

## **~~PROVINCIAL~~ CAPITAL MARKETS ACT: A REVISED CONSULTATION DRAFT**

August, ~~2014~~2015

*Notice:* This Revised Consultation Draft of the ~~Provincial~~provincial and territorial Capital Markets Act (~~PCMA~~CMA) is published for comment ~~in relation to the execution of~~with the draft Initial Regulations under the CMA, as contemplated by the Memorandum of Agreement Regarding the Cooperative Capital Markets Regulatory System.

- The ~~PCMA~~CMA is subject to legislative approval and will not become law unless introduced in, and enacted by, the legislatures of the provincial and territorial participating jurisdictions.
- Certain parts of the Revised Consultation Draft ~~PCMA~~CMA are still being completed. For example, transitional provisions ~~and regulation-making powers~~ are being developed and it is contemplated that they will be included in the ~~PCMA~~CMA and related provincial and territorial implementation legislation brought forward for legislative approval.

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**PART 1**  
**INTERPRETATION**

**Purposes of Act**

1. The purposes of this Act are, as part of the Canadian capital markets regulatory framework, to provide protection to investors from unfair, improper or fraudulent practices, to foster fair, efficient and competitive capital markets in which the public has confidence and to contribute to the stability and integrity of the Canadian financial system.

**Definitions**

2. In this Act

**“adviser”**

“adviser” means a person engaging in, or holding himself, herself or itself out as engaging in, the business of advising others with respect to investing in, purchasing or selling securities or trading derivatives.

**“appeal court”**

“appeal court” has the meaning set out in **[implementation legislation]**.

**“associate”**

“associate”, if used to indicate a relationship with any person, means

- (a) an issuer of which the person beneficially owns or has control or direction over, directly or indirectly, voting securities entitling the person to more than 10% of the voting rights attached to the issuer's outstanding securities;
- (b) a partner, other than a limited partner, of the person;
- (c) a trust or estate in which the person has a substantial beneficial interest or in respect of which the person serves as trustee or in any other similar capacity; or
- (d) the person's relative who has the same home as the person, including the person's spouse or a relative of the person's spouse.

**“Authority”**

“Authority” means the Capital Markets Regulatory Authority established ~~in accordance with the Memorandum of Agreement~~ under the [Capital Markets Regulatory Authority Act].

**“benchmark”**

“benchmark” means a price, estimate, rate, index or value that is

- (a) determined from time to time by reference to an assessment of one or more underlying interests;
- (b) made available to the public, either free of charge or on payment; and
- (c) used for reference for any purpose, including
  - (i) determining the interest payable, or other sums that are due, under a security or derivative,

- (ii) determining the value of a security or derivative or the price at which ~~it~~they may be acquired or traded, and
- (iii) measuring the performance of a security or derivative.

**“Canadian financial institution”**

“Canadian financial institution” means

- (a) a bank listed in Schedule I or II to the *Bank Act* (Canada);
- (b) a body corporate to which the *Trust and Loan Companies Act* (Canada) applies;
- (c) an association to which the *Cooperative Credit Associations Act* (Canada) applies or a central cooperative credit society for which an order has been made under subsection 473 (1) of that Act;
- (d) an insurance company or a fraternal benefit society incorporated or formed under the *Insurance Companies Act* (Canada);
- (e) a trust, loan or insurance corporation incorporated by or under an Act of the legislature of a province or territory;
- (f) a credit union, caisse populaire, financial services cooperative or credit union league or federation that is authorized to carry on business by or under an Act of the legislature of a province or territory; or
- (g) a treasury branch established and regulated by or under an Act of the legislature of a province or territory.

**“capital markets law”**

“capital markets law” means this Act and the regulations and, in respect of a person, includes a decision of the Authority, the Chief Regulator or the Tribunal to which the person is subject.

**“Chief Regulator”**

“Chief Regulator” means the chief executive officer of the Authority’s Regulatory Division.



**“clearing agency”**

“clearing agency” means;

- (a) with respect to securities, a person who,
  - (i) acts as an intermediary in paying funds or delivering securities, or both, in connection with trades or other transactions in securities,
  - (ii) provides a centralized facility for the clearing of trades or other transactions in securities, including facilities for comparing data respecting the settlement of trades or other transactions in securities, or
  - (iii) provides a centralized facility as a depository of securities,

but does not include a person that is prescribed ~~person~~, or person is within ~~prescribed~~ a class of persons that are prescribed, not to be a clearing agency; and

- (b) with respect to derivatives, a person who provides a centralized facility for the clearing and settlement of trades in derivatives that,
  - (i) enables each party to the contract, instrument or transaction to substitute, through novation or otherwise, the credit of the clearing agency for the credit of the parties,
  - (ii) arranges or provides, on a multilateral basis, for the settlement or netting of obligations arising under a derivative executed by its participants, or
  - (iii) otherwise provides clearing services or arrangements that mutualize or transfer among its participants the credit risk arising from such contracts, instruments or transactions executed by the participants,

but does not include a person that is prescribed ~~person~~, or ~~a person is~~ within a ~~prescribed~~ class of persons: that are prescribed, not to be a clearing agency.

**“company”**

“company” means any corporation, incorporated association, incorporated syndicate or other incorporated organization.

**“control person”**

“control person” means,

- (a) a person who holds a sufficient number of the voting rights attached to all outstanding voting securities of an issuer to affect materially the control of the issuer and, if a person holds more than 20% of the voting rights attached to all outstanding voting securities of an issuer, the person is deemed, in the absence of evidence to the contrary, to hold a sufficient number of the voting rights to affect materially the control of the issuer; or
- (b) each person in a combination of persons acting in concert by virtue of an agreement, arrangement, commitment or understanding which holds in total a sufficient number of the voting rights attached to all outstanding voting securities of an issuer to affect materially the control of the issuer and, if a combination of persons holds more than 20% of the voting rights attached to all outstanding voting securities of an issuer, the combination of persons is deemed, in the absence of evidence to the contrary, to hold a sufficient number of the voting rights to affect materially the control of the issuer.

**“Council of Ministers”**

“Council of Ministers” means the Council of Ministers established in accordance with the Memorandum of Agreement.

**~~“court”~~**

~~“court” means, subject to the regulations, the superior court of the province, but this definition does not apply in respect of paragraph 89 (3) (b), subsection 112 (3) and sections 110, 111, 115 and 176.~~

**“credit rating”**

“credit rating” means an assessment of the creditworthiness of an issuer in general or with respect to specific securities or a specific portfolio of securities or assets.

**“credit rating organization”**

“credit rating organization” means a person who issues credit ratings that are publicly disclosed or distributed by subscription.

**“dealer”**

“dealer” means a person who

- (a) engages in, or holds himself, herself or itself out as engaging in, the business of trading in securities or derivatives as principal or agent; or
- (b) acts as an underwriter.

**“debt security”**

“debt security” means a bond, debenture, note or other evidence of indebtedness, whether secured or unsecured.

**“decision”**

“decision”, when used in relation to the Authority, the Chief Regulator or the Tribunal, means a decision, direction, order or ruling made or a requirement imposed by the Authority, the Chief Regulator or the Tribunal, as the case may be, under a power ~~or right~~ conferred by this Act.

**“derivative”**

“derivative” means

- (a) an option, swap, futures contract, forward contract or other financial or commodity contract or instrument, whose market price, value, delivery obligations, payment obligations or settlement obligations are derived from, referenced to or based on an underlying interest (including a price, rate, index, value, variable, event, probability or thing), ~~or~~
- (b) a security that is designated, or ~~a security~~is within a class of securities, ~~that is~~are designated, under subsection 95 (2) to be a derivative, or

(c) a security that is within a class of securities that are prescribed to be derivatives,

but does not include a contract or instrument that is designated, or ~~that~~ is within a class of contracts or instruments that are designated, under subsection 95 (1) not to be a derivative, or ~~that is designated, or that is within a class of contracts or instruments designated, under subsection 95 (2) to be a security, or~~ a contract or instrument that is within a class of contracts or instruments that are prescribed not to be ~~derivatives~~a derivative.

**“designated derivative”**

“designated derivative” means a derivative that is

- (a) designated, or is within a class that is designated, under subsection 95 (2) to be a designated derivative; or
- (b) within a class of derivatives that are prescribed to be designated derivatives,

but does not include a derivative that is designated, or ~~that~~ is within a class of derivatives that are designated, under subsection 95 (1) not to be a designated derivative.

**“designated entity”**

“designated entity” means a person designated under section 17.

**“director”**

“director” means a director of a company or an individual performing a similar function or occupying a similar position for a company or for any other person.

**“distribution”**

“distribution”, when used in relation to trading in securities, means

- (a) a trade in securities of an issuer that have not been previously issued;
- (b) a trade by or on behalf of an issuer in previously issued securities of that issuer that have been redeemed or purchased by or donated to that issuer;
- (c) a trade in previously issued securities of an issuer that are from a control person's holdings;
- (d) a trade that is designated, or is within a class that is designated, under subsection 95 (2) to be a distribution;
- (e) a trade that is within a class of trades that are prescribed to be distributions; or

- (f) a transaction or series of transactions involving a purchase and sale or a repurchase and resale in the course of or incidental to a distribution referred to in any of paragraphs (a) to (e),

but does not include a trade that is designated, or is within a class of trades that are designated, under subsection 95 (1) not to be a distribution, or a trade that is within a class of trades that are prescribed not to be distributions.

### **“form of proxy”**

“form of proxy” means a form that becomes a proxy when the form is completed and executed by or on behalf of a security holder.

### **“forward-looking information”**

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

### **“individual”**

“individual” means a natural person other than in ~~the person’s~~their capacity as a trustee or other person who administers the property of another, or in their capacity as an executor, administrator or other legal representative.

### **“insider”**

“insider” means

- (a) a director or officer of an issuer;
- (b) a director or officer of a person who is itself an insider or subsidiary of an issuer;
- (c) a person who has beneficial ownership of, or control or direction over, directly or indirectly, or a combination of beneficial ownership of and control or direction over, directly or indirectly, securities of an issuer carrying more than 10% of the voting rights attached to all the issuer's outstanding voting securities, excluding, for the purpose of calculating the percentage held, any securities held by the person as underwriter in the course of a distribution;

- (d) an issuer who has purchased, redeemed or otherwise acquired a security of its own issue, for as long as it continues to hold that security;
- (e) a person who is designated under subsection 95 (2) to be an insider; or
- (f) a person who is within a class of persons prescribed to be insiders,

but does not include a person who is designated, or is within a class of persons who are designated, under subsection 95 (1) not to be an insider or who is within a class of persons who are prescribed not to be insiders.

**“investment fund”**

“investment fund” means a mutual fund or a non-redeemable investment fund.

**“investment fund manager”**

“investment fund manager” means a person who

- (a) directs or manages the business, operations or affairs of an investment fund from a location inside ~~the~~this province or territory; or
- (b) directs or manages the business, operations or affairs of an investment fund from outside ~~the~~this province or territory and knows or reasonably ought to know that the investment fund has a security holder resident in ~~the~~this province or territory.

**“investor relations activities”**

“investor relations activities” means any activities or oral or written communications, by or on behalf of an issuer or security holder of the issuer, that promote or reasonably could be expected to promote the purchase or sale of securities of the issuer, but does not include

- (a) the dissemination of information provided, or records prepared, in the ordinary course of the issuer's business to promote the sale of the issuer's products or services, or to raise public awareness of the issuer, that cannot reasonably be considered to promote the purchase or sale of the issuer's securities;

- (b) activities or communications necessary to comply with capital markets law or the by-laws, policies or other regulatory instruments of a self-regulatory organization or exchange;
- (c) communications by a publisher of, or writer for, a newspaper, news magazine, business publication or financial publication that has general and regular paid circulation and that is distributed ~~only~~primarily to subscribers for value or to purchasers,
  - (i) if the communication is made only through the newspaper, magazine or publication, and
  - (ii) if the publisher or writer receives no commission or other consideration other than for acting in the capacity of publisher or writer; or
- (d) an activity or communication that is prescribed.

**“issuer”**

“issuer” means a person who has outstanding securities, is issuing securities or proposes to issue securities.

**“issuer bid”**

“issuer bid” means a direct or indirect offer to acquire or redeem a security, or a direct or indirect acquisition or redemption of a security, that is made by the security's issuer and that is within a prescribed class of such offers, acquisitions or redemptions.

**“large derivatives participant”**

“large derivatives participant” means a person who trades in derivatives and is within a class of persons that are prescribed to be large derivatives participants.

**“market participant”**

“market participant” means

- (a) a registrant or a person exempted from the requirement to be registered under capital markets law;

~~(b) an issuer who has filed a preliminary prospectus for which the Chief Regulator has issued a receipt;~~

(c) a reporting issuer;

(d) a reporting issuer's director, officer, control person or promoter;

(e) a person engaged in investor relations activities on behalf of a reporting issuer or security holder of a reporting issuer;

(f) a custodian of assets, shares or units of an investment fund;

(g) a general partner of a market participant;

(h) a trustee of a market participant referred to in paragraph (c) or (f);

(i) a market place;

(j) a recognized entity;

(k) a designated entity;

~~(l) a person who is designated under subsection 95 (2) to be a market participant;~~

(m) a person who is a director, officer, control person or promoter of a person described in paragraph (r);

(n) a person who is exempt from the requirement to be recognized under capital markets law;

(o) a transfer agent for any issuer;

(p) a registrar for securities of any issuer;

(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 ~~or an exemption in an order made under section 94; or;~~

(r.1) an independent review committee of an investment fund;

(l) a person who is designated under subsection 95 (2) to be a market participant; or

- (s) a prescribed person or a person ~~who is~~ within a class of persons who are prescribed to be market participants,

but does not include a person who is designated, or is within a class of persons who are designated, under subsection 95 (1) not to be a market participant or who is within a class of persons who are prescribed not to be market participants.

### **“market place”**

“market place” means

- (a) an exchange;
- (b) a person who is not an exchange but who
  - (i) constitutes, maintains or provides a market or facility for bringing together buyers and sellers of securities,
  - (ii) brings together the orders for securities of multiple buyers and sellers, and
  - (iii) uses established non-discretionary methods under which the orders interact with each other, and the buyers and sellers entering the orders agree to the terms of a trade;
- (c) a dealer who executes a trade of an exchange-traded security outside a market place described in paragraph (a) or (b);
- (d) any other person who constitutes, maintains or provides a market, facility or system for trading in securities or derivatives and is prescribed to be a market place or is within a class of persons prescribed to be ~~a market place~~ places; or

(e) any other person who is designated under subsection 95 (2) to be a market place,

but does not include a person who is designated, or is within a class of persons who are designated, under subsection 95 (1) not to be a market place, or who is within a class of persons who are prescribed not to be market places.

**“material change”**

“material change” means

(a) in relation to an issuer other than an investment fund,

- (i) a change in the issuer's business, operations or capital that would reasonably be expected to have a significant effect on the market price or value of a security of the issuer, or
- (ii) a decision to implement a change referred to in subparagraph (i) made by the issuer's directors, or by the issuer's senior management who ~~believes~~believe that confirmation of the decision by the directors is probable; and

(b) in relation to an issuer who is an investment fund,

- (i) a change in the issuer's business, operations or affairs that would be considered important by a reasonable investor in determining whether to purchase or to continue to hold a security of the issuer, or
- (ii) a decision to implement a change referred to in subparagraph (i) made,
  - (A) by the issuer's directors, by the directors of the issuer's investment fund manager or by another person acting in a similar capacity,
  - (B) by the issuer's senior management who believes that confirmation of the decision by the issuer's directors is probable, or
  - (C) by senior management of the issuer's investment fund manager who believes that confirmation of the decision by the directors of the issuer's investment fund manager is probable.

**“material fact”**

“material fact”, in relation to securities issued or proposed to be issued, means a fact that would reasonably be expected to have a significant effect on the market price or value of the securities.

**“Memorandum of Agreement”**

“Memorandum of Agreement” means the *Memorandum of Agreement Regarding the Cooperative Capital Markets Regulatory System* ~~between the governments of British Columbia, Ontario, Saskatchewan, New Brunswick and Canada,~~concluded on August 28, 2014, as amended from time to time, and any successor agreement.

**“misrepresentation”**

“misrepresentation” means

- (a) ~~a false or misleading~~an untrue statement of ~~a~~ material fact; or
- (b) an omission to state a material fact that is ~~—(i)—~~ required to be stated; or ~~(ii) that is~~ necessary ~~so that~~to make a statement ~~is~~ not misleading in the light of circumstances in which it ~~is~~was made.

**“mutual fund”**

“mutual fund” means

- (a) an issuer whose primary purpose is to invest money provided by its security holders and whose securities entitle the holder to receive on demand, or within a specified period after the demand, an amount computed by reference to the value of a proportionate interest in the whole or in part of the issuer's net assets including a separate fund or trust account;
- (b) an issuer who is designated under subsection 95 (2) to be a mutual fund; or
- (c) an issuer who is within a class of issuers that are prescribed to be mutual funds,

but does not include an issuer who is designated, or is within a class of issuers who are designated, under subsection 95 (1) not to be a mutual fund, or who is within a class of issuers who are prescribed not to be mutual funds.

**“non-redeemable investment fund”**

“non-redeemable investment fund” means

- (a) an issuer, other than a mutual fund, whose primary purpose is to invest money provided by its security holders and which does not invest
  - (i) for the purpose of exercising or seeking to exercise control of an issuer, other than an issuer who is an investment fund, or
  - (ii) for the purpose of being actively involved in the management of any issuer in which it invests, other than an issuer who is an investment fund;
- (b) an issuer that is designated under subsection 95 (2) to be a non-redeemable investment fund; or
- (c) an issuer that is within a class of issuers who are prescribed to be non-redeemable investment funds,

but does not include an issuer who is designated, or is within a class of issuers who are designated, under subsection 95 (1) not to be a non-redeemable investment fund, or who is within a class of issuers who are prescribed not to be non-redeemable investment funds.

**“offer to acquire”**

“offer to acquire” means

- (a) an offer to purchase securities or a solicitation of an offer to sell securities; or
- (b) an acceptance of an offer to sell securities, whether or not the offer has been solicited.

**“officer”**

“officer”, with respect to a person, means

- (a) ~~a~~the chair or a vice-chair of the person’s board of directors, ~~a~~the chief executive officer, chief operating officer, chief financial officer, president, a vice-president, the secretary, assistant secretary, treasurer, assistant treasurer or general manager;

- (b) an individual who is designated as an officer under a by-law or similar authority of the person; or
- (c) an individual who performs functions similar to those normally performed by an individual referred to in paragraph (a) or (b).

**“participating province or territory”**

“participating province or territory” means any province or territory in which [**the *Capital Markets Act***] is in force and is administered by the Authority.

**“person”**

“person” means an individual, company, partnership, unincorporated association, unincorporated syndicate, unincorporated organization, trust, trustee; or other person that administers the property of another, or an executor, administrator or other legal representative.

**“prescribed”**

“prescribed” means prescribed by regulation.

**“professional company”**

“professional company” means a company that is registered or required to be registered, in accordance with the regulations, that acts as a dealer or adviser on behalf of another dealer or adviser through one or more PC representatives.

**“professional company representative” or “PC representative”**

“professional company representative” or “PC representative” means an individual who acts as a dealer or adviser:

(a) as a representative of a registered dealer or adviser acting on behalf of the dealer or adviser; and

(b) as an employee of or on behalf of a professional company.

**“promoter”**

“promoter” means

- (a) a person, acting alone or in conjunction with one or more other persons, who, directly or indirectly, takes the initiative in founding, organizing or substantially reorganizing an issuer's business; or
- (b) a person who, directly or indirectly, receives in consideration of services or property, or both, in connection with the founding, organizing or substantial reorganizing of an issuer's business, 10% or more of any class of securities of the issuer or 10% or more of the proceeds from the sale of any class of securities of a particular issue,

but does not include a person who receives securities or proceeds solely as underwriting commissions or in consideration of property transferred to the issuer if that person does not otherwise take part in founding, organizing or substantially reorganizing the issuer's business.

**“proxy”**

“proxy” means a form of proxy that is completed and executed, by which a security holder has appointed a person as its nominee to attend and act on its behalf at a meeting of security holders.

**“recognized auditor oversight organization”**

“recognized auditor oversight organization” means an auditor oversight organization recognized under section 9.

**“recognized clearing agency”**

“recognized clearing agency” means a clearing agency recognized under section 9.

**“recognized entity”**

“recognized entity” means a person recognized under section 9.

**“recognized exchange”**

“recognized exchange” means a person recognized as an exchange ~~recognized~~ under section 9.

**“recognized self-regulatory organization”**

“recognized self-regulatory organization” means a self-regulatory organization recognized under section 9.

**“recognized trade repository”**

“recognized trade repository” means a trade repository recognized under section 9.

**“record”**

“record” includes anything containing information, regardless of its form or characteristics.

**“registrant”**

“registrant” means a person registered or required to be registered under this Act.

**“regulation”**

“regulation” means a regulation made under this Act.

**“related financial instrument”**

“related financial instrument” means, in relation to a security,

- (a) another security or a derivative or other contract or instrument whose market price, value, delivery obligations, payment obligations or settlement obligations are derived from, referenced to, or based on ~~or vary materially with~~ the market price, value ~~or~~ delivery obligations, payment obligations or settlement obligations of the security; or
- (b) an agreement, arrangement, commitment or understanding that affects, directly or indirectly, a person's economic interest in the security, namely,
  - (i) the person's right to receive or opportunity to participate in a reward, benefit or return from the security, or
  - (ii) the person's exposure to a risk of financial loss in respect of the security.

**“reporting issuer”**

“reporting issuer” means an issuer who

- (a) has filed a prospectus for which the Chief Regulator has issued a receipt;
- (b) has filed a take-over bid circular in accordance with the regulations, in which it offers securities of its own issue as consideration for the acquisition of a reporting issuer's

securities and has taken up and paid for securities subject to the bid in accordance with a circular prepared in respect of the bid;

- (c) has exchanged its securities with another issuer or with the holders of that other issuer's securities in connection with an amalgamation, merger, reorganization, arrangement or similar business combination if one of the parties to the transaction was a reporting issuer at the time;

(c.1) is a reporting issuer under the [*Capital Markets Act*], or a regulation made under it, of another participating province or territory;

- (d) is designated under subsection 95 (2) to be a reporting issuer; or
- (e) is within a class of issuers who are prescribed to be reporting issuers,

but does not include an issuer who is designated, or is within a class of issuers who are designated, under subsection 95 (1) not to be a reporting issuer, or who is within a class of issuers who are prescribed not to be reporting issuers.

