the words "and the regulations". The reference to information obtained by the Authority in this subsection reflects information obtained by the CMRA as a whole, including the Chief Regulator.
233.	193(2) – Disclosure	A commenter expressed the view that the disclosure of confidential information to a law enforcement agency under s. 193(2) should be more clearly defined. Similarly, another commenter recommended that s. 193(2)(a) include wording that specifically protects privacy of personal information.	We did not make this change. Current securities legislation and other regulatory legislation permit disclosure to law enforcement agencies.
234.	193(2), 193(3) – Disclosure	A commenter expressed the view that the stipulated standard of "exceptional circumstances" as referenced in s. 193(2)(d) fails to provide adequate protection, particularly given the very broad and discretionary nature of the term "exceptional". The commenter recommended that (i) a more defined, restrictive and objective standard be used and (ii) some independence be inserted into the process, for example, a process whereby the Tribunal must approve such release of information.	We did not make this change. The test in s. 193(2)(d) requires both: (i) exceptional circumstances, and (ii) that the disclosure is necessary for the purposes of the CMA.

	Section Reference	Comment	Response
235.	194 – Disclosure	A commenter noted that s. 194 is unclear as to what type of agreement, arrangement, etc. or its parameters is being referred to. The failure to define the scope of the arrangement creates ambiguity and reduces the protective effect of the section.	Current securities legislation and other regulatory legislation permit disclosure outside of Canada. Although s. 194 does not specify the scope of the agreement, the Authority can only release information if the release fits within the circumstances outlined in s. 193(2) and (3).
236.	196 – Disclosure of compelled evidence	A commenter recommended that s. 196 require that, prior to the disclosure of evidence under paragraph 104(4)(b), the person who gave the evidence must be provided with the opportunity to be heard, not merely a chance to make representations.	We have revised the CMA to address this comment.
237.	196 – Disclosure of compelled evidence	Two commenters recommended that decisions under s. 196 be made by the Tribunal or the court, rather than the Chief Regulator.	Current securities legislation in some jurisdictions does not include a statutory constraint on disclosure of compelled evidence. In Ontario, an opportunity to be heard before the Commission is provided. Note that a decision of the Chief Regulator made under s. 196 may be appealed to the Tribunal pursuant to s. 99 of the CMA.
238.	200 – Collection from third party	A commenter recommended that s. 200(4) permit the third party who has failed to pay money to the Authority to make representations concerning his or her liability to pay the amount demanded, and the amount of the alleged indebtedness, and to appeal the decision of the Authority.	This provision is consistent with current securities legislation in BC.
239.	200 – Collection from third party	A commenter asked whether s. 200 of the CMA overrides the rights of secured creditors, unsecured creditors, employees, trust beneficiaries, etc.	This provision is consistent with current securities legislation in BC. Other collections laws would continue to apply.
240.	201 – Immunity from proceedings for damages	Two commenters recommended that s. 201(3) of the CMA be revised so as to provide a recognized self-regulatory organization with the same immunity as that granted to the other entities identified in s. 201.	This provision is consistent with current securities legislation in several CMR Jurisdictions.
241.	201 – Immunity from proceedings for damages	A commenter noted that s. 201 of the CMA provides immunity to SROs and other private parties, which, given their substantial powers, is a substantial change to Ontario securities law and should be subject to a detailed request for comments.	This provision is consistent with current securities legislation in several CMR Jurisdictions.

	Section Reference	Comment	Response
242.	201 – Immunity from proceedings for damages	A commenter recommended that s. 201 of the CMA be revised to grant immunity to persons intending to comply with securities laws as is currently provided in s. 141(2) of the OSA and s. 106(2) of the CMSA	We have revised the CMA to address this comment.

Part 15 – Regulations, Forms and Policies

	Section Reference	Comment	Response
243.	Part 15 – General comment – periodic cost benefit reviews	A commenter recommended that both the CMA and the CMSA include a requirement that cost benefit analyses be conducted for new rules, for rule changes, and periodically, in an effort to ensure that the compliance costs resulting from securities regulations are appropriately aligned with the benefits sought (or dangers averted). The commenter would be encouraged if the Authority was also mandated to constantly or periodically consider whether current regulations are unnecessarily impeding or discouraging capital formation for small and mid-sized businesses that depend on risk tolerant capital.	Please refer to s. 205(2) of the CMA. New rule and amendment proposals must include description of the anticipated costs and benefits, a discussion of all alternatives that were considered, and the reasons for not proposing the adoption of the alternatives considered. Section 9.3(viii) of the Memorandum of Agreement states that the CMRA should promote a culture of innovation that values ideas and perspectives from all offices and from other sources (including investors, market participants and other stakeholders) that contribute to delivering better and more cost-effective regulation.
244.	202 – Regulations	A commenter expressed the view that the CMA's authority to make regulations "for carrying out the purposes of" the legislation is substantially unconfined. The unconfined rulemaking authority (based on the BCSA) is, in principle, inconsistent with the democratic premise that the legislature should formulate the basic policies that inform a system of regulation. Rulemaking authority should be limited to fleshing out principles in the statute with respect to subject matter that is also specified in the statute. If it becomes evident that additional rulemaking authority is required, the statute should be amended.	This provision is consistent with current securities legislation in BC.