**“security”**

“security” includes each of the following, whether or not it relates to an issuer:

- (a) any instrument or unit commonly known as a security;
- (b) any title to, or interest in, the capital, assets, property, profits, earnings or royalties of any person;
- (c) any interest in an association of legatees or heirs;
- (d) any option, subscription to or other interest in a security;
- (e) a debt security or a share, stock, unit, unit certificate, participation certificate, certificate of share or interest, preorganization certificate or subscription that is not,
  - (i) a contract of insurance issued by an insurance company governed by the laws of Canada or of a province or territory,



- (ii) evidence of a deposit issued by a Canadian financial institution, or
- (iii) evidence of a deposit issued by an authorized foreign bank listed in Schedule III to the *Bank Act* (Canada) in respect of its business in Canada;
- (f) any agreement under which the interest of the purchaser is valued for purposes of conversion or surrender by reference to the value of a proportionate interest in a specified portfolio of assets, other than, unless otherwise provided by the regulations, a contract issued by an insurance company governed by the laws of Canada or of a province or territory which provides for payment at maturity of an amount not less than three quarters of the premiums paid by the purchaser for a benefit payable at maturity;
- (g) any agreement providing that money received will be repaid or treated as a subscription to shares, stock, units or interests at the option of the recipient or of any other person;
- (h) any certificate of share or interest in a trust, estate or association;
- (i) any profit-sharing agreement or certificate;
- (j) any certificate of interest in an oil, natural gas or mining lease, claim or royalty voting trust certificate;
- (k) any oil or natural gas royalties or leases or fractional or other interest in such royalties or leases;
- (l) any collateral trust certificate;
- (m) any income or annuity contract not issued by an insurance company;
- (n) any investment contract;
- (o) any document constituting evidence of an interest in a scholarship or educational plan or trust;
- (p) a derivative that is within a prescribed class of derivatives; and

- (q) a derivative that is designated, or is within a class of derivatives designated, under subsection 95 (2) to be a security,

but does not include a security that is designated, or is within a class of securities that are designated, under subsection 95 (1) not to be a security, or a security that is within a class of securities that are prescribed not to be securities.

**“spouse”**

“spouse” means a person who

- (a) is married to another person and is not living separate and apart, within the meaning of the *Divorce Act* (Canada), from the other person; or
- (b) is living with another person in a marriage-like relationship.

**“subsidiary”**

“subsidiary” means an issuer who is controlled by one or more other issuers and includes a subsidiary of a subsidiary.

**“superior court”**

“superior court” means , subject to the regulations, the superior court of the province or territory.

**“take-over bid”**

“take-over bid” means a direct or indirect offer to acquire outstanding voting or equity securities of a class that is

- (a) made by a person other than the issuer of the securities; and
- (b) within a prescribed class of offers to acquire.

**“trade”**

“trade” includes

- (a) any sale or other disposition of a security for valuable consideration, whether the terms of payment are on margin, instalment or otherwise, but does not include, except as

provided in paragraph (f), a transfer, pledge or encumbrance of securities for the purpose of giving collateral for a debt made in good faith;

- (b) any entering into a derivative, any material amendment to a derivative, any termination or assignment, sale or other acquisition or disposition of a derivative;
- (c) a novation of a derivative, other than a novation with a clearing agency;
- (d) any participation as a trader in any transaction in a security or derivative through the facilities of an exchange;
- (e) any receipt by a registrant of an order to purchase or sell a security or to effect a transaction in a derivative;
- (f) any transfer, pledge or ~~encumbrance~~encumbrance of an issuer's securities that are from a control person's holdings for the purpose of giving collateral for a debt made in good faith; and
- (g) any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of anything referred to in paragraphs (a) to (f),

but does not include a purchase of a security.

**“trade repository”**

“trade repository” means a person who collects and maintains reports of completed trades made by other persons.

**“Tribunal”**

“Tribunal” means the Tribunal established ~~in accordance with the Memorandum of Agreement~~under the [Capital Markets Regulatory Authority Act].

**“underwriter”**

“underwriter” means a person that, as principal, agrees to purchase securities with a view to distribution or that, as agent, offers for sale or sells securities in connection with a distribution and includes a person who participates directly or indirectly in the distribution, but does not include any of the following:

- (a) a person whose interest in the transaction is limited to receiving the usual and customary distributor's or seller's commission payable by an underwriter or issuer;
- (b) a mutual fund that accepts its shares or units for surrender and resells them;
- (c) a company that purchases its shares and resells them; or
- (d) a bank listed in Schedule I, II or III to the *Bank Act* (Canada) with respect to prescribed securities or prescribed banking transactions.

### **“voting security”**

“voting security” means any security, other than a debt security, of an issuer carrying a voting right under all circumstances or under some circumstances that have occurred and are continuing.

### **Affiliation**

**3.** For the purposes of capital markets law, a person is affiliated with another person

- (a) if one of them is the subsidiary of the other;
- (b) if each of them is controlled by the same person; or
- (c) in such other circumstances as may be prescribed.

### **Control**

**4.** For the purposes of capital markets law, a person controls another person

- (a) if the person beneficially owns or exercises control or direction over, directly or indirectly, voting securities of the other person, other than voting securities held only to secure an obligation, and the votes carried by those voting securities, if exercised, entitle the person to elect a majority of the other person's directors;
- (b) if the other person is a partnership, other than a limited partnership, and the person holds more than 50% of the interests of the partnership;

- (c) if the other person is a limited partnership and the person is the general partner of the limited partnership; or
- (d) in any other prescribed circumstance.

### **Beneficial ownership**

5. For the purposes of capital markets law, a reference to the beneficial ownership of securities by a person includes securities that are beneficially owned, directly or indirectly

- (a) by an issuer controlled by the person;
- (b) by an affiliate of the person or of an issuer controlled by the person;
- (c) by another prescribed person or by a person within a prescribed class of persons.

### **Insiders of a mutual fund**

6. For the purposes of capital markets law, each of the following is an insider of a mutual fund that is a reporting issuer:

- (a) the mutual fund's adviser;
- (b) a person distributing a security under a contract under which a mutual fund grants to a person the right to purchase the securities of the mutual fund for distribution or to distribute the securities of the mutual fund on behalf of the mutual fund;
- (c) an insider of an adviser or distributor referred to in paragraph (a) or (b);
- (d) a person who is within a prescribed class of persons.

### **Special relationships**

7. For the purposes of capital markets law, a person is in a special relationship with an issuer

- (a) if the person is an insider, affiliate or associate of any of the following:
  - (i) the issuer,

- (ii) a person who is considering or evaluating whether to make a take-over bid or who proposes to make a take-over bid for securities of the issuer, or
  - (iii) a person who is considering or evaluating whether to become a party or is proposing to become a party to an amalgamation, merger, reorganization, arrangement or similar business combination with the issuer or is considering or evaluating whether to acquire a substantial portion of the issuer's property;
- (b) if the person has engaged, is engaging, is considering or evaluating whether to engage, or proposes to engage in any business or professional activity with or on behalf of the issuer or a person described in subparagraph (a) (ii) or (iii);
- (c) if the person is a director, officer or employee of,
  - (i) the issuer,
  - (ii) a subsidiary of the issuer,
  - (iii) a person who controls the issuer, or
  - (iv) a person described in subparagraph (a) (ii) or (iii) or in paragraph (b);
- (d) if the person learned of a material change with respect to the issuer or a material fact ~~with respect~~relating to securities of the issuer while the person was a person described in paragraph (a), (b) or (c);
- (e) if the person learns of a material change with respect to the issuer, or a material fact ~~with respect~~relating to securities of the issuer, from any other person described in this section, including a person described in this paragraph, and knows or ~~ought~~ reasonably ought to know that the other person is a person in a special relationship with the issuer; or
- (f) in any other prescribed circumstance.

## PART 2 RECOGNIZED ENTITIES

### Requirement to be recognized

#### As exchange

8. (1) A person must not carry on business as an exchange unless the person is recognized as an exchange under section 9.

#### As clearing agency

(2) A person must not carry on business as a clearing agency unless the person is recognized as a clearing agency under section 9.

### Recognition of entities

9. (1) On application, if the Authority considers that it would be in the public interest, the Authority may, after consultation with the Chief Regulator, make an order recognizing

(a) a self-regulatory organization;

(b) a person as an exchange;

(c) a clearing agency;

(c.1) a trade repository;

(d) an auditor oversight organization;

(e) a person engaged in a prescribed activity.

### Conditions

(2) At any time, the Authority may impose conditions, restrictions or requirements on a recognition after giving the applicant or recognized entity an opportunity to ~~make representations~~be heard.

### Surrender of recognition

(3) On application by a recognized entity, the Authority may accept the surrender of the recognition if the Authority is satisfied that the surrender is not prejudicial to the public interest.

### **Duty to provide information**

10. A recognized entity other than a recognized auditor oversight organization must, at the time and in the form required by the Chief Regulator, provide the ~~Authority~~Chief Regulator with any information, record or thing in its possession or under its control that relates to the administration or enforcement of capital markets law or the regulation of the capital markets.

### **Duty of recognized self-regulatory organizations, recognized exchanges**

11. A recognized self-regulatory organization or a recognized exchange must, with a view to pursuing the public interest, regulate the operations, standards of practice and business conduct of its members or participants and their representatives in accordance with its by-laws, regulatory instruments, policies, procedures, interpretations and practices.

### **Power to make decisions re recognized entities, recognized exchanges**

12. If the Chief Regulator considers that it would be in the public interest to do so, he or she may make any decision respecting the following:

- (a) a by-law, regulatory instrument, policy, procedure, interpretation or practice of a recognized entity;
- (b) the manner in which a recognized entity carries on business;
- (c) the trading of securities or derivatives on or through a recognized exchange;
- (d) a security or derivative listed or posted for trading on a recognized exchange; or
- (e) issuers whose securities are listed or posted for trading on a recognized exchange in order to ensure that they comply with capital markets law.

### **Review of decisions of recognized entities**

13. (1) The Chief Regulator, a recognized entity or a person directly affected by a decision of a recognized entity may apply to the Tribunal for a hearing and review of the decision.



## **Time**

(2) The application must be filed with the Tribunal within 30 days after the day on which the decision is made or within such period as the Tribunal may permit if such an extension is not prejudicial to the public interest.

## **Parties**

(3) The Chief Regulator, the recognized entity and a person directly affected by the decision are parties to the hearing and review under subsection (1).

## **Same**

(3.1) If a hearing and review under subsection (1) relates to a decision of a recognized auditor oversight organization in respect of a participant and if the evidence produced at the initial proceeding included information or records that are subject to solicitor-client privilege that were provided to the recognized auditor oversight organization as part of its review of a participant's audit of a reporting issuer, the Chief Regulator must not be present during any part of the hearing and review where that information or those records are being discussed or considered.

## **Disposition on review**

(4) The Tribunal may confirm a decision under review or make another decision that it considers appropriate.

## **Stay of decision**

(5) The Tribunal may grant a stay of a decision, other than a decision of a recognized clearing agency, until the disposition of the review.

## **~~Stay of decision of clearing agency~~**

## **[intentionally deleted]**

~~(6) With the consent of the Chief Regulator, the Tribunal may grant a stay of a decision of a clearing agency until the disposition of the review.~~

## **Definition of “decision”**

(7) In this section,

“decision” means a decision, direction, order or ruling made,

- (a) by a recognized entity under a by-law, policy or other regulatory instrument ~~or policy~~ of the recognized entity; or
- (b) by a recognized self-regulatory organization under a power or duty delegated to it by the Chief Regulator under section 14.

### **Delegation to recognized self-regulatory organization**

**14.** (1) The Chief Regulator may delegate to a recognized self-regulatory organization or a recognized exchange the exercise of a power or the performance of a duty of the Chief Regulator under Part 4 or the regulations related to it.

### **Same**

(2) The Chief Regulator may delegate to a recognized self-regulatory organization or a recognized exchange the exercise of any power ~~or the performance of any duty~~ under section 173 in respect of a decision made by the organization in its performance of duties delegated to it under subsection (1).

### **~~Authority retained~~**

~~—(3) Despite any delegation made under this section, the Chief Regulator may exercise the power or perform the duty in respect of which the delegation was made.~~

### **Powers and duties of recognized auditor oversight organization**

**15.** (1) A recognized auditor oversight organization must, with a view to pursuing the public interest, ~~regulate~~oversee the operations, standards of practice and business conduct of its ~~members~~ ~~or~~ participants as they relate to the audit or review of financial statements that must be filed under capital markets law.

### **Adoption of by-laws, etc.**

(2) For the purposes of performing its duties under subsection (1), ~~an~~ a recognized auditor oversight organization may adopt a by-law, regulatory instrument, standard or policy for ~~regulating~~overseeing its ~~members or~~ participants on the basis that a government, a governmental authority or another regulatory body in Canada applies the same by-law, regulatory instrument, standard or policy.

### Confidentiality of documents, etc.

(3) All information, records or things prepared for or received by a recognized auditor oversight organization in the exercise of its powers and duties under subsection (1), are confidential and may not be disclosed without,

(a) the written consent of all persons whose interests might reasonably be affected by the disclosure; or

(b) a court order authorizing the disclosure.

### Duty to provide information

(3.1) Despite subsection (3), a recognized auditor oversight organization must, at the time and in the form required by the Chief Regulator, provide the Chief Regulator with any information, record or thing within a prescribed class that relates to the administration or enforcement of capital markets law or the regulation of capital markets.

### Disclosure to foreign auditor oversight bodies

(4) Despite subsection (3), a recognized auditor oversight organization may provide information, records or things to a foreign auditor oversight body relevant to that body's review of an audit carried out on a reporting issuer that carries on business in that body's jurisdiction.

### Same

(5) If a recognized auditor oversight organization is in possession of information or a record that is subject to solicitor-client privilege, the recognized auditor oversight organization must not provide the information or record to the foreign auditor oversight body unless the person in respect of whom the privilege exists consents to its disclosure.

### **Duty to provide information, etc.**

~~—(3) A recognized auditor oversight organization must, at the time and in the form required by the Chief Regulator, provide the Authority with any information or record or thing, other than information, records or things within a prescribed class, in its possession or under its control that relate to the administration or enforcement of capital markets law.~~ **Duty to provide information, etc. to recognized auditor oversight organization**

**16. (1)** On request by a recognized auditor oversight organization, a ~~member or~~ participant of the organization must provide the organization with information, records or things that

- (a) relate to the audit or review of financial statements that must be filed under capital markets law; and

- (b) are specified, or that are within the class of information, records or things described in the request, including information, records or things relating to, or prepared by, an issuer, whether or not the issuer is named in the request.

## Same

(2) The recognized auditor oversight organization may specify in the request a reasonable time by which the information, records or things must be provided and the form in which the information or records must be provided.

## Privileged information or records

(3) If a ~~member or~~ participant of a recognized auditor oversight organization is in possession of information or a record that is subject to solicitor-client privilege, the ~~member or~~ participant must not provide the information or record to the recognized auditor oversight organization unless the person in respect of whom the privilege exists consents to its disclosure.

## Consent to disclosure

(4) If a person consents to the disclosure to a recognized auditor oversight organization of information or a record that is subject to solicitor-client privilege, the consent neither negates nor constitutes a waiver of the privilege and the privilege continues for all other purposes.

## ~~Restriction on disclosure~~

~~—(5) For greater certainty, a recognized auditor oversight organization shall not disclose privileged records, privileged information or information that is based on privileged information to the Authority or to any regulatory authority, law enforcement agency or professional regulatory authority.~~

## Testimony in civil proceedings

(6) A recognized auditor oversight organization and its directors, officers, employees, and agents are not required, and must not be compelled, to give evidence or testimony about information ~~or~~, records or things obtained in the performance of their duties, in any proceeding, other than a criminal proceeding, in which the recognized auditor oversight organization is not a party.

### PART 3 DESIGNATED ENTITIES AND OTHER MARKET PLACES

#### Designation of entities

17. (1) On application, if the Authority considers that it would be in the public interest, the Authority may, after consultation with the Chief Regulator, make an order designating

- (a) ~~a trade repository;~~ [intentionally deleted]
- (b) a credit rating organization;
- (c) an investor compensation fund;
- (d) a dispute resolution service;
- (e) an information processor;
- (f) a market place; or
- (g) a person ~~who provides investors or market participants with~~ engaged in a prescribed ~~services.~~ activity.

#### Conditions

(2) At any time, the Authority may impose conditions, restrictions or requirements on a designation after giving the designated entity an opportunity to ~~make representations~~ be heard.

#### ~~Voluntary surrender~~ Surrender of designation

(3) On application by a designated entity, the Authority may accept the ~~voluntary~~ surrender of the designation if the Authority is satisfied that the surrender is not prejudicial to the public interest.

#### Duty to provide information

18. A designated entity must, at the time and in the form required by the Chief Regulator, provide the ~~Authority~~ Chief Regulator with any information, record or thing in the designated entity's possession or under its control that relates to the administration or enforcement of capital markets law or the regulation of the capital markets.

### **Restriction re credit ratings, procedures, etc.**

**19.** Nothing in this Act or the regulations permits the Authority to regulate the content of credit ratings or the content of the methodologies for determining credit ratings.

### **Authority to make decisions re designated entities**

**20.** If the Chief Regulator considers that it would be in the public interest, he or she may make any decision respecting the following:

- (a) a by-law, regulatory instrument, policy, procedure, interpretation or practice of a designated entity;
- (b) the manner in which a designated entity carries on business;
- (c) the trading of securities or derivatives on or through a designated market place.

### **Authority to make decisions re other market places**

**21.** (1) This section applies with respect to a market place that is not a recognized exchange or designated market place.

### **Same**

(2) If the Chief Regulator considers that it would be in the public interest, he or she may make any decision respecting the following:

- (a) a by-law, regulatory instrument, policy, procedure, interpretation or practice of the market place;
- (b) the manner in which the market place carries on business;
- (c) the trading of securities or derivatives on or through the market place.

## PART 4 REGISTRATION

### Requirement to be registered

22. (1) A person must not act as a dealer, adviser ~~or~~, investment fund manager or large derivatives participant unless the person is registered in accordance with the regulations and in the category prescribed for the purposes of the activity.

### Same

(2) An individual must not

- (a) act as a dealer on behalf of a person that is required to be registered under subsection (1), unless that person is a registered dealer and the individual is acting as a dealer only on behalf of that registered dealer, and the individual is registered in accordance with the regulations and in the category prescribed;
- (b) act as an adviser on behalf of a person that is required to be registered under subsection (1), unless that person is a registered adviser and the individual is acting as an adviser only on behalf of that registered adviser, and the individual is registered in accordance with the regulations and in the category prescribed; or
- (c) perform a prescribed function or duty for a person that is required to be registered under subsection (1), unless the individual is registered in accordance with the regulations and in the category prescribed.

### Registration

23. (1) The Chief Regulator must grant registration, reinstatement of registration or amendment of registration to an applicant unless the Chief Regulator considers that

- (a) the applicant is not suitable for the registration, reinstatement or amendment applied for; or
- (b) the registration, reinstatement or amendment applied for is objectionable.

### Conditions, etc., of registration

(2) After giving the applicant or registrant an opportunity to ~~make representations~~be heard, the Chief Regulator may impose conditions, restrictions or requirements on a registration at any time, or refuse to grant, reinstate or amend a registration.

### **Duty to submit further information, etc.**

24. (1) The Chief Regulator may require further information, records or things to be submitted by an applicant or registrant within a specified time and

- (a) may require verification by affidavit or otherwise of any information, record or thing submitted; or
- (b) may require any of the following persons to submit to an examination under oath:
  - (i) the applicant or registrant,
  - (ii) any partner of the applicant or registrant,
  - (iii) any officer, director, governor or trustee of the applicant or registrant or any person performing a similar function,
  - (iv) any employee or agent of the applicant or registrant, or
  - (v) a person who beneficially owns or exercises control or direction over, directly or indirectly, 10% or more of the voting securities of the applicant or registrant.

### **Audit or financial review**

(2) The Chief Regulator may require a registrant to direct its auditor to conduct any audit or financial review required by the Chief Regulator and to deliver a report of the findings of the audit or review to the Chief Regulator as soon as practicable.

### **Automatic suspension of registration**

25. (1) A registration is suspended in the prescribed circumstances.

### **Discretionary suspension**

(2) The Chief Regulator may, after giving the registrant an opportunity to ~~make representations~~be heard, suspend a registration if he or she considers that

- (a) the registrant has not complied with capital markets law;



- (b) the registrant is not suitable for registration; or
- (c) the registration is objectionable.

### Temporary suspension

(3) If the Chief Regulator considers that the length of time required to give the registrant an opportunity to ~~make representations~~be heard could be prejudicial to the public interest, ~~he or she~~the Chief Regulator may, without giving that opportunity, suspend the registration for a period of no more than 15 days.

### Surrender of registration

26. (1) ~~If~~On application by a registrant ~~applies to surrender his, her or its registration,~~ the Chief Regulator ~~must~~may accept the surrender ~~unless he or she considers that it would be of the registration if the Chief Regulator is satisfied that the surrender is not~~ prejudicial to the public interest ~~to do so~~.

### Suspension or conditions

(2) Before accepting the surrender, the Chief Regulator may suspend the registration or impose conditions, restrictions or requirements on the registration after giving the registrant an opportunity to ~~make representations~~be heard.

### Temporary suspension or conditions, etc.

(3) If the Chief Regulator considers that the length of time required to give the registrant an opportunity to ~~make representations~~be heard could be prejudicial to the public interest, ~~he or she~~the Chief Regulator may, without giving that opportunity, suspend the registration or impose conditions, restrictions or requirements on the registration for a period of no more than 15 days.

## PART 5 PROSPECTUS REQUIREMENTS

### Requirement to file prospectus, etc.

27. (1) A person must not distribute a security unless
- (a) a preliminary prospectus and a prospectus have been filed with the Chief Regulator, the Chief Regulator has issued a receipt for each of them and the prescribed period for the distribution has not expired; or

- (b) a prescribed ~~disclosure~~offering document has been filed with the Chief Regulator and, if a receipt is required by the regulations, a receipt for it has been issued by the Chief Regulator and the prescribed period, if any, for the distribution has not expired.

### **Voluntary filing**

(2) Even if no distribution is contemplated, a person may file a preliminary prospectus and a prospectus or, in accordance with the regulations, a prescribed ~~disclosure~~offering document to enable an issuer to become a reporting issuer or for another prescribed purpose.

### **Restriction on distribution of ~~information, record or thing~~records**

28. A person distributing a security must not distribute any ~~information, record or thing~~ respecting the security that is prohibited by the regulations.

### **Preliminary prospectus requirements**

29. (1) A preliminary prospectus must comply with the prescribed requirements and must substantially comply with the requirements under capital markets law with respect to the form and content of a prospectus.

### **Receipt for preliminary prospectus**

(2) Subject to section 32, the Chief Regulator must issue a receipt for a preliminary prospectus as soon as practicable after it has been filed.

### **Prospectus requirements**

30. (1) A prospectus must provide full, true and plain disclosure of all material facts relating to the securities issued or proposed to be distributed and must comply with the prescribed requirements.

### **Receipt for prospectus**

(2) Subject to section 32, the Chief Regulator must issue a receipt for a filed prospectus unless he or she considers that it would not be in the public interest to do so or the regulations prevent him or her from issuing the receipt in the circumstances.

### **Opportunity to ~~make representations~~be heard**

(3) The Chief Regulator must not refuse to issue a receipt for a filed prospectus without giving the person who filed the prospectus an opportunity to ~~make representations~~be heard.

## **~~Requirements for prescribed disclosure~~Prescribed offering document requirements**

31. (1) A prescribed ~~disclosure~~offering document must comply with the prescribed requirements.

### **Receipt for prescribed offering document**

(2) Subject to section 32, the Chief Regulator must issue a receipt for a prescribed ~~disclosure~~offering document if a receipt is required by the regulations, unless the Chief Regulator considers that it would not be in the public interest to do so or the regulations prevent him or her from issuing the receipt in the circumstances.

### **Opportunity to ~~make representations~~be heard**

(3) If a receipt for a prescribed ~~disclosure~~offering document is required by the regulations, the Chief Regulator must not refuse to issue a receipt for the prescribed ~~disclosure~~offering document without giving the person who filed the prescribed ~~disclosure~~offering document an opportunity to ~~make representations~~be heard.

### **Requirement to provide further information, etc.**

32. Before issuing a receipt for a preliminary prospectus, a prospectus or, if a receipt is required by the regulations, a prescribed ~~disclosure~~offering document, the Chief Regulator may impose additional restrictions, conditions and filing requirements ~~and conditions~~ if the Chief Regulator considers that it is in the public interest to do so.

### **Order to provide information, etc., re distribution of previously issued securities**

33. If a person proposing to distribute an issuer's previously issued securities is unable to obtain from the issuer information or records that are necessary to enable that person to comply with this Part or the regulations related to it, the Chief Regulator may order the issuer to give to that person any information or records that the Chief Regulator considers necessary.

### **Permitted activities under preliminary prospectus**

34. Despite ~~section 27, paragraph 27 (1) (a)~~, during the period between the issuance of a receipt for a preliminary prospectus and the issuance of a receipt for a prospectus, a person may undertake the trading activities relating to the proposed distribution that are permitted by the regulations.

### **Exception: defective preliminary prospectus**

35. (1) If the Chief Regulator considers that a preliminary prospectus does not comply with the requirements under capital markets law with respect to its form and content, he or she may,

without giving an opportunity to ~~make representations~~be heard, order that the trading activities permitted under section 34 cease.

### **Duration of order**

(2) The order remains in force until a revised preliminary prospectus satisfactory to the Chief Regulator is filed and sent to each person who was shown, on the record that is maintained in accordance with the regulations, to have received the defective preliminary prospectus.

### **Order to cease trading**

36. (1) If, after a receipt is issued for a prospectus or, if a receipt is required by the regulations, for a prescribed offering document, the Chief Regulator considers that any of the circumstances exist in which the regulations do not permit the issuance of the receipt, the Chief Regulator may, after giving the issuer or the person distributing the securities an opportunity to ~~make representations~~be heard, order that the distribution of the securities under the prospectus or the prescribed ~~disclosure~~offering document cease.

### **Temporary order**

(2) If the Chief Regulator considers that the length of time required to give an opportunity to ~~make representations~~be heard could be prejudicial to the public interest, he or she may, without giving that opportunity, order that the distribution of the securities under the prospectus or the prescribed ~~disclosure~~offering document cease for a period of no more than 15 days.

### **Notice**

(3) ~~An~~A notice of an order under this section must be sent by the Chief Regulator to the issuer of, or the person distributing, the securities to which the prospectus or the prescribed ~~disclosure~~offering document relates.

### **Duty to comply**

(4) ~~On sending~~When the notice of the order is sent to the issuer or person distributing securities, the person named in ~~it~~the order must cease distribution of the securities under the prospectus or the prescribed ~~disclosure~~offering document, and any receipt issued by the Chief Regulator is revoked or, in the case of a temporary order, that receipt is suspended for the period of the order.

### **Obligation to send prospectus, etc.**

37. (1) A person who trades in securities, other than a person acting as a purchaser's agent, and who receives a purchase order or subscription for a security offered in a distribution to which

subsection 27 (1) applies must, subject to the regulations, send the following documents to a purchaser of the security:

- (a) the latest prospectus that is filed or required to be filed, if the distribution is made under paragraph 27 (1) (a);
- (b) the latest prescribed ~~disclosure~~offering document that is filed or required to be filed, if the distribution is made under paragraph 27 (1) (b);
- (c) any other prescribed disclosure document that the purchaser is entitled to receive under this Act or the regulations; and
- (d) any amendment to the prospectus or prescribed offering document referred to in paragraph (a) or (b) or the prescribed disclosure document ~~that is filed or required to be filed~~referred to in paragraph (c).

### **~~Obligation to send prospectus, etc.~~**

#### **Exception**

(2) Subsection (1) does not apply if a person is required to send a prescribed disclosure document under subsection (3).

### **Obligation to send prescribed disclosure document**

(3) A person who trades in securities and who receives an order from a purchaser for a purchase of a prescribed security must send to the purchaser any prescribed disclosure document in accordance with the regulations.

## **PART 6 TRADING IN DERIVATIVES**

### **Requirement re trades in designated derivatives**

- 38.** (1) A person must not trade in a designated derivative unless
- (a) the prescribed disclosure document for the designated derivative has been filed and, if a receipt is required by the regulations, a receipt for it has been issued by the Chief Regulator;
  - (b) the effective period of the prescribed disclosure document has not expired; and

- (c) the prescribed disclosure document has been sent in accordance with the regulations.

### **Receipt**

(2) The Chief Regulator must issue a receipt for a prescribed disclosure document if a receipt is required by the regulations, unless the Chief Regulator considers that it would not be in the public interest to do so or the regulations prevent him or her from issuing the receipt in the circumstances.

### **Opportunity to ~~make representations~~be heard**

(3) If a receipt for a prescribed disclosure document is required by the regulations, the Chief Regulator must not refuse to issue a receipt for the prescribed disclosure document without giving the person who filed the prescribed disclosure document an opportunity to ~~make representations~~be heard.

### **Duty to provide information**

**39.** A person who trades in or provides facilities for trading in derivatives must, in accordance with the regulations, provide any prescribed information.

### **~~Exemption from Part 5 for trades in derivatives~~**

~~**40.** Part 5 and the regulations related to it do not apply in respect of a trade in a derivative unless it has been designated as a security.~~

### **Derivatives that are securities for prescribed purposes**

**41.** ~~Derivatives~~Prescribed derivatives, other than derivatives within a class of derivatives referred to in paragraph (p) of the definition “security” in section 2, are securities for the purposes of any prescribed provisions of this Act and the regulations.

### **Effect of failure to comply**

**42.** For greater certainty, unless the terms of the derivative provide otherwise, a trade of a derivative is not void, voidable or unenforceable, and a counterparty to the trade is not entitled to rescind the trade, solely by reason that the trade failed to comply with capital markets law.

## PART 7 DISCLOSURE AND PROXIES

### Requirement to disclose

**43.** A reporting issuer or any other issuer within a prescribed class must, in accordance with the regulations, provide

- (a) prescribed periodic disclosure about its business and affairs, including financial reports;
- (b) disclosure of a material change; and
- (c) any other disclosure required by the regulations.

### Reports, etc., by insiders

**44.** An insider of a reporting issuer, other than a mutual fund, must, in accordance with the regulations,

- (a) file reports disclosing the insider's beneficial ownership of, or control or direction over, directly or indirectly, ~~securities~~a security of the issuer, and the insider's interest in, or right or obligation associated with, a related financial instrument ~~of a security of the issuer~~; and
- (b) ~~make~~provide any other disclosure ~~required by the regulations~~.

### Information from directors, etc.

**45.** A director, officer, promoter or control person of an issuer must, at the time and in the form required by the Chief Regulator, give the Authority any information, record or thing in the person's possession or under the person's control that relates to the administration or enforcement of capital markets law or the regulation of capital markets.

### Requirement to solicit proxies

**46.** Subject to section 47, if the management of a reporting issuer gives registered holders of its voting securities notice of a meeting, the management must, in accordance with the regulations, send each of them a form of proxy in the prescribed form.

### **Information circular**

**47.** Subject to the regulations, a person must not solicit proxies from a holder of a reporting issuer's voting securities unless the person sends to the holder a prescribed information circular, and sends it in accordance with the regulations.

## **PART 8 TAKE-OVER BIDS AND ISSUER BIDS**

### **Definition of “interested person”**

**48.** In this Part,

“interested person” means

- (a) an offeree issuer;
- (b) a security holder, director or officer of an offeree issuer;
- (c) an offeror;
- (d) the Chief Regulator; or
- (e) any person not referred to in paragraphs (a) to (d) who, in the opinion of the Tribunal or the superior court, as the case may be, is a proper person to make an application under section 52 or 53.

### **Requirement re take-over bid, issuer bid**

**49.** A person must not make a take-over bid or an issuer bid, whether acting alone or acting jointly or in concert with one or more persons, except in accordance with the regulations.

### **Requirement re recommendation**

**50.** (1) If a take-over bid has been made, the directors of the issuer whose securities are the subject of the bid must, in accordance with the regulations,

- (a) determine whether to recommend acceptance or rejection of the bid or determine not to make a recommendation; and



- (b) prepare and send a circular that sets out the recommendation and the reasons for it, or states that the board is not making a recommendation and the reasons for not doing so.

### **Individual recommendation**

(2) A director or officer of the issuer whose securities are the subject of the take-over bid may, in accordance with the regulations, individually recommend acceptance or rejection of the bid.

### **Power to vary period**

**51.** On application by an interested person, the Chief Regulator may, if he or she considers that it would not be prejudicial to the public interest to do so, make an order in respect of a particular case varying ~~any~~ period set out in the regulations related to this Part.

### **Application to Tribunal — compliance orders**

**52.** (1) On application by an interested person, the Tribunal may, after a hearing, if it considers that a person has not complied or is not complying with this Part or the regulations related to it, make one or more of the following orders:

- (a) restraining the distribution of a record used or issued in connection with a take-over bid or issuer bid;
- (b) requiring an amendment of a record used or issued in connection with a take-over bid or issuer bid and requiring the distribution of amended information;
- (c) directing a person to comply with this Part or the regulations related to it;
- (d) restraining a person from contravening this Part or the regulations related to it;
- (e) varying any period set out in the regulations related to this Part;
- (f) exempting a person from any of the requirements of this Part or the regulations related to it; and
- (g) directing the person's directors and officers to cause the person to comply with or to cease contravening this Part or the regulations related to it.

### Notice to Chief Regulator

(2) If the Chief Regulator is not the applicant under subsection (1), he or she must be given notice of the application, and is entitled to appear as a party ~~at the proceeding~~.

### Application to court — compliance orders

**53.** (1) On application by an interested person, if a superior court is satisfied that a person has not complied with this Part or the regulations related to it, the court may make any interim or final order that it considers appropriate, including an order

- (a) compensating an interested person who is a party to the application for damages suffered as a result of the non-compliance;
- (b) rescinding a transaction entered into with an interested person, including the issue of a security or a purchase and sale of a security;
- (c) requiring a person to dispose of securities acquired in connection with a take-over bid or issuer bid;
- (d) prohibiting a person from exercising all or any of the voting rights attached to any securities; or
- (e) requiring the trial of an issue.

### Notice to Chief Regulator

(2) If the Chief Regulator is not the applicant under subsection (1), he or she must be given notice of the application, and is entitled to appear as a party.

## PART 9 MARKET CONDUCT

### Requirement to keep records

**54.** (1) A market participant must keep

- (a) the records that are necessary for the proper recording of its business transactions and financial affairs and of the transactions that it executes on behalf of others; and

- (b) any other records that are reasonably required ~~under~~ to demonstrate compliance with capital markets law.

### Exception

(1.1) Subsection (1) does not apply to a prescribed class of market participants.

### **Same**

### Duration

(2) A market participant must keep the records described in subsection (1) until the expiry of ~~six~~seven years after the end of the year to which they relate or for any longer period that is prescribed.

### **Duty to provide records**

(3) The Chief Regulator may require a market participant to ~~give~~provide, within the time and in the form required by the Chief Regulator.

(a) any of the records described in subsection (1), ~~and to do so within the time and in the form required by the Chief Regulator;~~ and

(b) except where prohibited by law, any filings, reports or other communications made to any other regulatory agency whether within or outside this province or territory.

### **Duty to client**

**55.** A registrant must deal fairly, honestly and in good faith with its clients and meet such other standards as may be prescribed.

### **Duty to investment fund**

**56.** An investment fund manager must

- (a) exercise the powers and perform the duties of his, her or its office honestly, in good faith and in the best interests of the investment fund; and
- (b) exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances.

### **Conflicts of interest — registrant, etc.**

57. A registrant and an investment fund must, in accordance with the regulations, identify, disclose and manage conflicts of interest.

### **Conflicts of interest — offeror, etc.**

58. ~~An~~ The regulations may prescribe duties of an offeror, offeree issuer and issuer as well as its directors and officers ~~must, in accordance with the regulations, to~~ identify, disclose and manage conflicts of interest that may arise among the security holders in connection with a take-over bid, issuer bid, going-private transaction, related party transaction, business combination or similar transaction.

### **False or misleading statements**

59. (1) A person must not make a statement that the person knows or reasonably ought to know

- (a) in a material respect and at the time and in the circumstances in which it is made, is false or misleading or omits information that is necessary so that the statement is not misleading; and
- (b) would reasonably be expected to have a significant effect on the market price or value of a security, a derivative or the underlying interest of a derivative.

### **Remedy**

(2) A breach of subsection (1) does not give rise to a statutory right of action for damages otherwise than under Part 12 or 13.

### **Prohibited representations — securities**

60. (1) A person must not, in relation to a trade in a security, represent that the person or any other person will resell or repurchase the security, or refund any purchase price of the security.

### **Exceptions**

(2) Subsection (1) does not apply in respect of a security that carries or is accompanied by an obligation of the issuer to redeem or repurchase the security or a right of the owner of the security to require the issuer to redeem or repurchase the security.

### **Future value or price**

(3) A person must not, in relation to a trade in a security, give an assurance relating to the future value or price of the security.

### **~~Prohibited representations~~ — Listing on an exchange**

- (4) A person must not make a representation, in relation to a trade in a security, that
- (a) the security will be listed on an exchange, unless the exchange has approved, with or without conditions, the listing of the security or has consented to the representation;
  - (b) an application has been made to list the security on an exchange, unless,
    - (i) an application has been made to list the security on the exchange and securities of the same issuer are currently listed on the exchange, or
    - (ii) the exchange has approved, with or without conditions, the listing of the security or has consented to the representation; or
  - (c) an application will be made to list the security on an exchange.

### **Exceptions**

- (5) Subsection (1), (3) or (4) does not apply in the prescribed circumstances.

### **Prohibited representations – derivatives**

- 61.** (1) A person must not make a representation, in relation to a trade in a derivative, that
- (a) the person or any other person will refund any amount paid in respect of the derivative, unless the terms of the derivative provide for a refund or a right to a party to require a refund; or
  - (b) the person or any other person will assume all or part of the obligations under the derivative, unless the terms of the derivative provide for an assumption of all or part of the obligations under the derivative, or a right to a party to require the assumption of all or part of the obligations under the derivative.

## **Future value**

(2) A person must not, in relation to a trade in a derivative, give an assurance relating to the future value or price of the derivative.

## **Listing on a market place**

(2.1) A person must not make a representation, in relation to a trade in a derivative, that

(a) the derivative will be listed on a market place, unless the market place has approved, with or without conditions, the listing of the derivative or has consented to the representation;

(b) an application has been made or will be made to list the derivative on a market place.

## **Exceptions**

(3) Subsection (1), (2) or ~~(2.1)~~ does not apply in the prescribed circumstances.

## **Market manipulation**

**62.** (1) A person must not, directly or indirectly, engage in, or participate in, any act, practice or course of conduct relating to ~~securities, derivatives~~a security, derivative or underlying ~~interests~~interest of a derivative that results in or contributes to

(a) a false or misleading appearance of trading activity in a security or derivative; or

(b) an artificial price or value for a security or derivative.

## **Attempt**

(2) A person must not, directly or indirectly, attempt to engage or participate in the conduct described in subsection (1).

## **Unjust deprivation, fraud**

**63.** (1) A person must not, directly or indirectly, engage in, or participate in, any act, practice or course of conduct relating to securities or derivatives that

(a) results in an unjust deprivation or a risk of an unjust deprivation of a person's money or other property or of the value of the person's property; or

- (b) the person knows or reasonably ought to know perpetrates a fraud on any person.

### **Same**

(2) For the purposes of subsection (1), conduct relating to a security or derivative includes conduct relating to anything that is represented as, or implied to be, a security or derivative.

### **Attempt**

(3) A person must not, directly or indirectly, attempt to engage or participate in the conduct described in subsection (1).

### **Benchmark – false or misleading information**

**64.** (1) A person must not, directly or indirectly, engage or participate in the provision of information to another person for the purpose of determining a benchmark if the person knows or reasonably ought to know that the information, at the time and in the circumstances in which it is provided, is false or misleading.

### **Attempt**

(2) A person must not, directly or indirectly, attempt to engage or participate in the conduct described in subsection (1).

### **Benchmark manipulation**

**65.** (1) A person must not, directly or indirectly, engage or participate in conduct relating to a benchmark that improperly influences the determination of the benchmark or produces or contributes to the production of a false or misleading determination of the benchmark.

### **Attempt**

(2) A person must not, directly or indirectly, attempt to engage or participate in the conduct described in subsection (1).

### **Insider trading**

**66.** (1) A person must not purchase or trade a security of a reporting issuer or of an issuer whose securities are publicly traded, or enter into a transaction involving a related financial instrument, if the person is in a special relationship with the issuer and knows of a material change with respect to the issuer, or a material fact ~~with respect~~ relating to securities of the issuer, that has not been generally disclosed.

## Tipping

(2) An issuer described in subsection (1), or a person in a special relationship with such an issuer, must not inform another person of a material change with respect to the issuer or a material fact ~~with respect~~relating to securities of the issuer, unless that change or fact has been generally disclosed or unless informing that other person is necessary in the course of business of the issuer or person in the special relationship.

## Tipping — take-over or other action

(3) A person who is considering or evaluating whether to take, or proposes to take, one or more of the following actions must not inform another person of a material change with respect to an issuer described in subsection (1), or a material fact ~~with respect~~relating to securities of that issuer, unless that change or fact has been generally disclosed or unless informing that other person is necessary in the course of business relating to ~~effect the proposed~~ action:

- (a) making a take-over bid for securities of the issuer;
- (b) becoming a party to a reorganization, amalgamation, merger, arrangement or similar business combination with the issuer; or
- (c) acquiring a substantial portion of the issuer's property.

## Recommending

(4) If a material change with respect to an issuer described in subsection (1), or a material fact ~~with respect~~relating to securities of that issuer, has not been generally disclosed, the issuer, or a person who has knowledge of the change or fact and that either is in a special relationship with the issuer or is considering or evaluating whether to take, or proposes to take, one or more of the actions set out in paragraphs (3) (a) to (c), must not recommend ~~that~~to another person or encourage another person to purchase or trade a security of the issuer or to enter into a transaction involving a related financial instrument.

## Front-running

## Definitions

67. (1) The following definitions apply in this section and in section 68.



**“investor”**

“investor” means a person who has indicated an intention to purchase or trade a security or derivative or to enter into a transaction with respect to an underlying interest of a derivative, or for whose account an order is or would be placed.

**“material order information”**

“material order information” means information that relates to an unexecuted order or to the intention of an investor to purchase or trade a security or derivative or to enter into a transaction with respect to an underlying interest of a derivative, if the ~~security's market price would reasonably be expected to be affected by the~~ execution of the order, the placement of an order to carry out the intention or the disclosure of any of the information would reasonably be expected to affect the market price or value of

(a) the security;

(b) the derivative; or

(c) a derivative that has, as an underlying interest, that underlying interest.

**“order”**

“order” means an order to purchase or trade a security or derivative or to enter into a transaction with respect to an underlying interest of a derivative.

**Connection to investor**

(2) For the purposes of this section, a person is connected to an investor if the person

- (a) is an insider, affiliate or associate of the investor;
- (b) is an investment fund manager of the investor, in the case where the investor is an investment fund;
- (c) is engaging in, is considering or evaluating whether to engage in, or proposes to engage in a trading or advising relationship with or on behalf of the investor or a person referred to in paragraph (a) or (b);

- (d) is a director, officer or employee of the investor or of a person referred to in any of paragraphs (a) to (c);
- (e) knows of material order information relating to the investor, having acquired that knowledge while in a relationship described in any of paragraphs (a) to (d); or
- (f) knows of material order information relating to the investor, having acquired that knowledge from another person ~~who~~ at the time ~~of the acquisition~~ when,

(i) that other person was connected to the investor, whether under this paragraph or any of paragraphs (a) to (e), and, ~~at the relevant time,~~

(ii) the person that acquired knowledge of the material order information from that other person knew or reasonably ought to have known ~~that the other person was connected to the investor~~ of the connection referred to in subparagraph (i).

## Trading

(3) A person who is connected to an investor and who knows of material order information relating to the investor must not

(a) purchase or trade a security that is the subject of that information or enter into a transaction involving a related financial instrument;

(b) trade a derivative that is the subject of that information; or

(c) trade a derivative that has, as an underlying interest, the underlying interest that is the subject of that information.

## Tipping

(4) A person who is connected to an investor must not inform another person of material order information relating to the investor unless it is necessary in the course of the person's or the investor's business.

## Recommending

(5) A person who is connected to an investor and who knows of material order information relating to the investor must not recommend to another person or encourage another person

(a) to purchase or trade a security that is the subject of that information or to enter into a transaction involving a related financial instrument;

(b) to trade a derivative that is the subject of that information; or

(c) to trade a derivative that has, as an underlying interest, the underlying interest that is the subject of that information.

## Defences

### Defence to trading, tipping or recommending

**68.** (1) A person does not contravene any of subsections 66 (1) to (4) if, at the time the person took an action referred to in the applicable subsection, the person reasonably believed that the material change or the material fact, as the case may be, had been generally disclosed.

### Defence to trading — other person's knowledge

(2) A person does not contravene subsection 66 (1) if, at the time the person purchased or traded the security or entered into the transaction, the person reasonably believed that the other party to the purchase, trade or transaction knew of the material change or material fact and if the transaction does not come within a prescribed class of transactions in respect of which this defence is not available.