	Section Reference	Comment	Response
245.	202 – Regulations	A commenter recommended that consideration be given to developing a mechanism that would permit amendments to the CMA without the legislature of each participating province having to enact each amendment, possibly by adopting the CMA and expressly delegating to the Authority its administration as amended following the process in s. 5.5 of the Memorandum of Agreement. If valid amended legislation is required to justify adoption of such an amendment on constitutional principles, consideration might also be given to adding a provision to the CMA to the effect that an amendment of the Act in any province, made after completion of the amendment process in the Memorandum of Agreement, is deemed to be an amendment to the CMA in each CMR Jurisdiction so that an amendment would apply in each CMR Jurisdiction after any one of them enacts it.	This is not the approach reflected in the Memorandum of Agreement.
246.	202 – Regulations (Binding dispute resolution body)	Three commenters recommended that governments and regulators mandate participation by all securities registrants in a single, independent, not-for-profit investment dispute resolution service that has the power to make binding decisions.	We thank the commenters for their comments. The regime under the CMA is consistent with current securities legislation.
247.	202 – Regulations (Ownership of recognized exchanges)	A commenter asked whether the shareholding restrictions set out in s. 21.11 of the OSA will be set out in the CMA regulations.	The 10% shareholding restriction has been continued. Please refer to s. 5 of proposed CMRA Regulation 21-501 <i>Certain Capital Market Participants</i> .
248.	203 – Incorporation by reference	A commenter recommended that public access to materials incorporated by reference pursuant to s. 203 of the CMA should be without cost.	This provision is consistent with current securities legislation in Ontario. OSA s. 143(6) makes no comment as to cost.
249.	204 – Forms	Two commenters recommended that, because substantive content is expected to be contained within the forms required to be filed with the CMRA, the Chief Regulator should not have authority to specify the content of forms and s. 205 should be clarified so that it applies equally to such forms.	Section 204 (now s. 211.1) of the CMA, which allows the Chief Regulator to specify the content of forms, is consistent with s. 182 of the BCSA.
250.	205(1) – Notice of proposed regulation	A commenter recommended that access to proposed regulations pursuant to s. 205 of the CMA should be without cost.	Under s. 197 of the CMA, the Authority complies with a requirement to make records accessible by posting the record on its website. Posting regulations on its website would be consistent with existing practice in BC and Ontario.

	Section Reference	Comment	Response
251.	205(2) – Content of notice	A commenter recommended that the CMA require reference to the authority under which the regulation is proposed or a discussion of alternatives to it that were considered.	We have revised the CMA to require discussion of alternatives considered.
252.	205(4) – Notice of proposed regulation – exception to publication	Several commenters expressed the view that the exceptions to the notice and comment period for "urgent" and "exemptive" regulation-making in s. 205(4) of the CMA should be narrowed for consistency with the OSA and include additional procedural protections. Further, it should be clarified that publication would be required as provided in s. 210(4).	We have revised s. 210(4) of the CMA to clarify the publication requirements associated with "urgent" and "exemptive" regulations made under s. 205(4). The framework for urgent and exemptive regulation-making in the CMA represents a middle ground between different approaches in CMR Jurisdictions. Section 205(4) is narrower than some CMR Jurisdictions. For example, the BCSA provides for an exception to the notice and comment process with Ministerial consent where the Commission considers it necessary and in the public interest to deposit the rule without delay (BCSA s. 184(7)). The CMA approach allows for a responsive, cost-effective and flexible regulatory framework.
253.	205(5) – Notice of proposed regulation – changes to proposal	A commenter recommended that all matters that are returned by the Council of Ministers for reconsideration under s. 208 of the CMA be treated as material and subject to republication. In any event, the test for republication should be the objective materiality of the change.	Section 208 of the CMA provides that if the Council of Ministers returns a regulation to the Authority for further consideration, the Council of Ministers may specify what is to be considered and the process to be followed. The subjective test is consistent with current securities legislation in BC, Saskatchewan and New Brunswick.
254.	205(6) – Notice of proposed regulation – comments regarding changes	A commenter recommended that s. 205(6) be revised to require the Authority to publish a notice of the comments received on its prior proposals and its response to all of the comments (not just those the Authority considers significant).	The legislative requirements with respect to republication are consistent with current securities legislation.
255.	205(6) – Notice of proposed regulation – comments regarding changes	Two commenters recommended that if a proposed regulation is published for a second comment period, the minimum comment period be extended from 30 days to a minimum of 60 days.	The 30 day minimum time period is consistent with current securities legislation.

	Section Reference	Comment	Response
256.	210 – Automatic revocation of certain regulations	A commenter recommended that the "sunset" for automatic revocation of regulation adopted without notice and comment under the CMA be reduced to one year, consistent with the CMSA.	The framework for urgent regulations in the CMA represents a middle ground between different approaches in CMR Jurisdictions.
257.	210 – Automatic revocation of certain regulations	A commenter questioned when s. 210(2) would apply. Section 205(4) specifically excepts the specified regulations from the application of s. 205(1). Clarifying changes are appropriate if the intent of s. 210(2) is to allow for an extension of these temporary regulations in order that they may become permanent regulations by way of the publication and comment process applicable to regulations that are not so excepted.	Subsection 210(1) provides that regulations made under ss. 205(4)(a), (b) and (d) are revoked automatically after 18 months. Subsection 210(2) allows for a further 18 month extension. In order for the regulation to be made permanent, it must be subject to the notice and comment process set out in ss. 205(1) to 205(3).
258.	211 – Request by Council of Ministers	A commenter recommended that the CMA include a provision requiring the Authority to accept and consider proposals for regulations from members of the public.	As is the case with existing securities regulators, we anticipate that the CMRA would consider proposals it receives from the public.
259.	212(2) – Policy statements	A commenter recommended that s. 212(2) of the CMA authorize the Authority, rather than the Chief Regulator, to issue policy statements.	We have revised the CMA to address this comment.
260.	212(2) – Policy statements	Two commenters recommended that the minimum comment period for proposed policies under s. 212(2) of the CMA be extended from 30 days to 60 days.	We have revised the CMA to address this comment.