### Defence to trading — automatic plan or legal obligation

(3) A person does not contravene subsection 66 (1) or 67 (3) if the person purchased or traded the security ~~or~~, entered into the transaction or traded the derivative, as the case may be,

- (a) under a written automatic plan — including an automatic dividend reinvestment plan or automatic purchase plan — in which the person agreed to participate before acquiring knowledge of the material change, material fact or material order information; or
- (b) because of a written legal obligation that the person entered into before acquiring knowledge of the material change, material fact or material order information.

### Defence to trading — agent or trustee

(4) A person does not contravene subsection 66 (1) or 67 (3) if the person purchased or traded the security ~~or~~, entered into the transaction or traded the derivative, as the case may be,

- (a) as agent under the specific and unsolicited instructions of the agent's principal;
- (b) as agent under specific instructions that the person solicited from the agent's principal before acquiring knowledge of the material change, material fact or material order information;
- (c) as agent or trustee for another person because of the other person's participation in a written automatic plan, including an automatic dividend reinvestment plan or automatic purchase plan; or
- (d) as agent or trustee for another person in order to fulfil a written legal obligation of the other person.

### **Defence to trading or recommending**

(5) A person who is not an individual does not contravene subsection 66 (1) or (4) or 67 (3) or (5) if no individual involved in making the decision to purchase or trade the security, to enter into the transaction, to trade the derivative or to make the recommendation on the person's behalf

- (a) had knowledge of the material change, material fact or material order information; or
- (b) was acting on the recommendation or encouragement of an individual who had that knowledge.

### **Defence to tipping**

(6) A person does not contravene subsection 66 (2) or (3) if, at the time the person informed the other person of a material change or material fact, the person reasonably believed that the other person knew of it.

### **Defence to front-running**

(7) A person does not contravene ~~any of subsections~~ subsection 67 (3) ~~to (5)~~ if, at the time that the person ~~took an action referred to in the applicable subsection, the person informed the other person of the material order information, and~~ purchased or traded the security, entered into the transaction or traded the derivative, as the case may be, the person reasonably believed that

- (a) the investor had consented to the ~~taking of that action~~ purchase, trade or transaction, as the case may be; and

- (b) the other party to the purchase, trade or transaction ~~or the other person~~, as the case may be, knew of the material order information.

### Defence to tipping material order information

(7.1) A person does not contravene subsection 67 (4) if, at the time that the person informs the other person of the material order information

- (a) the person reasonably believed that the investor had consented to the person informing the other person; and
- (b) the person informed the other person that both the person and the other person are connected to the investor for the purposes of section 67.

### Defence to recommending

(7.2) A person does not contravene subsection 67 (5) if, at the time the person recommends or encourages the other person

- (a) the person reasonably believed that the investor had consented to the person recommending or encouraging the other person; and
- (b) the person informed the other person
- (i) of the material order information, and
- (ii) that both the person and the other person are connected to the investor for the purposes of section 67.

### **Onus**

(8) In any proceeding, the onus of proving that ~~any of subsections (1) to (7)~~ a defence described in this section or that a prescribed defence applies is on the person seeking to rely on ~~that subsection~~ the defence.

### **Meaning of entering into a transaction**

#### [intentionally deleted]

~~69. For the purposes of sections 66 to 68, entering into a transaction includes terminating or materially amending an existing obligation with respect to a security or a related financial instrument.~~ 69.

## Unfair practice

70. A person must not, in relation to a trade, engage in an unfair practice, including

- (a) putting unreasonable pressure on another person to purchase, hold or sell a security or to trade in or hold a derivative;
- (b) ~~entering into a transaction with~~taking advantage of another person ~~who is unable or does not have the capacity~~'s inability or incapacity to reasonably protect his or her own interest because of physical or mental disability, ignorance, illiteracy, age or other inability to understand the character, nature or language of any matter relating to a decision to purchase, hold or sell a security or to trade in or hold a derivative; and
- (c) engaging in any other prescribed practice that is fraudulent, manipulative, deceptive or unfairly detrimental to investors.

## Using name of another registrant

71. A registrant must not represent himself, herself or itself using the name of another registrant unless the registrant is a partner, officer or agent of the other registrant or is authorized to do so in writing by the other registrant.

## Representation of registration

72. (1) A person must not represent that he, she or it is registered under this Act or the regulations unless the representation is true and the person specifies, in making the representation, the person's category of registration.

## False or misleading statements

(2) A person must not make a statement about something that a reasonable investor would consider important in deciding whether to enter into, or maintain, a trading or advising relationship with the person if the statement is false or misleading or omits information that is necessary to prevent it from being misleading in the circumstances in which it is made.

## Representation re approval by Authority

73. A person must not make a representation that the Authority has in any manner approved or passed upon the merits of

- (a) the financial standing, fitness or conduct of a registrant;

- (b) a security, derivative or underlying interest of a derivative;
- (c) an issuer;
- (d) an issuer's disclosure; or
- (e) a credit rating organization or a credit rating issued by one.

### **Disclosure of investor relations activities**

**74.** (1) An issuer or an issuer's security holder who knows that a person is engaged in investor relations activities on behalf of the issuer or a security holder of the issuer must disclose the fact of the engagement and on whose behalf the person is engaged, to any person who inquires.

### **Investor relations activities**

(2) A person engaged in investor relations activities, or an issuer or security holder on whose behalf investor relations activities are undertaken by a person, must ensure that every record disseminated, and every public oral statement made, by that person as part of those activities clearly and conspicuously discloses that the record is issued, or the statement is made, by or on behalf of the issuer or security holder.

### **Declaration of short position**

**75.** (1) A person who places, through a registered dealer who is acting as the person's agent, an order for the sale of a security that the person does not own must declare to the dealer that the person does not own the security at the time the order is placed.

### **Placement through agent**

(2) Subsection (1) also applies to an agent who is placing an order on behalf of a person for the sale of a security that the person does not own if the agent knows that the person does not own it.

### **Obstruction**

**76.** (1) A person must not, and must not attempt to, destroy, withhold or conceal any information, record, or thing that is reasonably required for a hearing, opportunity to ~~make representations~~be heard, review or investigation under capital markets law if the person knows or reasonably ought to know that a hearing, opportunity to ~~make representations~~be heard, review or investigation is being, or is likely to be, conducted.

## Same

(2) A person must not obstruct a ~~member~~director, officer, employee or agent of the Authority or any member of the Tribunal in the performance of his or her powers, ~~functions and~~ or duties under this Act.

## No reprisal by employer

77. (1) An employer, or person acting on behalf of an employer or in a position of authority in respect of an employee of the employer, must not take a disciplinary measure against, demote, terminate, harass or otherwise disadvantage such an employee, or threaten to do so,

(a) because the employee provides information or expresses an intention to provide information to the employer, the Authority, a recognized self-regulatory organization or a law enforcement agency respecting an act of the employer or ~~an~~ a director, officer or employee of the employer ~~or, if the employer is not an individual, by one or more of its directors,~~ that the employee reasonably believes is contrary to capital markets law or a by-law, policy or other regulatory instrument of a recognized self-regulatory organization; or

(b) because the employee testifies or expresses an intention to testify in .

(i) any proceeding of the Authority or a recognized self-regulatory organization in relation to information referred to in paragraph (a), or

(ii) a judicial proceeding in relation to information referred to in paragraph (a).

## Same

(2) Any provision in an agreement, including a confidentiality agreement, between the employer and an employee is void insofar as it purports to preclude the employee from .

(a) providing information to the Authority, a recognized self-regulatory organization or a law enforcement agency; ~~or from~~

(b) initiating, testifying in or assisting in .

(i) any proceeding of the Authority or a recognized self-regulatory organization in relation to information referred to in paragraph (a), or

(ii) a judicial proceeding ~~based upon or relating to such~~ in relation to information referred to in paragraph (a).



## **Breach of trust**

**78.** If a person is required under capital markets law to hold another person's assets in trust or separate and apart from the person's own assets, the person must not convert the other person's assets or any part of them to a use that is not authorized.

## **Duty to comply with decision**

**79.** A person must comply with a decision of the Authority, the Chief Regulator or the Tribunal.

## **Duty to comply with undertaking**

**80.** A person who gives a written undertaking to the Authority, the Chief Regulator or the Tribunal must comply with the undertaking.

## **False or misleading statements to the Chief Regulator, etc.**

**81.** (1) A person must not

- (a) make a statement in evidence or provide information under capital markets law to the Chief Regulator or any person designated or authorized under capital markets law that, in a material respect and at the time and in the circumstances in which the statement is made or the information is provided, is false or misleading, or omits facts that are necessary to prevent it from being misleading, or
- (b) make a statement or provide information in any record required to be filed, provided, delivered or sent under capital markets law that, in a material respect and at the time and in the circumstances in which the statement is made or the information is provided, is false or misleading, or omits facts that are necessary to prevent it from being misleading.

## **Exception**

(2) A person does not contravene subsection (1) if the person did not know, and in the exercise of reasonable diligence would not have known, that the statement made or the information provided was false or misleading or that it omitted facts that are necessary to prevent it from being misleading in the circumstances in which it was made or provided.

## **Onus**

(3) In any proceeding, the onus of proving that subsection (2) applies is on the person seeking to rely on that subsection.

## **Contravention by directors, officers, etc.**

**82.** (1) If a person, other than an individual, contravenes capital markets law, any of the person's directors, officers, employees or agents who authorized, permitted or acquiesced in the contravention have also contravened capital markets law.

## **Contravention by investment fund manager**

(2) If an investment fund contravenes capital markets law, the investment fund manager has also contravened capital markets law.

## **Contravention re: actions of employees, agents**

**83.** A person contravenes capital markets law if the person's employee acting within the scope of his or her employment, or the person's agent acting within the scope of the agent's authority, contravenes capital markets law, unless the person establishes that

- (a) the contravention was committed without the person's knowledge or consent; and
- (b) the person exercised due diligence to prevent the contravention.

## **Aiding and abetting, counselling**

**84.** A person must not do or omit to do anything for the purpose of aiding, abetting or counselling a contravention of capital markets law.

## **Conspiracy**

**85.** A person must not conspire with any other person to contravene capital markets law.

# **PART 10**

## **ORDERS, REVIEWS AND APPEALS**

## **Cease-trade order — extraordinary circumstances**

**86.** (1) For the purposes of this section, each of the following circumstances constitutes extraordinary circumstances:

- (a) a major market disturbance characterized by or constituting sudden fluctuations of ~~securities prices that~~the market price or value of securities, derivatives or underlying interests of derivatives if the fluctuations threaten fair or orderly capital markets;
- (b) a major market disturbance characterized by or constituting a substantial disruption in the system for clearance and settlement of transactions;
- (c) a major disruption in the functioning of capital markets or of a significant segment of the markets, including a major disruption in the availability of capital to a market participant;
- (d) a major disruption in the transmission, execution or processing of ~~securities~~ transactions in securities, derivatives or underlying interests of derivatives; ~~and~~
- (e) a substantial threat of such a major market disturbance or major disruption.

## Order

(2) The Authority may, after consultation with the Chief Regulator, make an order under this subsection without notice to cease trading in a security or derivative, or to cease all trading on a recognized exchange or otherwise, if,

- (a) in the opinion of the Authority, there are extraordinary circumstances requiring immediate action to be taken in the public interest; and
- (b) in the opinion of the Authority, the order is necessary to maintain or restore fair and orderly capital markets, to ensure prompt, accurate and safe clearance and settlement of ~~securities~~ transactions in securities, derivatives or underlying interests of derivatives or to assist in doing so in another jurisdiction.

## Duration

(3) ~~The~~An order under subsection (2) expires no later than 15 days after the day on which it is made.

## Notice to the Council of Ministers

(4) As soon as ~~feasible~~practicable after the Authority is of the opinion that there are extraordinary circumstances requiring immediate action to be taken in the public interest, the Authority must notify the Council of Ministers about the nature of the extraordinary

circumstances and as soon as ~~feasible~~practicable after the Authority makes an order under subsection (2), the Authority must provide the Council of Ministers with the order, its purpose and the nature of the extraordinary circumstances.

### **Public notice**

~~—(5) The Authority must promptly issue a news release describing the details of the order and must publish the order.~~

### **Opportunity to make representations**

~~—(6) As soon as practicable after making the order, the Authority must give an opportunity to make representations to a person who is directly affected by the order.~~

### **Revocation or variation of order**

~~—(7) The Authority may make an order revoking or varying the order, or exempting a person or class of persons from the order, but cannot vary it to provide for an expiry after the period specified in subsection (3) or (8).~~

### **Extension of order**

(8) The Authority may, with notice to the Council of Ministers, ~~extend the term of the~~make an order ~~made~~extending an order under ~~this section~~subsection (2) for up to 15 days, and ~~the order~~ may ~~be extended~~do so more than once.

### **Revocation or variation of order**

—(7) The Authority may make an order revoking or varying an order under this section, or exempting a person or class of persons from the order, but cannot vary it to provide for an expiry after the period specified in subsection (3) or (8).

### **Opportunity to be heard**

—(6) As soon as practicable after making an order under this section, the Authority must give a person who is directly affected by the order an opportunity to be heard.

### **Public notice**

—(5) The Authority must promptly issue a news release describing the details of any order made under this section and must publish the order.

## Cease-trade order — market fluctuations

### Securities

87. (1) On application by the Chief Regulator, the Tribunal may, without giving an opportunity to ~~make representations~~be heard, order that all trading in a security cease, if the Tribunal considers it to be in the public interest and

- (a) considers that there are unexplained and unusual fluctuations in the volume of trading in the security or in its market price;
- (b) becomes aware of information, other than information filed under capital markets law, that if generally disclosed may cause or is likely to cause unusual fluctuations in the volume of trading in the security or in its market price;
- (c) considers that there may have been a material change in the business or operations of the issuer of the security's ~~issuer~~ that, if generally disclosed, could significantly affect the security's market price; or
- (d) considers that circumstances exist or are about to occur that could result in other than orderly trading of the security.

### Derivatives

(2) On application by the Chief Regulator, the Tribunal may, without giving an opportunity to ~~make representations~~be heard, order that all trading in a derivative cease, if the Tribunal considers it to be in the public interest and

- (a) considers that there are unexplained and unusual fluctuations ~~either~~ in the volume of trading or in the market price or value of the derivative or the underlying interest of the derivative;
- (b) becomes aware of information, other than information filed under capital markets law, that if generally disclosed may cause or is likely to cause unusual fluctuations in the volume of trading in the derivative, ~~in its~~ or the underlying interest of the derivative or in the market price or ~~in its~~ value of the derivative or the underlying interest of the derivative;

(b.1) in the case of a derivative that is a related financial instrument, considers that there may have been a material change in the business or operations of the issuer of the security that, if generally disclosed, could significantly affect the market price of the security; or

(c) considers that circumstances exist or are about to exist that could result in other than orderly trading of the derivative.

### **Notice to issuer**

~~—(3) Written notice of an order made under subsection (1) must be sent immediately to the issuer of the security.~~

### **Notice to market place**

~~—(4) If the security or derivative is listed or posted for trading on a market place, written notice of the order under this section must be sent immediately to the market place.~~

### **Duration**

(5) An order under ~~this section~~subsection (1) or (2) expires no later than 15 days after the day on which it is made.

### **Extension of order**

(6) If the Tribunal considers it in the public interest, it may, on application by the Chief Regulator ~~and after giving the issuer whose securities are affected by an order made under this section an opportunity to make representations, extend the order.~~ make an order extending an order under subsection (1) or (2) but must not make such an order.

(a) in the case of an order affecting a security, without giving the issuer of the security an opportunity to be heard; and

(b) in the case of an order affecting a derivative, without giving a person directly affected by the order an opportunity to be heard.

### **Notice to issuer, securities**

(3) The Chief Regulator must immediately send notice of an order under subsection (1) or paragraph 6 (a), and a notice of any variation or revocation of the order to the issuer of the security.

### Public notice, derivatives

(3.1) In the case of an order made under subsection (2) or paragraph 6 (b), the Chief Regulator must either

- (a) send notice of the order and of any variation or revocation of the order to a person directly affected by the order; or
- (b) publish notice of the order and of any variation or revocation of the order.

### Notice to market place

(4) If an order under this section affects a security or derivative that is listed or posted for trading on a market place, the Chief Regulator must immediately send notice of the order, and a notice of any variation or revocation of the order, to the market place.

### **Cease-trade order — non-compliance**

#### **Securities**

**88.** (1) The Chief Regulator may, without giving an opportunity to ~~make representations~~be heard, order that a person, a class of persons or all persons cease trading in or acquiring a security or class of securities if the issuer of the security or the person in respect of whom the order is made

- (a) fails to file a record required to be filed under capital markets law; or
- (b) files a record that is not completed as required under capital markets law.

#### **Derivatives**

(2) The Chief Regulator may, without giving an opportunity to ~~make representations~~be heard, order that a person, a class of persons or all persons cease trading in a derivative or a class of derivatives if a person required to file a record under capital markets law in respect of the derivative or an underlying interest of the derivative

- (a) fails to file a record required to be filed; or
- (b) files a record that is not completed as required under capital markets law.

## Revocation of order

(3) The Chief Regulator must revoke an order made under subsection (1) or (2) as soon as practicable after

- (a) all records required to be filed under capital markets law, whether or not mentioned in the order, have been filed; and
- (b) all records, whether or not mentioned in the order, have been, in the opinion of the Chief Regulator, completed as required under capital markets law.

## Order to be sent

(4) The Chief Regulator must, as soon as is practicable, send notice of an order under ~~this section~~ subsection (1) or (2), and a notice of any variation or revocation of ~~it~~ the order, to each person named in the order.

## Orders of Tribunal — general

**89.** (1) If the Tribunal considers that it is in the public interest to do so, the Tribunal may make one or more of the following orders after a hearing:

- (a) that a person comply with capital markets law, with a decision as defined in subsection 13 (7), or with a regulatory instrument of a recognized entity;
- (b) that trading or acquisition cease in respect of any security or derivative specified in the order;
- (c) that a person or a class of persons cease trading in or acquiring all securities or all derivatives, the securities or the derivatives or the classes of securities or the classes of derivatives, specified in the order;
- (d) that the registration, recognition or designation of a person under this Act be terminated or be suspended or restricted for the period, if any, that is specified in the order, or that conditions, restrictions or requirements be imposed on the registration, recognition or designation;
- (e) ~~reprimanding~~ that a person is reprimanded;
- (f) that any or all of the exemptions under capital markets law do not apply to a person;



- (g) that a person resign from one or more positions that the person holds as a director or officer of an issuer, registrant, recognized entity or designated entity;
- (h) that a person is prohibited from becoming or acting as a director or officer of an issuer, registrant, recognized entity or designated entity;
- (i) that a person is prohibited from becoming or acting as a registrant or promoter;
- (j) that a person is prohibited from engaging in investor relations activities;
- (k) that a person is prohibited from advising in connection with activities in the securities or derivatives market;
- (l) that a person is prohibited from acting in a management or consultative capacity in connection with activities in the securities or derivatives market;
- (m) that a person, if the person is a market participant, submit to an audit or to a review of its practices and procedures;
- (n) that a person, if the person is a market participant, make changes to its practices and procedures;
- (o) that a person is prohibited from disseminating to the public, or authorizing the dissemination to the public of, any information or record that is described in the order;
- (p) that a person disseminate to the public, by the method that may be described in the order, the information or record relating to the affairs of a registrant or issuer that the Tribunal considers must be disseminated;
- (q) that a person amend, in the manner specified in the order, any information or record disseminated to the public as described in the order;
- (r) that a person is prohibited from voting or exercising any other right attaching to a security at a meeting specified in the order.

### Order on consent

(2) The Chief Regulator may make any order described in subsection (1) without a hearing if he or she has the consent of the person to whom the order is directed.

### Orders based on findings by another authority

(3) The Tribunal may, after a hearing, make an order under subsection (1) in respect of a person if the person

- (a) has been convicted in Canada or elsewhere of an offence
  - (i) arising from conduct related to securities or derivatives, or
  - (ii) under legislation respecting securities or derivatives;
- (b) has been found by a court in Canada or elsewhere to have contravened legislation respecting securities or derivatives;
- (c) is subject to an order made by a capital markets or financial regulatory authority ~~within~~in Canada or ~~in another jurisdiction~~elsewhere imposing sanctions or conditions on the person; or
- (d) has agreed with a capital markets or financial regulatory authority ~~within~~in Canada or ~~in another jurisdiction~~elsewhere to be subject to sanctions or conditions.

### Order without delay

(4) The Chief Regulator may make an order described in subsection (1), other than an order described in paragraph (1) (e), (g), (n), (p) or (q), without giving an opportunity to ~~make representations~~be heard, if the Chief Regulator considers that a delay in the making of an order under subsection (1) could be prejudicial to the public interest.

### Duration

(5) An order under subsection (4) expires no later than 15 days after the day on which it is made.

### Extension by the Tribunal

(6) If the Tribunal considers it in the public interest, it may, on application by the Chief Regulator and after a hearing, ~~extend~~make an order extending an order under subsection (4) ~~for such period as the Tribunal determines is in the public interest.~~

### Notice

(7) The Chief Regulator must ~~give~~send notice of an order made under subsection (4) to every person directly affected by the order.

### Order to pay administrative monetary penalty, etc.

**90.** (1) The Tribunal may order a person to pay one or both of the following amounts to the Authority if the Tribunal determines, after a hearing, that the person has contravened capital markets law and if the Tribunal considers the order to be in the public interest:

- (a) an administrative monetary penalty of not more than \$1 million for each contravention;
- (b) any amounts obtained, or payments or losses avoided, as a result of the contravention.

### Compensation or restitution

(2) If the Tribunal determines, after a hearing, that a person has contravened capital markets law and if the Tribunal considers the order to be in the public interest, the Tribunal may order that the person ~~to~~ compensate or make restitution to ~~one or more persons~~another person.

### Payment

(3) The Tribunal may order that a person make a payment under subsection (2) either directly, or through an investor compensation fund that is designated under section 17, or by paying an amount of money to the Authority or another person who is specified for the purpose of allocating the money.

### Exception

(3.1) A person is not entitled to participate in a proceeding in which an order may be made under subsection (1) or (2) solely on the basis that the person may be entitled to receive any amount paid under the order.

## **Order on consent**

### Settlement order

(4) The Chief Regulator may order that a person make a payment, ~~if he or she~~ in connection with the settlement of a proceeding or a potential proceeding under capital markets law, if the Chief Regulator has the consent of the person to whom the order is directed.

### Same

(5) For greater certainty, the limits specified in paragraphs (1) (a) and (b) do not apply to an order that may be made by the Chief Regulator under subsection (4).

## **Freeze order**

**91.** (1) On application by the Chief Regulator, if the Tribunal considers it expedient for the administration or enforcement of capital markets law or the regulation of the capital markets or expedient to assist in the administration or enforcement of securities or derivatives law or the regulation of the capital markets in another jurisdiction, the Tribunal may make an order, without notice, that a person do one or more of the following:

- (a) retain any funds, securities, derivatives or other property of another person that the person has on deposit, under the person's control or for safekeeping and hold those funds, securities, derivatives or property;
- (b) refrain from withdrawing any funds, securities, derivatives or other property from another person who has them on deposit, under control or for safekeeping;
- (c) maintain securities, derivatives or other property, and refrain from disposing of, transferring, dissipating or otherwise dealing with or diminishing the value of the funds, securities, derivatives or other property;
- (d) if the person has control of another person's derivatives, liquidate or otherwise dispose of those derivatives and retain the proceeds of the liquidation or other disposition.

## **Non-application**

(2) Unless it states otherwise, the order does not apply to funds, securities, derivatives or other property in a recognized clearing agency or to securities that are in the process of being transferred by a transfer agent.

## Registration of order

(3) The Tribunal may direct that the order be sent to an official in charge of a land or mining register and be registered or recorded against the lands or claims specified in it.

## Effect of registration

(4) Upon being registered or recorded, the order has the same effect as a certificate of pending litigation.

## Notice of order

(5) The Chief Regulator must, as soon as practicable, send ~~a copy~~ notice of the order to each of the persons named in it.

## Duration

(6) ~~The~~ An order under subsection (1) expires no later than 15 days after the day on which it is made.

## Extension of order

(7) ~~On application by the Chief Regulator, the Tribunal may extend the order if, after a hearing, the Tribunal is satisfied that the order would not be prejudicial to the public interest.~~ If the Tribunal considers it not to be prejudicial to the public interest, it may, on application by the Chief Regulator and after a hearing, make an order extending the order under subsection (1).

## Court orders — general

### Declaration of non-compliance

**92.** (1) In addition to any other powers he or she has, the Chief Regulator may apply to ~~a~~ the superior court for a declaration that a person has not complied with or is not complying with capital markets law and for an order under subsection (3) or (4).

### Same

(2) The Chief Regulator is not required to seek an order under section 89 before making an application under subsection (1).

## Orders

(3) If the court makes a declaration that a person has not complied with or is not complying with capital markets law, the court may make any order that it considers appropriate with respect

to the person who is the subject of the declaration, despite any order made under section 89 or 90 and despite the imposition of any penalty under section 112.

### **Same**

(4) Without limiting the generality of subsection (3), the court may make one or more of the following orders:

- (a) an order that the person comply with capital markets law;
- (b) an order that the person purchase securities of a security holder;
- (c) an order rescinding a transaction relating to trading in securities;
- (d) an order requiring the issuance, cancellation, purchase, exchange or disposition of a security;
- (e) an order prohibiting voting or the exercise of any other right attaching to a security;
- (f) if the person who is the subject of the declaration is not an individual, an order appointing officers and directors in place of or in addition to all or any of the person's directors and officers;
- (g) an order prohibiting the person from acting as an officer or director or prohibiting the person from acting as a promoter, either permanently or for a period specified in the order;
- (h) an order directing the person to submit to a review by the Chief Regulator of the person's practices and procedures and to institute changes as directed by the Chief Regulator;
- (i) an order requiring the person to produce to the court, or to ~~any other~~another person named in the order, financial statements in the form required under capital markets law, or an accounting in any other form that the court determines;
- (j) an order directing rectification of the person's registers or other records;

- (k) an order requiring the person to rectify any past or current non-compliance with capital markets law to the extent that rectification is practicable;
- (l) an order directing that the person repay to a security holder any part of the money paid by the security holder for a security;
- (m) an order requiring the person to compensate or make restitution to ~~any other~~another person;
- (n) an order requiring the person to pay general or punitive damages to ~~any other~~another person;
- (o) an order requiring the person to pay to the Authority any amounts obtained or payment or losses avoided as a result of the non-compliance;
- (p) an order directing that the information or a record described in the order,
  - (i) be provided by the person to another person,
  - (ii) not be provided by the person to another person, or
  - (iii) be amended by the person to the extent that amendment is practicable.

### **Interim orders**

(5) On an application for a declaration under subsection (1), the court may make any interim order that it considers appropriate.

### **Court appointment of receiver, etc.**

**93.** (1) On the application of the Chief Regulator, ~~a~~the superior court may make an order appointing a receiver, receiver-manager, trustee or liquidator of all or any part of a person's property, if the court is satisfied that the appointment is

- (a) in the best interests of the person's creditors, the person's security holders or subscribers or persons whose property is in the person's possession or under the person's control; or

- (b) expedient for the administration or enforcement of capital markets law or the regulation of capital markets or expedient for assisting in the administration or enforcement of securities or derivatives law or the regulation of capital markets of another jurisdiction.

## **Evidence**

(2) On application under subsection (1), the court may admit any hearsay evidence that the court considers reliable and any oral or written statement that the court considers relevant.

## **Application without notice**

(3) The court may make the order without notice to the person, in which case the period of appointment must not be for more than 15 days.

## **Application to continue order**

(4) If the order is made without notice, the Chief Regulator may apply to the court within 15 days after the day on which the order is granted to continue the order or for another order that the court considers appropriate.

## **Powers of appointee**

(5) The person appointed by the court is the receiver, receiver-manager, trustee or liquidator, as the case may be, of all or any part of the property belonging to the person or held by the person on behalf of or in trust for anyone else.

## **Same**

(6) If so directed by the court, the appointee has the authority to wind up or manage the person's business and affairs and has all the powers necessary or incidental to that authority.

## **Directors' powers**

(7) Until the appointee is discharged by the court, the person's directors cannot exercise the powers that the appointee is authorized to exercise.

## **Fees and expenses**

(8) The appointee's fees and expenses in relation to the exercise of powers under the appointment are in the court's discretion.



## Variation or revocation of order

(9) An order made under this section may be varied or revoked by the court on application.

## Exemption orders

**94.** If the Authority considers that it would not be prejudicial to the public interest to do so, the Authority may, on application by an interested person or on its own initiative, make an order exempting the applicant or a person, trade, intended trade, distribution, security or derivative or a class of persons, trades, intended trades, distributions, securities or derivatives from any provision of Parts 2 to 9 or the regulations ~~related to those Parts~~.

## Designation orders

### Removing status

**95.** (1) If the Authority considers that it would not be prejudicial to the public interest to do so, the Authority may, on application or on its own initiative, make an order designating

- (a) an issuer, or a class of issuers, not to be a reporting issuer;
- (b) an issuer, or a class of issuers, not to be a mutual fund;
- (c) an issuer, or a class of issuers, not to be a non-redeemable investment fund;
- (d) a person, or a class of persons, not to be an insider;
- (e) a person, or a class of persons, not to be a market participant;
- (f) a trade, or a class of trades, not to be a distribution;
- (g) a contract or instrument, or a class of contracts or instruments, not to be a derivative;
- (h) a security, or class of securities, not to be a security;
- (i) a derivative, or class of derivatives, not to be a designated derivative; or
- (j) a person, or class of persons, not to be a market place.

**Designation orders — ~~according~~ According status**

(2) If the Authority considers that it would be in the public interest to do so, the Authority may, on application or on its own initiative, make an order designating

- (a) an issuer to be a reporting issuer;
- (b) an issuer to be a mutual fund;
- (c) an issuer to be a non-redeemable investment fund;
- (d) a person to be an insider;
- (e) a person to be a market participant;
- (f) a trade to be a distribution;
- (g) a derivative, or class of derivatives, to be a security;
- (h) a security, or class of securities, to be a derivative;
- (i) a derivative, or class of derivatives, to be a designated derivative; or
- (j) a person to be a market place.

**Restriction**

(3) The Authority must not make an order under ~~paragraph (2) (a), (b), (c), (d), (e) or~~ subsection (1) or (2) without giving a person directly affected by the order an opportunity to be heard.

**Recognition or designation for purposes of a regulation**

**95.1** (1) If the Authority considers that it would be in the public interest to do so, the Authority may, on application or on its own initiative, make an order that

- (a) an exchange be recognized for the purposes of a regulation or any provisions of a regulation; or

- (b) a market place be designated for the purposes of a regulation or any provision of a regulation.

### **Restriction**

(2) The Authority must not make an order under subsection (1) without giving the person named in the order an opportunity to ~~make representations~~be heard.

### **Duration of class orders**

**96.** (1) If an order made under section 94 or 95 applies to a class of persons, trades, intended trades, distributions, securities or derivatives,

- (a) the order has no effect 18 months after the day on which it comes into force unless extended under paragraph (b); and
- (b) the Authority may make a regulation extending the order for a further period of up to 18 months in accordance with subsection 205 (4) and sections 207 to 210.

### **Exception**

(2) Subsection (1) does not apply to an order made under section 94 or 95 if,

- (a) the order applies to a class of persons, trades, intended trades, distributions, securities or derivatives that are directly connected to an applicant; and
- (b) the application of the order to the class referred to in paragraph (a) is reasonably necessary to achieve the purposes of the order.

### **Public notice**

(3) On or before the date that an order described in subsection (1) is effective, the Authority must publish a ~~statement~~notice that includes a description of the order, the reasons for it and the day on which it ceases to have effect.

### **Order to extend a period**

**97.** If the Authority considers that it would not be prejudicial to the public interest to do so, the Authority may, on application or on its own initiative, make an order extending ~~a~~any period in Parts 2 to 9 or the regulations.

### **Order re: when distribution concluded**

**98.** The Chief Regulator may, after giving the issuer an opportunity to ~~make representations~~be heard, make an order determining whether a distribution has been concluded or is still in progress.

### **Order re: filing of records, etc.**

**98.1** The Chief Regulator may make an order exempting a person from any requirement referred to in section 182 or 183 with respect to the filing of records.

### **Review of Chief Regulator's decision**

**99.** (1) A person who is directly affected by a decision of the Chief Regulator, other than an order made under section 98, may apply to the Tribunal for a hearing and review of the decision.

### **Time limit**

(2) Notice of an application for a hearing and review must be filed with the Tribunal within 30 days after the later of the day on which the decision is made or the day on which the reasons for the final decision are issued, or within such longer period as the Tribunal may permit if such an extension is not prejudicial to the public interest.

### **Chief Regulator**

(3) The Chief Regulator is a party to a hearing and review under this section.

### **Disposition on review**

(4) The Tribunal may confirm a decision under review or make another decision that it considers appropriate.

### **Stay of decision**

(5) The Tribunal may grant a stay of a decision under review until the disposition of the review.

### **Appeal of Tribunal's decision**

**100.** (1) The Chief Regulator or a person directly affected by a final decision of the Tribunal or a decision made under subsection 91 (7) may appeal the decision to the appeal court within 30 days after the later of the day on which the decision is made or the day on which the reasons for the final decision are issued, or within such longer period as the court may permit.

### **Exception**

(2) A decision of the Tribunal that, ~~under the regulations,~~ is considered to have been made in another participating province or territory cannot be appealed under subsection (1).

### **Chief Regulator**

(3) The Chief Regulator is a party to an appeal under this section.

### **Stay of decision**

(4) The appeal court or the Tribunal may grant a stay of a decision until the disposition of the appeal.

### **Disposition of appeal**

(5) In an appeal under this section, the appeal court may confirm the decision under appeal or direct the Tribunal to make a decision or to perform an act that the Tribunal is authorized and empowered to make or perform.

### **New material**

(6) Despite a direction of the appeal court in a particular matter, the Tribunal may make a further decision on new material or if there is a significant change in the circumstances, and that decision is also subject to this section.

## **PART 11 ADMINISTRATION AND ENFORCEMENT**

### INTERPRETATION

#### Definitions

100.1 (1) In this Part,

#### “authorized investigator”

“authorized investigator” means a person who is authorized, or who is within a class of persons that are authorized, under subsection 104 (1) to investigate a matter under section 104.

**“designated reviewer”**

“designated reviewer” means a person who is designated, or who is within a class of persons that are designated, under subsection 103 (1) to exercise powers under section 103.

**Same**

(2) In sections 107 to 111,

**“judge”**

“judge” means a judge of a superior court of criminal jurisdiction, as defined in section 2 of the *Criminal Code* (Canada).

**“justice”**

“justice” has the same meaning as in section 2 of the *Criminal Code* (Canada).

GENERAL POWERS

**Complaints and dispute resolution**

**101.** The Authority may, in accordance with the regulations,

- (a) receive complaints concerning conduct that may contravene capital markets law; and
- (b) make inquiries, gather information and attempt to mediate or resolve complaints, as appropriate, concerning any matter that comes to its attention that may be in contravention of capital markets law.

**Order to provide information, etc.**

**102.** (1) The Chief Regulator may make an order under subsection (2) for 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.

**Same**

(2) The Chief Regulator may order that a market participant provide the ~~Authority~~Chief Regulator with any information, record or thing in the market participant’s possession or under its control that is specified or otherwise described in the order, in the form and within the time or at the intervals specified in the order.

## Verification

(3) The Chief Regulator may require verification by affidavit of any information, record or thing provided pursuant to the order.

## REVIEWS AND INVESTIGATIONS

### Review of market participant

#### Designation of reviewers

**103.** (1) The Chief Regulator may designate persons or classes of persons as reviewers to exercise powers referred to in this section for the purposes of the administration or enforcement of capital markets law or the regulation of the capital markets.

#### Review

(2) A ~~person~~ designated ~~under subsection (1) may, for that purpose,~~reviewer may review the business and conduct of a market participant.

#### Requirement to provide records

(3) A ~~person~~ designated ~~under subsection (1) to conduct~~reviewer conducting a review under subsection (2) may, for that purpose, require that a market participant provide the designated ~~person~~reviewer with any information, record or thing in the market participant's possession or under its control, and to do so in the form and within the time ~~and in or at~~ the ~~form~~intervals specified.

#### Authority to enter, etc.

(4) A ~~person~~ designated ~~under subsection (1)~~reviewer may, in conducting a review under subsection (2), enter the business premises of any market participant and

- (a) examine anything in the place;
- (b) use any means of communication in the place or cause it to be used;
- (c) use or cause to be used any electronic device or other system in the place in order to examine ~~data~~information contained in, or available to, the electronic device or system;
- (d) prepare a record, or cause one to be prepared, based on the ~~data~~information;

- (e) use, or cause to be used, any copying equipment at the place to make copies of any record; and
- (f) remove any record or thing from the place for examination or copying.

### **Business hours**

(5) ~~For greater certainty, a person~~A designated ~~under subsection (1)~~reviewer may enter the business premises only during business hours.

### **Authority to inquire**

(6) A ~~person~~ designated ~~under subsection (1)~~reviewer may make inquiries of any person under review or its employees, agents, officers, directors or control persons concerning business or conduct that reasonably relates to the review.

### **Fees**

(7) A market participant in respect of which a review is conducted under this section must pay the Authority such fees as may be prescribed.

### **Investigation — order authorizing exercise of powers**

**104.** (1) The Chief Regulator may, by order, authorize persons or classes of persons to investigate any matter ~~relating to,~~ as the Chief Regulator considers expedient, for the purpose of the administration or enforcement of capital markets law or the regulation of ~~the~~ capital markets; or ~~relating to~~ assist in the administration or enforcement of securities or derivatives law or in the regulation of the capital markets of another jurisdiction, ~~as the Chief Regulator considers expedient.~~

### **Same**

(2) The Chief Regulator must set out in the order under subsection (1) the matter that is the subject of the investigation.

### **Scope of investigation**

(3) For the purposes of ~~an~~the investigation ~~under this section~~, an authorized ~~person~~investigator may investigate and inquire into



- (a) the affairs of the person in respect of which the investigation is being made, including any trades, communications, negotiations, transactions, investigations, loans, borrowings or payments to, by, on behalf of, or in relation to or connected with the person and any property, assets or things owned, acquired or disposed of in whole or in part by the person or by any other person acting on behalf of or as agent for the person; and
- (b) the assets at any time held, the liabilities, debts, undertakings and obligations at any time existing, the financial or other conditions at any time prevailing in or in relation to or in connection with the person, and any relationship that may at any time exist or have existed between the person and any other person by reason of investments, commissions promised, secured or paid, interests held or acquired, the loaning or borrowing of money, securities or other property, the transfer, negotiation or holding of securities ~~or~~, derivatives or underlying interests of derivatives, interlocking directorates, common control, undue influence or control or any other relationship.

### **~~Summons and production~~**

#### **Power to compel, etc.**

(4) An authorized ~~person~~investigator may, for the purpose of the investigation, do one or more of the following:

#### (0.a) ~~compel any person to preserve information, records or things in the person's possession or under their control;~~

- (a) summon the attendance of any person;
- (b) compel any person to give evidence on oath or otherwise; and
- (c) compel any person to produce information, records or ~~other things or classes of information, records or things~~ in the person's possession or under ~~the person's~~their control, and to do so, if possible, in the form specified.

#### **Power of contempt**

(5) The failure or refusal of a person to preserve information, to attend, to give evidence or to produce information, records or ~~other things~~ under subsection (4) makes that person, on application to the superior court by an authorized ~~person~~investigator, liable to be committed for contempt by that court in the same manner as if that person were in breach of an order or judgment of that court.

### **Representation by ~~counsel~~a lawyer**

- (6) A person giving evidence under subsection (4) may be represented by ~~counsel~~a lawyer.

### **Authority to inspect business premises**

(7) An authorized ~~person~~investigator may, on production of the order under subsection (1), ~~may~~ enter the business premises of any person named in the order during business hours and inspect any information, records or ~~other~~ things that are used in the business of that person and that relate to the matters specified in the order.

### **Authority to search, etc.**

(8) Subject to sections 106 and 107, on being satisfied by information on oath in writing that there are reasonable grounds to believe that a place contains anything that is related to the investigation, the Chief Regulator may make an order authorizing an authorized ~~person~~investigator to enter the place and

- (a) examine anything in the place;
- (b) use any means of communication in the place or cause it to be used;
- (c) use or cause to be used any electronic device or other system in the place in order to examine ~~data~~information contained in, or available to, the electronic device or system;
- (d) prepare a record, or cause one to be prepared, based on the ~~data~~information;
- (e) use, or cause to be used, any copying equipment at the place to make copies of any record; and
- (f) remove any record or thing from the place for examination or copying.

### **Permitted hours of entry**

(9) ~~For greater certainty, an authorized person may~~The authority conferred under subsection (8) to enter ~~the~~a place may be exercised only between the hours of 6 am and 9 pm.

## Production of authorization

(10) An authorized ~~person~~investigator must, if so requested, produce the authorization order.

## Prohibition on communication

(11) The Chief Regulator may make an order prohibiting a person from communicating, for a specified period, some or all of the information related to the investigation to another person except the person's ~~counsel~~lawyer.

## Duty to assist

~~105. The person who is subject to a review under section 103 or an investigation under section 104, the person's employees, agents, directors, officers, control persons and the~~ owner or person who is in charge of a place that is entered under subsection 103 (4), 104 (7) or 104 (8), and every person who is in the place, must give all assistance that is reasonably required to enable the designated ~~person~~reviewer to conduct the review or the authorized ~~person~~investigator to conduct the investigation, as the case may be.

## ~~Warrant for~~Entry to dwelling-house

~~106.~~ If the place referred to in subsection 103 (4) or 104 (8) is a dwelling-house, the designated reviewer or authorized ~~person~~investigator must not enter it without the occupant's consent except under the authority of a warrant issued under section 107.

## ~~Authority to issue warrant~~

~~107. On an application without notice, a judge or justice, as defined in section 2 of the Criminal Code (Canada), may issue a warrant authorizing a designated or authorized person who is named in it to enter a place or dwelling house, subject to any conditions specified in the warrant, if the judge or justice is satisfied by information on oath in writing that there are reasonable and probable grounds to believe that~~

- ~~— (a) the place or dwelling house is a place referred to in subsection 103 (4) or 104 (8); and~~
- ~~— (b) entry to the place or dwelling house is necessary for the purpose of conducting a review under section 103 or an investigation under section 104.~~

## Entry on private property

~~108.~~ (1) A designated reviewer or authorized ~~person~~investigator may enter on and pass through private property for the purpose of gaining entry to a place referred to in subsection 103 (4), 104 (7) or 104 (8) and is not liable for doing so.

## Same

(2) For greater certainty, no person has a right to object to the entry on the property for the purpose of passing through it, and no warrant is required for the entry, unless the property is a dwelling-house.

## Same

(3) A person may, at the request of the designated reviewer or authorized ~~person's~~ request investigator, accompany ~~that person~~ him or her to assist him or her in gaining entry to a place referred to in subsection 103 (4), 104 (7) or 104 (8) and is not liable for doing so.

## WARRANTS AND ORDERS

### Warrant to enter a place or dwelling-house

107. On an application without notice, a judge or justice may issue a warrant authorizing a designated reviewer or authorized investigator who is named in it to enter a place or dwelling-house, subject to any conditions specified in the warrant, if the judge or justice is satisfied by information on oath in writing that there are reasonable grounds to believe that

(a) the place or dwelling-house is a place referred to in subsection 103 (4) or 104 (8); and

(b) entry to the place or dwelling-house is necessary for the purpose of conducting a review under section 103 or an investigation under section 104.

## Use of force

**109.** In executing a warrant issued under section 107 to enter a place or dwelling-house, a designated reviewer or authorized ~~person~~ investigator may use as much force as is reasonably necessary for that purpose.

### Order to preserve information

109.1 (1) On an application without notice by a peace officer or a person investigating an offence under capital markets law, a judge or justice may order that a person preserve information that is in their possession or under their control when they receive the order.

### Conditions for making order

(2) Before making the order, the judge or justice must be satisfied by information on oath in writing

(a) that there are reasonable grounds to suspect that

(i) an offence under capital markets law has been or will be committed,

(ii) the information that is to be produced will assist in the investigation of the offence, and

(iii) the person who is the subject of the order has possession or control of the information that is to be produced, and

(b) that a peace officer or a person investigating an offence under capital markets law intends to apply or has applied for a warrant or an order in connection with the investigation to obtain a document that contains the information.

### **Terms**

(3) The order may contain terms that the judge or justice considers appropriate, including terms with respect to the non-disclosure of the existence of the order.

### **Power to revoke or vary**

(4) On an application without notice by a peace officer or a person investigating an offence under capital markets law, the judge or justice who made the order, or a judge or justice of the same court, may vary or revoke the order. The peace officer or the person investigating an offence under capital markets law must, as soon as practicable, give notice of the revocation or variation to the person who is subject to the order.

### **Restriction**

(5) A person who is under investigation for an offence referred to in sub-paragraph (2) (a) (i) may not be made subject to an order.

### **Duration**

(6) Unless the order is revoked earlier, it expires 90 days after the day on which it is made.

### Order for production of names

**110.** (1) On an application without notice by a peace officer or a person investigating an offence under capital markets law, a judge or justice, ~~as defined in section 2 of the Criminal Code (Canada),~~ may order one or more of the following:

- (a) that a clearing agency, market place or self-regulatory organization produce a ~~document~~record, in the form specified in the order, containing the names of all dealers, other than those who are individuals, that acquired or traded a specified security or derivative during a specified period;
- (b) that a trade repository produce a ~~document~~record, in the form specified in the order, containing ~~the legal entity identifiers of~~information that would identify all persons that acquired or traded a specified security or derivative during a specified period; and
- (c) that a dealer, other than one who is an individual, produce a ~~document~~record, in the form specified in the order, containing the names of all persons on whose behalf the dealer acquired or traded a specified security or derivative during a specified period and the time and date at which the trade took place.

### Conditions for making order

(2) Before making the order, the judge or justice must be satisfied by information on oath in writing that there are reasonable grounds to suspect that

- (a) an offence under capital markets law has been or will be committed;
- (b) the information that is to be produced will assist in the investigation of the offence; and
- (c) the person who is the subject of the order has possession or control of the information that is to be produced.

### Terms

(3) The order may contain terms that the judge or justice considers appropriate, including terms with respect to the non-disclosure of the existence of the order.

### Power to revoke or vary

(4) On an application without notice by a peace officer or a person investigating an offence under capital markets law, the judge or justice who made the order, or a judge or justice of the

same court, may vary or revoke the order. The peace officer or the person investigating an offence under capital markets law must, as soon as ~~feasible~~practicable, give notice of the revocation or variation to the person who is subject to the order.

### Restriction

(5) A person who is under investigation for an offence referred to in paragraph (2) (a) may not be made subject to an order.

### **Order for production of information, etc.**

**111.** (1) On an application without notice by a peace officer or a person investigating an offence under capital markets law, a judge or justice, ~~as defined in section 2 of the Criminal Code (Canada),~~ may order a dealer that is not an individual, a party to a derivative that is not an individual or an issuer whose securities are publicly traded to do one or more of the following within a specified period and at a specified place:

- (a) produce to the peace officer or the ~~authorized person~~investigator a copy of a record certified by affidavit to be a true copy that is specified in the order;
- (b) prepare and produce to the peace officer or the ~~authorized person~~investigator a written statement setting out in detail the information that is required by the order; and
- (c) prepare and produce to the peace officer or the ~~authorized person~~investigator a record containing the information that is required by the order.

### **Conditions for making order**

(2) Before making the order, the judge or justice must be satisfied by information on oath in writing that there are reasonable grounds to believe that

- (a) an offence under capital markets law has been or will be committed;
- (b) the record or statement that is to be produced will assist in the investigation of the offence; and
- (c) the person who is the subject of the order has knowledge, possession or control of the information that is to be produced.

## Terms

(3) The order may contain terms that the judge or justice considers appropriate, including terms to protect a privileged communication between a lawyer and client, and with respect to the non-disclosure of the existence of the order.

## Power to revoke or vary

(4) On an application without notice by a peace officer or a person investigating an offence under capital markets law, made by information on oath in writing, the judge or justice who made the order, or a judge or justice of the same court, may vary or revoke the order. The peace officer or the person investigating an offence under capital markets law must, as soon as ~~feasible~~practicable, give notice of the revocation or variation to the person who is subject to the order.

## Restriction

(5) A person who is under investigation for an offence referred to in paragraph (2) (a) may not be made subject to an order.

## OFFENCES AND PENALTIES

### Offences and penalties

**112.** (1) Every person who contravenes capital markets law is guilty of an offence and, upon conviction, is liable to a fine of not more than \$5 million or to imprisonment for a term of not more than five years less a day, or to both.

### Exception

(2) Despite subsection (1), a contravention of a prescribed provision of a regulation is not an offence.

### Order to pay

(3) If the court finds that a person has committed an offence under subsection (1), the court may, in addition to any penalty, make one or both of the following orders:

- (a) an order that the person compensate or make restitution to another person; or
- (b) an order that the person pay to the Authority any amount obtained, or the amount of any payment or loss avoided, ~~directly or indirectly~~, as a result of the offence.



### **Enforcement of order to pay**

(4) The Authority or a person who is entitled to payment under an order described in subsection (3) may file the order with the court and, upon being filed, the order is enforceable as if it were an order of the court.

### **Limitation**

(5) A person is not entitled to participate in a proceeding in which an order may be made under this section solely on the basis that the person has a right of action against a defendant to the proceeding or that the person may be entitled to receive an amount under the order.

### **Liability of directors, officers, employees, agents**

**113.** (1) If a person other than an individual commits an offence under capital markets law, any of the person's directors, officers, employees or agents who authorized, permitted or acquiesced in the commission of the offence is a party to and guilty of the offence and upon conviction is liable to the penalties provided for the offence, whether or not the person has been prosecuted or convicted.

### **Liability of investment fund managers**

(2) If an investment fund commits an offence under capital markets law, the investment fund manager is a party to and guilty of the offence and upon conviction is liable to the penalties provided for the offence, whether or not the investment fund has been prosecuted or convicted.

### **Offences re: actions of employees, agents**

**114.** In a prosecution for an offence under capital markets law, it is sufficient proof of the offence to establish that it was committed by the accused's employee acting within the scope of his or her employment, or the accused's agent acting within the scope of the agent's authority, whether or not the employee or agent is identified or prosecuted for the offence, unless the accused establishes that

- (a) the offence was committed without the accused's knowledge or consent; and
- (b) the accused exercised due diligence to prevent its commission.

### **Increased fines for specified contraventions**

**115.** (1) Despite the fine provided for in subsection 112 (1), a person convicted of an offence for a contravention of any of sections 62 to 67, or for a contravention of section 84 in relation to a

contravention of any of sections 62 to 67, is liable to a fine that is not less than “A” and not more than “B” where

“A” is the amount of the profit made or loss avoided by the person as a result of the contravention, and

“B” is the greater of \$5 million and an amount equal to triple the profit made or the loss avoided by all persons as a result of the contravention.

### **Exception**

(2) If it is not possible to determine the profit made or the loss avoided, subsection (1) does not apply and the fine referred to in subsection 112 (1) applies.

### **Calculating profit made or loss avoided**

(3) For the purposes of subsection (1), the amount of the profit made or the loss avoided with respect to a contravention of any of sections 62 to 67 must be calculated in accordance with the regulations.

### **Exception**

(4) Despite subsection (3), the court may vary or disregard the prescribed method of calculation if the court considers that it would be appropriate to do so.

## **PART 12 CIVIL LIABILITY**

### **~~Definition of “expert”~~**

### **Definitions**

**116.** In this Part

### **“conversion”**

“conversion” means the exercise of a right to acquire an underlying security, or the automatic acquisition of an underlying security, under the terms of a prescribed converting security or under the terms of a contract related to a prescribed converting security.

**“expert”**

“expert” means a person whose profession gives authority to a statement made in a professional capacity by the person, including an accountant, actuary, appraiser, auditor, engineer, financial analyst, geologist or lawyer but does not include a credit rating organization designated under section 17.

**“underlying security”**

“underlying security” means a security that is or may be acquired under the terms of a prescribed converting security or under the terms of a contract related to a prescribed converting security.

**Actions relating to prospectus or prescribed ~~disclosure~~offering document**

**117.** (1) If, during the period of distribution, a person purchases securities offered by a prospectus or a prescribed ~~disclosure~~offering document ~~required by paragraph 27 (1) (b)~~ that contains a misrepresentation at the time of the purchase, that person has, without regard to whether he, she or it relied on the misrepresentation, either a right of ~~action~~,

- (a) action for damages against,
  - (i) the issuer or selling security holder on whose behalf the distribution is made,
  - (ii) every underwriter of the securities that is in a contractual relationship in respect of the securities with a person referred to in subparagraph (i),
  - (iii) every person who, at the time the prospectus or the prescribed ~~disclosure~~offering document was filed, was a director of the issuer,
  - (iv) every person whose consent to disclosure of information in the prospectus or the prescribed ~~disclosure~~offering document has been filed but only with respect to reports, statements or opinions that have been made by the person, and
  - (v) every person who signed the prospectus or the prescribed ~~disclosure~~offering document; or
- (b) ~~for~~ rescission against any of the following persons who sold the securities to the purchaser:

- (i) the issuer or selling security holder on whose behalf the distribution is made, ~~and~~or
- (ii) the underwriter of the securities.

### **Depreciation resulting from the misrepresentation**

(2) In an action for damages under this section, the defendant is not liable for all or any part of the damages that the defendant proves do not represent the depreciation in value of the securities resulting from the misrepresentation.

### **Liability of underwriter**

(3) In an action under this section, an underwriter is not liable for more than the total offering price represented by the portion of the distribution underwritten by the underwriter.

### **Amount recoverable**

(4) The amount recoverable in an action under this section must not exceed the price at which the securities were offered under the prospectus or the prescribed ~~disclosure~~offering document.

### **Joint and several liability**

(5) Subject to subsections (3) and (6), each person liable in an action under this section is jointly and severally liable with every other person so liable.

### **Contributions**

(6) A person who is liable to pay an amount may recover a contribution from another person who is jointly and severally liable for that amount unless, in all circumstances of the case, the court is satisfied that it would not be just and equitable.

### **Actions relating to ~~special warrants~~prescribed converting securities**

#### **Right of rescission**

**118.** (1) If, a prospectus or prescribed offering document is filed for the purpose of the distribution of an underlying security related to the conversion of a prescribed converting security, and if, at any time during the period of distribution, ~~a person exercises special warrants, as defined in the regulations, in order to purchase securities offered by a~~ of the underlying security, the prospectus or ~~a~~ prescribed ~~disclosure~~offering document ~~required by paragraph 27 (1) (b) that~~ contains a misrepresentation ~~at the time of the purchase, that person,~~ a person that acquired an

underlying security as a result of the conversion has, without regard to whether he, she or it relied on the misrepresentation, a right of ~~action for~~ rescission against any of the following ~~persons~~:

(a) the issuer ~~or~~ of the prescribed converting security or the underlying security;

(a.1) any selling security holder who sold the prescribed converting security and on whose behalf the distribution under the prospectus or prescribed offering document is made; or

(b) the underwriter of the ~~special warrants~~ prescribed converting security or the ~~securities~~ underlying security.

### Rescission

(2) ~~The action is for rescission of the exercise of the special warrants.~~ For the purposes of subsection (1), the right of rescission includes the right to rescind the transaction under which the person acquired the prescribed converting security.

### Amount recoverable

(3) The amount recoverable in an action under this section is the amount paid to the issuer or underwriter for the ~~special warrants~~ prescribed converting security.

### Joint and several liability

(4) Subject to subsection (5), each person liable in an action under this section is jointly and severally liable with every other person so liable.

### Contributions

(5) A person who is liable to pay an amount may recover a contribution from another person who is jointly and severally liable for that amount unless, in all circumstances of the case, the court is satisfied that it would not be just and equitable.

### No liability — prospectus or prescribed ~~disclosure~~ offering document

**119.** (1) A person is not liable in an action under section 117 or 118 if the person proves that the purchaser purchased the ~~securities or exercised the special warrants~~ security or converted the prescribed converting security with knowledge of the misrepresentation.

## No liability — other circumstances

(2) A person, other than the issuer or selling security holder, is not liable in an action under section 117 or 118 if the person proves that

- (a) the prospectus or the prescribed ~~disclosure~~offering document ~~required by paragraph 27 (1) (b)~~ was filed without the person's knowledge or consent and that, on becoming aware of its filing, the person advised the Chief Regulator and gave reasonable general notice that it was so filed;
- (b) after the issuance of a receipt for the prospectus or the prescribed ~~disclosure~~offering document and before the purchase of the ~~securities~~security or ~~exercise~~conversion of the ~~special warrants~~prescribed converting security, on becoming aware of ~~the~~any misrepresentation in the prospectus or the prescribed ~~disclosure~~offering document, the person withdrew the person's consent to the filing of the prospectus or the prescribed ~~disclosure~~offering document, and advised the Chief Regulator and gave reasonable general notice of the withdrawal and the reason for it;
- (c) with respect to any part of the prospectus or the prescribed ~~disclosure~~offering document purporting to be made on an expert's authority or purporting to be a copy of or extract from an expert's report, statement or opinion, the person had no reasonable grounds to believe and did not believe that
  - (i) there had been a misrepresentation,
  - (ii) the part of the prospectus or the prescribed ~~disclosure~~offering document did not fairly represent the expert's report, statement or opinion, or
  - (iii) the part of the prospectus or the prescribed ~~disclosure~~offering document was not a fair copy of or extract from the expert's report, statement or opinion;
- (d) with respect to any part of the prospectus or the prescribed ~~disclosure~~offering document purporting to be made on the person's own authority as an expert or purporting to be a copy of or extract from the person's own report, statement or opinion as an expert, but that contains a misrepresentation attributable to a failure to represent fairly the person's report, statement or opinion as an expert,
  - (i) the person had, after reasonable investigation, reasonable grounds to believe and did believe that the part of the prospectus or the prescribed

~~disclosure~~offering document fairly represented the person's report, statement or opinion, or

- (ii) on becoming aware that the part of the prospectus or the prescribed ~~disclosure~~offering document did not fairly represent the person's report, statement or opinion, the person advised the Chief Regulator and gave reasonable general notice of that fact and that the person would not be responsible for that part; or
- (e) with respect to a false statement in the prospectus or the prescribed ~~disclosure~~offering document purporting to be a statement made by an official person or contained in what purports to be a copy of or extract from a public official document, it was a correct and fair representation of the statement and the person had reasonable grounds to believe, and did believe, that the statement was true.

#### **Liability — purported authority of expert**

(3) A person, other than the issuer or selling security holder, is not liable in an action under section 117 with respect to any part of the prospectus or the prescribed ~~disclosure~~offering document purporting to be made on the person's own authority as an expert or purporting to be a copy of or extract from the person's own report, statement or opinion as an expert if the person proves that, after conducting a reasonable investigation, the person had no reasonable grounds to believe and did not believe that there was a misrepresentation.

#### **Liability — no purported authority of expert**

(4) A person, other than the issuer or selling security holder, is not liable in an action under section 117 or 118 with respect to any part of the prospectus or the prescribed ~~disclosure~~offering document not purporting to be made on an expert's authority and not purporting to be a copy of or extract from an expert's report, statement or opinion if the person proves that, after conducting a reasonable investigation, the person had no reasonable grounds to believe and did not believe that there was a misrepresentation.

#### **Actions relating to take-over or issuer bid circular**

**120.** (1) If a take-over bid circular or issuer bid circular, or any notice of change or variation to either of them, contains a misrepresentation, a security holder to whom the circular or notice was sent has, without regard to whether the security holder relied on the misrepresentation, either a right of ~~action either~~

- (a) action for damages against

- (i) the offeror,
  - (ii) every person who, at the time the circular or notice was signed, was a director of the offeror,
  - (iii) every person whose consent has been filed in respect of the circular or notice, but only with respect to reports, statements or opinions that have been made by the person, and
  - (iv) every person who signed the circular or notice; or
- (b) ~~for~~ rescission against the offeror.

#### **Actions relating to other circulars**

(2) If a directors' circular or an individual director's or officer's circular, or a notice of change to any of them, contains a misrepresentation, a security holder to whom the circular or notice was sent has, without regard to whether the security holder relied on the misrepresentation, a right of action for damages against

- (a) every director or officer who signed the circular or notice; and
- (b) every person whose consent has been filed in respect of the circular or notice, but only with respect to reports, statements or opinions that have been made by the person .

#### **Depreciation resulting from the misrepresentation**

(3) In an action for damages under this section based on a misrepresentation affecting a security offered by the offeror in exchange for securities of the offeree issuer, the defendant is not liable for all or any part of the damages that the defendant proves do not represent the depreciation in value of the security resulting from the misrepresentation.

#### **Joint and several liability**

(4) Subject to subsection (5), each person liable in an action under this section is jointly and severally liable with every other person so liable.



## **Contributions**

(5) A person who is liable to pay an amount may recover a contribution from another person who is jointly and severally liable for that amount unless, in all circumstances of the case, the court is satisfied that it would not be just and equitable.

## **Deemed issuer bid circular**

(6) If the offeror in an issuer bid that is exempted by a regulation is required by the regulatory instruments or policies of an exchange to file with the exchange or send to the offeree issuer's security holders a disclosure document, the disclosure document that the offeror so files or sends is deemed, for the purposes of this section, to be an issuer bid circular that is sent to the security holders.

## **No liability — circular**

**121.** (1) A person is not liable in an action under section 120 if the person proves that the security holder had knowledge of the misrepresentation.

## **No liability — other circumstances**

(2) A person, other than the offeror, is not liable in an action under section 120 if the person proves that

- (a) the circular or the notice was sent without the person's knowledge or consent and that, on becoming aware of that fact, the person advised the Chief Regulator and gave reasonable general notice that it was so sent;
- (b) after the sending of the circular or the notice, on becoming aware of the misrepresentation in the circular or the notice, the person withdrew the person's consent to the sending of the circular or the notice, and advised the Chief Regulator and gave reasonable general notice of the withdrawal and the reason for it;
- (c) with respect to any part of the circular or the notice purporting to be made on an expert's authority or purporting to be a copy of or extract from an expert's report, statement or opinion, the person had no reasonable grounds to believe and did not believe that,
  - (i) there had been a misrepresentation,
  - (ii) the part of the circular or the notice did not fairly represent the expert's report, statement or opinion, or

- (iii) the part of the circular or the notice was not a fair copy of or extract from the expert's report, statement or opinion;
- (d) with respect to any part of the circular or the notice purporting to be made on the person's own authority as an expert or purporting to be a copy of or extract from the person's own report, statement or opinion as an expert, but that contains a misrepresentation attributable to a failure to represent fairly the person's report, statement or opinion as an expert,
  - (i) the person had, after reasonable investigation, reasonable grounds to believe and did believe that the part of the circular or the notice fairly represented the person's report, statement or opinion as an expert, or
  - (ii) on becoming aware that the part of the circular or the notice did not fairly represent the person's report, statement or opinion as an expert, the person advised the Chief Regulator and gave reasonable general notice of that fact and that the person would not be responsible for that part of the circular or the notice; or
- (e) with respect to a false statement in the circular or the notice purporting to be a statement made by an official person or contained in what purports to be a copy of or extract from a public official document, it was a correct and fair representation of the statement and the person had reasonable grounds to believe, and did believe, that the statement was true.

### **Liability — purported authority of expert**

(3) A person, other than the offeror, is not liable in an action under section 120 with respect to any part of the circular or the notice purporting to be made on the person's own authority as an expert or purporting to be a copy of or extract from the person's own report, statement or opinion as an expert if the person proves that, after conducting a reasonable investigation, the person had no reasonable grounds to believe and did not believe that there was a misrepresentation.

### **Liability — no purported authority of expert**

(4) A person, other than the offeror, is not liable in an action under section 120 with respect to any part of the circular or the notice not purporting to be made on an expert's authority and not purporting to be a copy of or extract from an expert's report, statement or opinion if the person

proves that, after conducting a reasonable investigation, the person had no reasonable grounds to believe and did not believe that there was a misrepresentation.

### **Actions relating to prescribed disclosure document**

**122.** (1) If a person purchases securities offered by a prescribed disclosure document, ~~other than a prescribed disclosure document required by paragraph 27(1)(b)~~, that contains a misrepresentation, that person has, without regard to whether he, she or it relied on the misrepresentation, either a right of ~~action~~

- (a) action for damages against,
  - (i) the issuer or selling security holder on whose behalf the distribution is made,
  - (ii) every person who, on the date of the prescribed disclosure document, was a director of the issuer, and
  - (iii) every person who signed the prescribed disclosure document; or
- (b) ~~for~~ rescission against the issuer or selling security holder on whose behalf the distribution is made.

### **Depreciation resulting from the misrepresentation**

(2) In an action for damages under this section, the defendant is not liable for all or any part of the damages that the defendant proves do not represent the depreciation in value of the securities resulting from the misrepresentation.

### **Amount recoverable**

(3) The amount recoverable in an action under this section must not exceed the price at which the securities were offered by the prescribed ~~disclosure~~offering document.

### **Joint and several liability**

(4) Subject to subsection (5), each person liable in an action under this section is jointly and severally liable with every other person so liable.

## Contributions

(5) A person who is liable to pay an amount may recover a contribution from another person who is jointly and severally liable for that amount unless, in all circumstances of the case, the court is satisfied that it would not be just and equitable.

## Exception

(6) Despite subsections (4) and (5), an issuer is not liable if it does not receive any proceeds from the distribution and the misrepresentation was not based on information provided by the issuer, unless the misrepresentation

- (a) was based on information that was previously generally disclosed by the issuer;
- (b) was a misrepresentation at the time of that disclosure; and
- (c) was not subsequently publicly corrected or superseded by the issuer before the completion of the distribution.

## No liability — prescribed disclosure document

**123.** (1) A person is not liable in an action under section 122 if the person proves that the purchaser purchased the securities with knowledge of the misrepresentation.

## No liability — other circumstances

(2) A person, other than the issuer or selling security holder, is not liable in an action under section 122 if the person proves that

- (a) the prescribed disclosure document was sent to the purchaser without the person's knowledge or consent and that, on becoming aware of that fact, the person gave ~~written~~ notice to the Chief Regulator and the issuer that it was so sent;
- (b) after the sending of the prescribed disclosure document and before the purchase of the securities, on becoming aware of the misrepresentation in the prescribed disclosure document, the person withdrew the person's consent to the sending of the prescribed disclosure document and gave ~~written~~ notice to the Chief Regulator and the issuer of the withdrawal and the reason for it; or
- (c) with respect to any part of the prescribed disclosure document purporting to be made on the authority of an expert or purporting to be a copy of or extract from an expert's report,

statement or opinion, the person had no reasonable grounds to believe and did not believe that,

- (i) there had been a misrepresentation,
- (ii) the part of the prescribed disclosure document did not fairly represent the expert's report, statement or opinion, or
- (iii) the part of the prescribed disclosure document was not a fair copy of or extract from the expert's report, statement or opinion.

### **Liability — no purported authority of expert**

(3) A person, other than the issuer or selling security holder, is not liable in an action under section 122 with respect to any part of the prescribed disclosure document not purporting to be made on an expert's authority and not purporting to be a copy of or extract from an expert's report, statement or opinion if the person proves that, after conducting a reasonable investigation, the person had no reasonable grounds to believe and did not believe that there was a misrepresentation.

### **No derogation — rights of action**

**124.** (1) The rights of action conferred under sections 117, 118, 120 and 122 are in addition to, and without derogation from, any other right that the plaintiff may have at law.

### **No derogation — defences**

(2) The defences provided under sections 119, 121 and 123 are in addition to, and without derogation from, any other defences that the defendant may have at law.

### **Records incorporated by reference**

**125.** For the purposes of sections 117, 118, 120 and 122, a misrepresentation contained in a record that is incorporated by reference in, or deemed incorporated into, a prospectus, [prescribed offering document](#), prescribed disclosure document, take-over bid circular, issuer bid circular or notice of change or variation to either of those circulars is deemed to be contained in the prospectus, document, circular or notice.

### **Defence — forward-looking information**

**126.** (1) A person is not liable in an action under section 117, 118, 120 and 122 for a misrepresentation in forward-looking information if the person proves that

- (a) the forward-looking information was accompanied by,
  - (i) reasonable cautionary language identifying the forward-looking information as such, and identifying material factors that could cause actual results to differ materially from a conclusion, forecast or projection set out in the forward-looking information, and
  - (ii) a statement of the material factors or assumptions that were applied in drawing a conclusion or making a forecast or projection set out in the forward-looking information; and
- (b) the person had a reasonable basis for drawing the conclusions or making the forecasts and projections set out in the forward-looking information.

### **Exception**

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

### **Standard of reasonableness**

**127.** For greater certainty, in determining what constitutes reasonable investigation or reasonable grounds for belief for the purposes of sections 119, 121 and 123, the standard of reasonableness is that required of a prudent person in the circumstances of the particular case.

### **Liability of trader, offeror or issuer**

**128.** Each of the following persons has either a right of action for ~~either~~ damages or a right of rescission against a person who traded in a security, an offeror or an issuer, as the case may be, that did not comply with the applicable statutory requirement:

- (a) a purchaser of the security to whom a prospectus, prescribed offering document or amendment was not sent as required by section 37;
- (b) a person to whom a take-over bid circular, issuer bid circular or notice of change or variation to either of them was not sent as required under capital markets law; or

- (c) a purchaser of a security to whom a prescribed disclosure document or amendment was not sent or made available as required by the regulations.

### **Action for damages — insider trading, etc.**

**129.** (1) A person who contravenes section 66 is liable for damages to a person who purchases or trades a security of the issuer referred to in that section — or enters into a transaction; ~~within the meaning of section 69,~~ involving a related financial instrument — during the period beginning at the time when the contravention occurred and ending at the time when the material change or material fact is generally disclosed.

### **Amount of damages**

(2) The amount of damages payable to the plaintiff under this section is equal to the ~~lesser amount~~ of ~~— (a) —~~ the loss incurred by the plaintiff as a result ~~of the contravention; and~~ ~~— (b) the amount equal to triple the profit made or the loss avoided by all persons as a result of~~ the contravention.

### **Loss incurred by plaintiff**

(3) ~~In determining~~ For the purposes of subsection (2), 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 or value of the security ~~that is unrelated to the material change or material factor~~ or of the related financial instrument, as the case may be, that is not a result of the contravention.

### **~~Other measure of damages~~**

#### **Joint and several liability**

~~(4) Despite subsections (2) and (3), the court may consider any other measure of damages that may be appropriate in the circumstances.~~ 3.1) Subject to subsections (3.2) and (3.3), each person liable in an action under this section is jointly and severally liable with every other person so liable.

#### **Contribution**

(3.2) A person who is liable to pay an amount may recover a contribution from another person who is jointly and severally liable for that amount unless, in all the circumstances of the case, the court is satisfied that it would not be just and equitable.

#### **Liability limit**

(3.3) Despite subsection (2), the amount of damages payable by a person in an action under this section is not to exceed the amount determined using the formula

A - B - C

in which

“A” is triple the amount of the profit made or loss avoided by all persons as a result of the contravention,

“B” is the aggregate of all damages assessed after appeals, if any, against the person in all other actions brought under this section and under comparable legislation in other provinces and territories in Canada with respect to the same contravention, and

“C” is any amount paid in settlement of any of those actions.

**Payment of benefit — insider trading, etc.**

**130.** (1) An insider, affiliate or associate of an issuer who contravenes section 66 must pay to the issuer an amount equal to the benefit or advantage received or receivable by the insider, affiliate or associate and all other persons as a result of the contravention.

**Payment of benefit — front-running**

(2) A person who contravenes section 67 must pay to the investor, as defined in subsection 67 (1), an amount equal to the benefit or advantage received or receivable by the person and all other persons as a result of the contravention.

**Payment of benefit – improper use of information, investment funds**

(3) A person is accountable to an investment fund, other than a prescribed investment fund, for any benefit or advantage received or receivable as a result of a purchase or sale of securities of an issuer if,

(a) the portfolio securities of the investment fund include securities of that issuer; and

(b) the person,

(i) has access to information concerning the investment program of the investment fund, and



- (ii) uses that information for his, her or its direct benefit or advantage to purchase or sell securities of that issuer for his, her or its own account.

### **Payment of benefit – improper use of information, discretionary investment portfolios**

(4) A person is accountable to a client of a registrant for any benefit or advantage received or receivable as a result of a purchase or sale of securities of an issuer if,

- (a) an investment portfolio is managed for the client by the registrant through discretionary authority provided by the client;
- (b) the portfolio securities of the investment portfolio include securities of that issuer;
- (c) the registrant is a registered adviser or registered dealer; and
- (d) the person has,
  - (i) access to information concerning the investment portfolio, and
  - (ii) uses that information for his, her or its direct benefit or advantage to purchase or sell securities of that issuer.

### **Action on behalf of issuer — insider trading, etc.**

**131.** (1) ~~A~~The superior court may, on application by either of the following, make an order, on any terms as to security for costs or otherwise that it considers appropriate, requiring the Chief Regulator or authorizing ~~the Chief Regulator or~~ the applicant to commence or continue an action on behalf of the issuer in order to enforce the obligation created by subsection 130 (1):

- (a) the Chief Regulator; or
- (b) a person who was, at the time of the contravention in question, or is, at the time of the application, a security holder of the issuer.

### **Exception**

- (2) The court ~~may~~must not make the order ~~only if~~unless it is satisfied that,

- (a) the applicant has reasonable grounds to believe that the issuer has a cause of action to enforce the obligation created by subsection 130 (1); and
- (b) the issuer,
  - (i) has not commenced such an action within 60 days after the day on which it received a written request from the applicant to do so, or
  - (ii) has not diligently pursued such an action commenced by it.

### **Action on behalf of investor — front-running**

**132.** (1) ~~A~~The superior court may, on application by either of the following, make an order, on any terms that it considers appropriate including terms as to security for costs, requiring the Chief Regulator or authorizing ~~the Chief Regulator or~~ the applicant to commence or continue an action on behalf of the investor, as defined in subsection 67 (1), in order to enforce the obligation created by subsection 130 (2):

- (a) the Chief Regulator; or
- (b) a person who was, at the time of the contravention in question, or is, at the time of the application, a security holder of the investor.

### **Exception**

- (2) The court must not make the order unless it is satisfied that
  - (a) the applicant has reasonable grounds to believe that the investor has a cause of action to enforce the obligation created by subsection 130 (2); and
  - (b) the investor,
    - (i) has not commenced such an action within 60 days after the day on which the investor received a written request from the applicant to do so, or
    - (ii) has not diligently pursued such an action commenced by the investor.

### **Action on behalf of investment fund – improper use of information**

**133.** (1) ~~A~~The superior court may, on application by either of the following, make an order, on any terms that it considers appropriate including terms as to security for costs, requiring the Chief Regulator or authorizing ~~the Chief Regulator or~~ the applicant to commence or continue an action on behalf of the investment fund in order to enforce the obligation created by subsection 130 (3):

- (a) the Chief Regulator; or
- (b) a person who was, at the time of the contravention in question, or is, at the time of the application, a security holder of the investment fund.

### **Exception**

(2) The court must not make the order unless it is satisfied that

- (a) the applicant has reasonable grounds to believe that the investment fund has a cause of action to enforce the obligation created by subsection 130 (3); and
- (b) the investment fund,
  - (i) has not commenced such an action within 60 days after the day on which the ~~investor~~investment fund received a written request from the applicant to do so, or
  - (ii) has not diligently pursued such an action commenced by the investment fund.

### **Notice of application**

**134.** Notice of an application under section 131, 132 or 133 must be sent to the Chief Regulator and to the issuer, investor or investment fund, as the case may be, and each of them may appear and be heard.

### **Order to cooperate**

**135.** An order made under section 131, 132 or 133 requiring or authorizing the Chief Regulator to commence or continue an action must provide that the issuer, investor or investment fund, as the case may be,

- (a) cooperate fully with the Chief Regulator in the commencement or continuation of the action; and
- (b) make available to the Chief Regulator all records and information that are relevant to the action and known to, or reasonably ascertainable by, the issuer, investor or investment fund.

## **Orders as to costs**

### **Costs of Chief Regulator**

**136.** (1) If an action under section 131, 132 or 133 is commenced or continued by the Chief Regulator, the superior court must order the issuer, investor or investment fund, as the case may be, to pay all costs properly incurred by the Chief Regulator in commencing or continuing the action.

### **Costs of security holder**

(2) If an action under section 131, 132 or 133 is commenced or continued by a security holder of the issuer, investor or investment fund, as the case may be, the court may order the issuer, investor or investment fund to pay all costs properly incurred by the security holder in commencing or continuing the action, if it is satisfied that

- (a) the issuer, investor or investment fund has not commenced the action or has not pursued it diligently; and
- (b) the action is in the best interests of the issuer and its security holders, the investor and its security holders or the investment fund and its security holders.

### **Determination of best interests**

(3) In determining whether an action or its continuance is in the best interests of the issuer and its security holders, the investor and its security holders or the investment fund and its security holders, the court must consider the relationship between the potential benefit to be derived from the action by the issuer and its security holders, the investor and its security holders or the investment fund and its security holders, and the cost involved in commencing or continuing the action.

## **Rescission — registered dealer**

### **Intending to act as principal**

**137.** (1) If, contrary to the regulations, a registered dealer does not disclose to a person with whom it effects a purchase of or trade in a security that it intended to act as principal in respect of the purchase or trade, the person may rescind the contract effecting the purchase or trade by sending ~~written~~ notice of the rescission to the registered dealer within 60 days after the day on which the security is delivered to or by the person, as the case may be.

### **Acting as principal**

(2) If, contrary to the regulations, a registered dealer does not disclose to a person with whom it effects a purchase of or trade in a security that it has acted as principal in respect of the purchase or trade, the person may rescind the contract effecting the purchase or trade by sending ~~written~~ notice of the rescission to the registered dealer within seven days after the day on which the written confirmation of the contract is delivered to the person.

### **Exception**

(3) Subsections (1) and (2) do not allow the rescission of a contract effecting the purchase of a security if the purchaser has disposed of beneficial ownership of the security otherwise than to secure indebtedness.

### **Onus**

(4) In an action to enforce a right of rescission created by this section, the onus of proving compliance with the regulations is on the registered dealer.

### **Time limit**

(5) The action is not to be commenced more than 90 days after the day on which the notice under subsection (1) or (2) is sent.

## **Rescission of purchase — prospectus or prescribed ~~disclosure~~offering document**

**138.** (1) Subject to subsection (2), a purchaser of a security offered in a distribution to which subsection 27 (1) applies may rescind the purchase by sending, in accordance with the regulations, a ~~written~~ notice to the person from whom the security was purchased.

### **Exceptions**

(2) The purchaser is not permitted to rescind the purchase if the purchaser is a registrant or has disposed of beneficial ownership of the security otherwise than to secure indebtedness.

## Onus

(3) In an action by the purchaser to enforce a right of rescission created by this section, the onus of proving that the ~~written~~ notice was not sent during the prescribed period is on the person from whom the security was purchased.

## Rescission of purchase — continuous distribution

**139.** (1) A purchaser of a security offered in a continuous distribution to which subsection 27 (1) applies may rescind the purchase if

- (a) the purchase is made after the prescribed period for the distribution has expired; and
- (b) the purchaser sends, in accordance with the regulations, a ~~written~~ notice to the person from whom the security was purchased within 90 days after the day on which the purchaser becomes aware ~~that (i) — the issuer did not file, in accordance of the failure to comply~~ with the ~~regulations, the prospectus or~~ prescribed ~~disclosure document required conditions~~ to continue the distribution, ~~or (ii) — a receipt for that prospectus or prescribed disclosure document was not issued.~~

## Sales charges

(2) If the purchase is rescinded, the person from whom security was purchased must refund to the purchaser the amount of sales charges and fees related to the purchase.

## Rescission of purchase — mutual fund security

**140.** (1) A purchaser of a security of a prescribed mutual fund may, if the amount paid for the purchase does not exceed a prescribed amount, rescind the purchase by sending, in accordance with the regulations, a ~~written~~ notice to the person from whom the security was purchased.

## Amount recoverable

(2) Subject to subsection (3), the amount that a purchaser may recover from the person from whom the security was purchased must not exceed the net asset value, at the time the right of rescission is exercised, of the securities purchased.

## Sales charges

(3) The person from whom the security was purchased must refund to the purchaser the amount of sales charges and fees related to the purchase.

### **Rescission of purchase — scholarship plan, etc.**

**141.** (1) A purchaser of an interest or right in or to a scholarship or educational plan or trust, or a subscriber to such a plan, may rescind the purchase or terminate the subscription by sending, in accordance with the regulations, a ~~written~~ notice to the issuer of the plan or trust or to the person from whom the interest, right or subscription was purchased.

### **Amount recoverable**

(2) If the purchase is rescinded or the subscription is terminated, the issuer of the plan or trust must refund to the purchaser or subscriber all amounts received from him or her.

### **Exception — sales charges**

(3) Despite subsection (2), any sales charges and fees related to the purchase or subscription must be refunded only if the notice is sent within 60 days after the day on which the contract to purchase or subscribe is entered into.

### **Rescission of purchase — prescribed disclosure document**

**142.** A purchaser of a security to whom a prescribed disclosure document is required to be sent, ~~other than the prescribed disclosure document required by paragraph 27 (1) (b),~~ may, in prescribed circumstances, rescind the purchase by sending, in accordance with the regulations, a ~~written~~ notice to the person from whom the security was purchased.

### **Class proceeding**

**143.** (1) In a class proceeding to enforce a right or obligation created by this Part, the person who brings an application or a motion to certify the class, or who files any material with the court, must send a copy of the application ~~or, if applicable,~~ notice of motion ~~to certify the class and any or~~ material ~~filed with,~~ as the ~~court must~~ case may be ~~sent,~~ to the Chief Regulator when filed.

### **Notice of date — application**

(2) A representative plaintiff must send the Chief Regulator ~~written~~ notice of the day on which the application or motion for certification is scheduled to be heard at the same time that notice of the day is given to each defendant.

### **Notice of appeal — certification**

(3) If a party appeals the court's decision on whether a class is certified,

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- (a) each party to the appeal must send a copy of any materials filed with the court hearing the appeal to the Chief Regulator at the same time that they are filed with the court; and
- (b) the appellant must send the Chief Regulator ~~written~~ notice of the day on which the appeal is scheduled to be heard at the same time that notice of the day is given to each respondent.

### **Notice of date — trial**

**144.** (1) A plaintiff in an action to enforce a right or obligation created by this Part must send the Chief Regulator

- (a) a copy of the statement of claim or other originating document when filed; and
- (b) a ~~written~~ notice of the day on which the trial of the action is scheduled to proceed at the same time that notice of the day is given to each defendant.

### **Notice of appeal — trial decision**

(2) If a party appeals the court's decision at the trial of the action,

- (a) each party to the appeal must send a copy of any materials filed with the court hearing the appeal to the Chief Regulator at the same time that they are filed with the court; and
- (b) the appellant must send the Chief Regulator ~~written~~ notice of the day on which the appeal is scheduled to be heard at the same time that notice of the day is given to each respondent.

### **Notice re discontinuation, etc.**

(3) If an action to enforce a right or obligation created by this Part is discontinued, settled or abandoned, the plaintiff must promptly send notice to the Chief Regulator, including a copy of any order made by the court in connection with the discontinuation, settlement or abandonment.

### **Intervention by Chief Regulator**

**145.** The Chief Regulator may intervene in a proceeding to enforce a right or obligation created by this Part, in an application or motion to certify a class and in any appeal from the court's decision at the trial of the action or from a decision on whether a class is certified.



## **Limitation period**

**146.** No action to enforce a right or obligation created by this Part is to be commenced

- (a) in the case of an action for rescission, later than six months after the transaction that gave rise to the cause of action; or
- (b) in the case of any other action, later than the earlier of
  - (i) six months after the day on which the plaintiff first had knowledge of the facts giving rise to the cause of action, and
  - (ii) three years after the transaction, contravention or alleged contravention, as the case may be, that gave rise to the cause of action.

## **PART 13 CIVIL LIABILITY FOR SECONDARY MARKET DISCLOSURE**

### **INTERPRETATION AND APPLICATION**

## **Definitions**

**147.** The following definitions apply in this Part:

### **“document”**

“document” means a written communication, including, for greater certainty, an electronic one, that is

- (a) filed or required to be filed with the Chief Regulator;
- (b) filed or required to be filed with a government or a government agency under applicable securities or corporate law or with an exchange under its by-laws or regulatory instruments; or
- (c) any other communication, the content of which would reasonably be expected to affect the market price or value of a security of a responsible issuer.

**“expert”**

“expert” means a person whose profession gives authority to a statement made in a professional capacity by the person, including an accountant, actuary, appraiser, auditor, engineer, financial analyst, geologist or lawyer. It does not include a credit rating organization designated under section 17.

**“failure to make timely disclosure”**

“failure to make timely disclosure” means a failure to disclose a material change in the manner and at the time required under this Act or the regulations.

**“influential person”**

“influential person” means, with respect to a responsible issuer, a control person, a promoter, an insider who is not a director or officer of the responsible issuer or, if the responsible issuer is an investment fund, an investment fund manager.

**“public oral statement”**

“public oral statement” means an oral statement made in circumstances in which a reasonable person would believe that information contained in it will become generally disclosed.

**“release”**

“release” means, with reference to a document, to file the document with the Chief Regulator or with an exchange or to otherwise make it available to the public.

**“responsible issuer”**

“responsible issuer” means

      (a) a reporting issuer; or ~~an~~

      (b) any other issuer who ~~is not a reporting issuer but~~ has a real and substantial connection to this province or territory and whose securities are publicly traded.

**“responsible issuer's security”**

“responsible issuer's security” includes a security

- (a) the market price or value of which, or the payment obligations under which, are derived from or based on a responsible issuer's security; and
- (b) that is created by a person on the responsible issuer's behalf or that is guaranteed by the responsible issuer.

### **Non-application**

**148.** This Part does not apply to

- (a) the purchase of a security offered by a prospectus or a prescribed ~~disclosure~~offering document ~~required by paragraph 27 (1) (b)~~ during the period of distribution;
- (b) the acquisition of a responsible issuer's security on the basis of a distribution that is exempt from section 27, except as may be prescribed;
- (c) the acquisition or disposition of a responsible issuer's security in connection with a take-over bid or issuer bid, except as may be prescribed; or
- (d) any other transaction or class of transactions that may be prescribed.

## CAUSES OF ACTION AND DEFENCES

### **Documents released by responsible issuer**

**149.** If a responsible issuer or a person with actual, implied or apparent authority to act on its behalf releases a document that contains a misrepresentation, a person who acquires or disposes of the responsible issuer's security during the period between the time when the document was released and the time when the misrepresentation contained in it was publicly corrected has, without regard to whether the person relied on the misrepresentation, a right of action for damages against each of the following:

- (a) the responsible issuer;
- (b) each director of the responsible issuer at the time the document was released;
- (c) each officer of the responsible issuer who authorized, permitted or acquiesced in the document's release;

- (d) each influential person, and each director and officer of an influential person, who knowingly influenced
  - (i) the responsible issuer or any person acting on its behalf to release the document, or
  - (ii) a director or officer of the responsible issuer to authorize, permit or acquiesce in its release; and
- (e) an expert if
  - (i) the misrepresentation is also contained in a report, statement or opinion made by the expert,
  - (ii) the document includes, summarizes or quotes from the expert's report, statement or opinion, and
  - (iii) in the case where the document was released by a person other than the expert, the expert consented in writing to the use of the expert's report, statement or opinion in the document.

### **Public oral statements by responsible issuer**

**150.** If a person with actual, implied or apparent authority to speak on behalf of a responsible issuer makes a public oral statement that relates to the responsible issuer's business or affairs and that contains a misrepresentation, a person who acquires or disposes of the responsible issuer's security during the period between the time when the statement was made and the time when the misrepresentation contained in it was publicly corrected has, without regard to whether the person relied on the misrepresentation, a right of action for damages against each of the following:

- (a) the responsible issuer;
- (b) the person who made the statement;
- (c) each director and officer of the responsible issuer who authorized, permitted or acquiesced in the making of the statement;

- (d) each influential person, and each director and officer of an influential person, who knowingly influenced
  - (i) the person who made the statement to make it, or
  - (ii) a director or officer of the responsible issuer to authorize, permit or acquiesce in the making of the statement; and
- (e) an expert if
  - (i) the misrepresentation is also contained in a report, statement or opinion made by the expert,
  - (ii) the person making the public oral statement includes, summarizes or quotes from the expert's report, statement or opinion, and
  - (iii) in the case where the public oral statement was made by a person other than the expert, the expert consented in writing to the use of the expert's report, statement or opinion in the public oral statement.

### **Influential persons**

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

- (a) the responsible issuer, if a director or officer of the responsible issuer — or, if the responsible issuer is an investment fund, the investment fund manager — authorized, permitted or acquiesced in the document's release or the making of the statement;
- (b) the person who made the statement;
- (c) each director and officer of the responsible issuer who authorized, permitted or acquiesced in the document's release or the making of the statement;

- (d) the influential person;
- (e) each director and officer of the influential person who authorized, permitted or acquiesced in the document's release or the making of the statement; and
- (f) an expert if
  - (i) the misrepresentation is also contained in a report, statement or opinion made by the expert,
  - (ii) the document or public oral statement includes, summarizes or quotes from the expert's report, statement or opinion, and
  - (iii) in the case where the document was released or the public oral statement was made by a person other than the expert, the expert consented in writing to the use of the expert's report, statement or opinion in the document or public oral statement.

### **Failure to make timely disclosure**

**152.** If a responsible issuer fails to make timely disclosure, a person who acquires or disposes of the responsible issuer's security between the time when the material change was required to be disclosed and the subsequent disclosure of the material change has, without regard to whether the person relied on the responsible issuer having complied with its disclosure requirements, a right of action for damages against each of the following:

- (a) the responsible issuer;
- (b) each director and officer of the responsible issuer who authorized, permitted or acquiesced in the failure to make the disclosure; and
- (c) each influential person, and each director and officer of an influential person, who knowingly influenced
  - (i) the responsible issuer or any person acting on its behalf in the failure to make the disclosure as required, or

- (ii) a director or officer of the responsible issuer to authorize, permit or acquiesce in the failure to make the disclosure as required.

### **Multiple roles**

**153.** In an action under any of sections 149 to 152, a person who is a director or officer of an influential person is not liable in that capacity if the person is liable as a director or officer of the responsible issuer.

### **Multiple misrepresentations**

**154.** In an action under any of sections 149 to 152,

- (a) multiple misrepresentations having common subject matter or content may, in the discretion of the court, be treated as a single misrepresentation; and
- (b) multiple instances of failure to make timely disclosure of a material change or material changes concerning common subject matter may, in the discretion of the court, be treated as a single failure to make such disclosure.

### **No implied or actual authority**

**155.** In an action under section 150 or 151, if the person who made the public oral statement had apparent authority, but not implied or actual authority, to speak on behalf of the responsible issuer, no other person is liable with respect to any of the responsible issuer's securities that were acquired or disposed of before the person became, or should reasonably have become, aware of the misrepresentation.

### **Conditions for liability — certain misrepresentations**

**156.** (1) Subject to subsection (2), a plaintiff must prove, to establish liability in an action under any of sections 149 to 151 in relation to a misrepresentation in a document or in a public oral statement, that the person against whom the action is brought

- (a) knew that the document or statement contained the misrepresentation, at the time that the document was released or the statement was made;
- (b) deliberately avoided acquiring knowledge that the document or statement contained the misrepresentation, at or before the time that the document was released or the statement was made; or

- (c) committed, through action or failure to act, gross misconduct in connection with the release of the document or the making of the statement that contained the misrepresentation.

### **Exception — expert's liability and core documents**

(2) A plaintiff is not required to prove any of the matters referred to in paragraphs (1) (a) to (c) with respect to:

- (a) the liability of an expert;
- (b) the liability for a misrepresentation in a document, if the document is a prospectus, a prescribed offering document, a takeover bid circular, an issuer bid circular, a directors' circular, a notice of change or variation in respect of any of those circulars, a rights offering circular, management's discussion and analysis, an annual information form, an information circular, an annual financial statement or an interim financial report of a responsible issuer, or if the document is any other prescribed disclosure document; or
- (c) the liability of the responsible issuer or any of its officers — or, if the responsible issuer is an investment fund, of the investment fund manager or an officer of the investment fund manager — for a misrepresentation in a material change report required to be filed under paragraph 43 (b) or the regulations.

### **Definition of “management's discussion and analysis”**

(3) In paragraph (2) (b),

“management's discussion and analysis” means the portion of an annual information form, annual report or other document that contains management's discussion and analysis of a responsible issuer's financial condition and performance as required under capital markets law.

### **Conditions for liability — failure to make timely disclosure**

**157.** (1) Subject to subsection (2), a plaintiff must prove, to establish liability in an action under section 152 in relation to a failure to make timely disclosure, that the person against whom the action is brought

- (a) knew of the change and knew that it was a material change, at the time that the failure first occurred;



- (b) deliberately avoided acquiring knowledge of the change or knowledge that the change was a material change, at the time that or before the failure first occurred; or
- (c) committed, through action or failure to act, gross misconduct in connection with the failure.

### **Exception**

(2) A plaintiff is not required to prove any of the matters referred to in subsection (1) with respect to the liability of a responsible issuer, an investment fund manager or an officer of either of them.

### **No liability for misrepresentation — reasonable investigation**

**158.** (1) A person is not liable in an action under any of sections 149 to 151 in relation to a misrepresentation in a document or in a public oral statement if the person proves that

- (a) before the release of the document or the making of the statement containing the misrepresentation, the person conducted or caused to be conducted a reasonable investigation; and
- (b) at the time of the release of the document or the making of the statement, the person had no reasonable grounds to believe and did not believe that the document or statement contained the misrepresentation.

### **No liability for misrepresentation — forward-looking information**

(2) A person is not liable in an action under any of sections 149 to 151 for a misrepresentation in forward-looking information contained in the document or public oral statement if the person proves that

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

- (ii) a statement of the material factors or assumptions that were applied in drawing a conclusion or making a forecast or projection set out in the forward-looking information; and
- (b) the person had a reasonable basis for drawing the conclusions or making the forecasts and projections set out in the forward-looking information.

### **Elements — forward-looking information**

(3) A person satisfies the requirements of paragraph (2) (a) with respect to a public oral statement containing forward-looking information if the person proves that the person who made the statement

- (a) made a cautionary statement that the oral statement contains forward-looking information;
- (b) stated that
  - (i) the actual results could differ materially from a conclusion, forecast or projection in the forward-looking information, and
  - (ii) certain material factors or assumptions were applied in drawing a conclusion or making a forecast or projection set out in the forward-looking information; and
- (c) stated that additional information about the following factors is contained in a readily available document, or in a portion of one, and has identified that document or that portion:
  - (i) the material factors that could cause actual results to differ materially from the conclusion, forecast or projection in the forward-looking information, and
  - (ii) the material factors or assumptions that were applied in drawing a conclusion or making a forecast or projection set out in the forward-looking information.

### **Certain documents presumed readily available**

(4) For the purposes of paragraph (3) (c), a document filed with the Chief Regulator or otherwise generally disclosed is presumed to be readily available.

## **Financial statements and initial public offerings**

(5) Subsection (2) does not relieve a person of liability respecting forward-looking information in a financial statement or financial report required to be filed under capital markets law or in a document released in connection with an initial public offering.

## **No liability — person other than expert**

(6) A person, other than an expert, is not liable in an action under any of sections 149 to 151 with respect to any part of a document or public oral statement that includes, summarizes or quotes from a report, statement or opinion made by an expert from whom the responsible issuer obtained the written consent for the use of the report, statement or opinion, if the person proves that

- (a) the person did not know and had no reasonable grounds to believe that there had been a misrepresentation in the part of the document or public oral statement made on the authority of the expert; and
- (b) the part of the document or public oral statement fairly represented the expert's report, statement or opinion.

## **Exception**

(7) Subsection (6) does not apply to a document or public oral statement if the expert's consent referred to in that subsection is withdrawn in writing before the document is released or the public oral statement is made.

## **No liability — expert**

(8) An expert is not liable in an action under any of sections 149 to 151 with respect to any part of a document or public oral statement that includes, summarizes or quotes from a report, statement or opinion made by the expert if the expert proves that he, she or it withdrew in writing, before the document was released or the public oral statement was made, the written consent that the expert had previously provided.

## **No liability — unanticipated release**

(9) A person is not liable in an action under any of sections 149 to 151 in respect of a misrepresentation in a document, other than a document required to be filed with the Chief Regulator, if the person proves that, at the time of the document's release, the person did not know and had no reasonable grounds to believe that the document would be released.

### **No liability — other circumstances**

(10) A person is not liable in an action under any of sections 149 to 151 for a misrepresentation in a document or a public oral statement if the person proves all of the following:

- (a) the misrepresentation was also contained in a document filed by or on behalf of another person, other than the responsible issuer, with the Chief Regulator or an exchange and was not corrected in another document filed by or on behalf of that other person with the Chief Regulator or exchange before the release of the document or statement made by or on behalf of the responsible issuer;
- (b) the document or statement contained a reference identifying the document that was the source of the misrepresentation; and
- (c) when the document was released or the statement was made, the person did not know and had no reasonable grounds to believe that the document or statement contained a misrepresentation.

### **No liability for failure to make timely disclosure — confidential filing**

**159.** (1) A person is not liable in an action under section 152 in respect of a failure to make timely disclosure if

- (a) the person proves that the material change was disclosed by the responsible issuer in a report filed on a confidential basis with the Chief Regulator under paragraph 43 (b) or the regulations;
- (b) the responsible issuer had a reasonable basis for making the disclosure on a confidential basis;
- (c) in the case where the information contained in the report filed on a confidential basis remains material, disclosure of the material change was generally disclosed immediately after the basis for confidentiality ceased to exist;
- (d) the person or responsible issuer did not release a document or make a public oral statement that, due to the undisclosed material change, contained a misrepresentation; and

- (e) in the case where the material change became generally disclosed in a manner other than the manner required under capital markets law, the responsible issuer immediately disclosed the material change in the manner required under capital markets law.

### **No liability — reasonable investigation**

(2) A person is not liable in an action under section 152 in relation to a failure to make timely disclosure if the person proves that

- (a) before the failure to make timely disclosure first occurred, the person conducted or caused to be conducted a reasonable investigation; and
- (b) the person had no reasonable grounds to believe and did not believe that the failure to make timely disclosure would occur.

### **Circumstances to be considered**

**160.** In determining whether a person committed gross misconduct under paragraph 156 (1) (c) or 157 (1) (c) or whether an investigation referred to in paragraph 158 (1) (a) or 159 (2) (a) that is conducted or caused to be conducted by a person is reasonable, the court must consider all relevant circumstances, including

- (a) the nature of the responsible issuer;
- (b) the knowledge, experience and function of the person;
- (c) the office held, if the person was an officer;
- (d) the presence or absence of another relationship with the responsible issuer, if the person was a director;
- (e) the existence, if any, and the nature of any compliance system designed to ensure that the responsible issuer meets its disclosure obligations;
- (f) the reasonableness of reliance by the person on the responsible issuer's disclosure compliance system and on the responsible issuer's officers and employees and others whose duties would ordinarily have given them knowledge of the relevant facts;
- (g) the period within which disclosure was required to be made;

- (h) in respect of an expert's report, statement or opinion, any professional standards applicable to the expert;
- (i) the extent to which the person knew, or should reasonably have known, the content and medium of dissemination of the document or public oral statement;
- (j) in the case of a misrepresentation, the role and responsibility of the person in the preparation and release of the document or the making of the public oral statement containing the misrepresentation or in the ascertainment of the facts contained in that document or statement; and
- (k) in the case of a failure to make timely disclosure, the role and responsibility of the person involved in a decision not to disclose the material change.

#### **No liability — plaintiff's knowledge**

**161.** A person is not liable in an action under any of sections 149 to 152 in relation to a misrepresentation in a document or public oral statement or a failure to make timely disclosure if the person proves that the plaintiff acquired or disposed of the responsible issuer's security with knowledge that the document or statement contained the misrepresentation or with knowledge of the material change.

#### **No liability — immediate notice**

**162.** A person, other than the responsible issuer, is not liable in an action under any of sections 149 to 152 if the misrepresentation or failure to make timely disclosure was made without the person's knowledge or consent and if, after becoming aware of the misrepresentation before it was corrected or of the failure to make timely disclosure before it was disclosed in the manner required under capital markets law, the person

- (a) immediately notified the responsible issuer's directors or other persons acting in a similar capacity of the misrepresentation or the failure to make timely disclosure; and
- (b) immediately notified the Chief Regulator in writing, unless the person was prohibited by law or by professional confidentiality rules, of the misrepresentation or the failure to make timely disclosure, if the responsible issuer did not correct the misrepresentation or subsequently disclose the material change in the manner required under capital markets law within two business days after the notification under paragraph (a).

## DAMAGES

### Assessment of damages — acquisition of securities

**163.** (1) The following rules apply to the assessment of damages in favour of a person who acquired a responsible issuer's securities after a document was released or a public oral statement was made containing a misrepresentation or after a failure to make timely disclosure:

- (a) if the person subsequently disposed of any of the responsible issuer's securities on or before the 10th trading day after the public correction of the misrepresentation or the disclosure of the material change in the manner required under capital markets law, assessed damages for those securities are equal to the amount, calculated taking into account the result of hedging or other risk limitation transactions, that is determined by the formula

$$C - D$$

where

C is the average price paid for those securities, including any commissions paid in respect of them, and

D is the price received on the disposition of those securities, without deducting any commissions paid in respect of the disposition;

- (b) if the person subsequently disposed of any of the responsible issuer's securities after the 10th trading day following the public correction of the misrepresentation or the disclosure of the material change in the manner required under capital markets law, assessed damages for those securities are equal to the lesser of
  - (i) an amount, calculated taking into account the result of hedging or other risk limitation transactions, that is determined by the formula

$$C - D$$

where

- C is the average price paid for those securities, including any commissions paid in respect of them, and
  - D is the price received on the disposition of those securities, without deducting any commissions paid in respect of the disposition, and
- (ii) an amount that is determined by the formula

$$E \times (F - G)$$

where

- E is the number of securities that the person disposed of,
  - F is the average price per security paid for those securities, including any commissions paid in respect of their acquisition, determined on a per security basis, and
  - G is
    - (A) if the responsible issuer's securities trade on a published market, the trading price, calculated in accordance with the regulations, of the responsible issuer's securities on the principal market for the 10 trading days after the public correction of the misrepresentation or the disclosure of the material change in the manner required under capital markets law, or
    - (B) if there is no published market, the amount that the court considers just;
- (c) if the person has not disposed of any of the responsible issuer's securities, assessed damages for those securities are equal to an amount that is determined by the formula

$$H \times (F - G)$$



where

H is the number of securities that the person acquired,

F is the average price per security paid for those securities, including any commissions paid in respect of their acquisition, determined on a per security basis, and

G is

- (i) if the responsible issuer's securities trade on a published market, the trading price, calculated in accordance with the regulations, of the responsible issuer's securities on the principal market for the 10 trading days after the public correction of the misrepresentation or the disclosure of the material change in the manner required under capital markets law, or
- (ii) if there is no published market, the amount that the court considers just.

### **Assessment — disposal of securities**

(2) The following rules apply to the assessment of damages in favour of a person who disposed of a responsible issuer's securities after a document was released or a public oral statement was made containing a misrepresentation or after a failure to make timely disclosure:

- (a) to the extent that the person subsequently acquired any of the responsible issuer's securities, of the same class or series as those that the person disposed of, on or before the 10th trading day after the public correction of the misrepresentation or the disclosure of the material change in the manner required under capital markets law, assessed damages for the securities the person disposed of are equal to an amount, calculated taking into account the result of hedging or other risk limitation transactions, that is determined by the formula

$$J - L$$

where

- J is the price paid for the securities the person subsequently acquired, without including any commissions paid in respect of them, and
- L is the average price received on the disposition of the securities the person disposed of, deducting any commissions paid in respect of the disposition;
- (b) to the extent that the person subsequently acquired any of the responsible issuer's securities, of the same class or series as those that the person disposed of, after the 10th trading day following the public correction of the misrepresentation or the disclosure of the material change in the manner required under capital markets law, assessed damages for the securities the person disposed of are equal to the lesser of
- (i) an amount, calculated taking into account the result of hedging or other risk limitation transactions, that is determined by the formula

$$K - L$$

where

- K is the price paid for the securities the person subsequently acquired, without including any commissions paid in respect of them, and
- L is the average price received on the disposition of the securities the person disposed of, deducting any commissions paid in respect of the disposition, and
- (ii) an amount that is determined by the formula

$$M \times (N - P)$$

where

- M is the number of securities that the person disposed of,
- N is

- (A) if the securities trade on a published market, the trading price, calculated in accordance with the regulations, of the securities on the principal market for the 10 trading days after the public correction of the misrepresentation or the disclosure of the material change in the manner required under capital markets law, or
- (B) if there is no published market, the amount that the court considers just, and

P is the average price per security received on the disposition of the securities the person disposed of, deducting any commissions paid in respect of the disposition determined on a per security basis; and

- (c) to the extent that the person has not subsequently acquired securities of the same class or series as those that the person disposed of, assessed damages are equal to an amount that is determined by the formula

$$M \times (N - P)$$

where

M is the number of securities that the person disposed of,

N is

- (i) if the securities trade on a published market, the trading price, calculated in accordance with the regulations, of the securities on the principal market for the 10 trading days after the public correction of the misrepresentation or the disclosure of the material change in the manner required under capital markets law, or
- (ii) if there is no published market, the amount that the court considers just, and

P is the average price per security received on the disposition of the securities the person disposed of, deducting any commissions paid in respect of the disposition determined on a per security basis.

### **Exception**

(3) For the purposes of subsections (1) and (2), assessed damages are not to include any amount that the defendant proves is attributable to a change in the market price of securities that is unrelated to the misrepresentation or the failure to make timely disclosure.

### **Definitions**

(4) The following definitions apply in this section.

#### **“principal market”**

“principal market” means, for a class or series of securities,

- (a) the published market in Canada on which the greatest volume of trading in securities of that class or series occurred during the 10 trading days before the day on which the misrepresentation was made or the failure to make timely disclosure first occurred; or
- (b) if securities of that class or series are not traded during those 10 trading days on a published market in Canada, the published market on which the greatest volume of trading in securities of that class or series occurred during the 10 trading days before the day on which the misrepresentation was made or the failure to make timely disclosure first occurred.

#### **“trading day”**

“trading day” means a day during which the principal market for a security is open for trading.

### **Proportionate liability**

**164.** (1) Subject to section 165, each defendant found liable in an action under any of sections 149 to 152 is only liable for that portion of the aggregate amount of damages assessed in favour of the plaintiff that corresponds to that defendant's responsibility for the damages, as determined by the court.

## Exception

(2) Despite subsection (1), if, in an action referred to in that subsection in respect of a misrepresentation or a failure to make timely disclosure, a court determines that a particular defendant, other than the responsible issuer, authorized, permitted, acquiesced in or influenced the making of the misrepresentation or the failure to make timely disclosure, while knowing it to be a misrepresentation or a failure to make timely disclosure, the whole amount of the damages assessed in the action may be recovered from that defendant.

## Joint and several liability

(3) Each defendant in respect of whom the court has made a determination under subsection (2) is jointly and severally liable with each other defendant in respect of whom the court has made such a determination.

## Contribution

(4) Any defendant against whom recovery is obtained under subsection (2) is entitled to claim contribution from any other defendant who is found liable in the action.

## Liability limit

**165.** (1) Despite section 163, the damages payable by a person in an action under any of sections 149 to 152 are not to exceed the lesser of

- (a) the aggregate damages assessed against the person in the action, and
- (b) the amount determined by the formula

$$Q - R - S$$

where

Q is

- (i) for a responsible issuer, the greater of \$1 million and 5% of its market capitalization,

- (ii) for a director or officer of a responsible issuer, the greater of \$25,000 and 50% of the aggregate of the director's or officer's compensation from the responsible issuer and its affiliates,
  - (iii) for an influential person who is not an individual, the greater of \$1 million and 5% of its market capitalization,
  - (iv) for an influential person who is an individual, the greater of \$25,000 and 50% of the aggregate of that person's compensation from the responsible issuer and its affiliates,
  - (v) for a director or officer of an influential person, the greater of \$25,000 and 50% of the aggregate of the director's or officer's compensation from that person and its affiliates,
  - (vi) for an expert, the greater of \$1 million and the revenue that the expert and the expert's affiliates have earned from the responsible issuer and its affiliates during the 12-month period preceding the misrepresentation, and
  - (vii) for each person who made a public oral statement, other than an individual referred to in subparagraph (iv), (v) or (vi), the greater of \$25,000 and 50% of the aggregate of the person's compensation from the responsible issuer and its affiliates,
- R is the aggregate of all damages assessed after appeals, if any, against the person in all other actions brought under any of sections 149 to 152 and under comparable legislation in other provinces and territories in Canada with respect to the same misrepresentation or failure to make timely disclosure, and
- S is any amount paid in settlement of any of those other actions.

### **Exception**

(2) Subsection (1) does not apply to a person, other than the responsible issuer, if the court determines that the person authorized, permitted, acquiesced in or influenced the making of the misrepresentation or the failure to make timely disclosure while knowing it to be a misrepresentation or a failure to make timely disclosure.

## Definition of “compensation”

(3) In subsection (1),

“compensation” means the compensation received during the 12-month period immediately before the day on which a misrepresentation is made or on which a failure to make timely disclosure first occurs, together with the fair market value of all deferred compensation — including options, pension benefits and stock appreciation rights — granted during that period, valued as of the day on which that compensation is awarded.

## PROCEDURAL MATTERS

### Leave required

**166.** (1) No action is to be commenced under any of sections 149 to 152 without leave of the court granted on application or motion with notice to each defendant.

### Conditions for leave

(2) The court may grant leave only if it is satisfied that

- (a) the action is being brought in good faith; and
- (b) there is a reasonable possibility that the action will be resolved at trial in favour of the plaintiff.

### Affidavits

(3) On an application or motion for leave under this section, the plaintiff must serve and file with the court one or more affidavits setting out the material facts on which the plaintiff intends to rely.

### Examination permitted

(4) The maker of an affidavit may be examined on it in accordance with the rules of the court in which the action is brought.

### Copies to Chief Regulator

(5) A ~~copy of the~~person who brings an application or motion for leave ~~and any materials filed with the court by either party must be sent,~~ or who files material with the court, must send a copy of the application, motion or material, as the case may be, to the Chief Regulator when filed.

### Notice of date

(6) The plaintiff must send the Chief Regulator ~~written~~ notice of the day on which the application or motion for leave is scheduled to be heard at the same time that notice of the day is given to each defendant.

### Notice of appeal

- (7) If a party appeals the court's decision on whether leave to commence an action is granted,
- (a) each party to the appeal must send a copy of any materials filed with the court hearing the appeal to the Chief Regulator at the same time that they are filed with the court; and
  - (b) the appellant must send the Chief Regulator ~~written~~ notice of the day on which the appeal is scheduled to be heard at the same time that notice of the day is given to each respondent.

### Notice

**167.** (1) A person who has been granted leave to commence an action under any of sections 149 to 152 must

- (a) issue, as soon as practicable, a news release disclosing that leave has been granted to commence an action under that section;
- (b) send a ~~written~~ notice of the leave to the Chief Regulator within seven days after it is granted, together with a copy of the news release;
- (c) send a copy of the statement of claim or other originating document to the Chief Regulator when filed; and
- (d) send the Chief Regulator ~~written~~ notice of the day on which the trial of the action is scheduled to proceed at the same time that notice of the day is given to each defendant.

### Notice of appeal

- (2) If a party appeals the court's decision at the trial of the action,



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- (a) each party to the appeal must send a copy of any materials filed with the court hearing the appeal to the Chief Regulator at the same time that they are filed with the court; and
- (b) the appellant must send the Chief Regulator ~~written~~ notice of the day on which the appeal is scheduled to be heard at the same time that notice of the day is given to each respondent.

### **Notice re discontinuation, etc.**

(3) If an action under any of sections 149 to 152 is discontinued, settled or abandoned, the plaintiff must promptly send notice to the Chief Regulator, including a copy of any order made by the court in connection with the discontinuation, settlement or abandonment.

### **Restriction on discontinuation**

**168.** (1) An action under any of sections 149 to 152 must not be discontinued, abandoned or settled without the approval of the court given on the terms, including terms as to costs, that the court considers appropriate.

### **Consideration**

(2) In determining whether to approve the settlement of an action referred to in subsection (1), the court must consider, among other things, whether there are any other actions outstanding under any of sections 149 to 152 or under comparable legislation in another province or territory of Canada.

### **Intervention by Chief Regulator**

**169.** The Chief Regulator may intervene in an action under any of sections 149 to 152, in an application or motion for leave to commence such an action and in any appeal from a decision in the action or from a decision on whether leave to commence such an action is granted.

### **No derogation**

**170.** The right of action for damages and the defences to an action under any of sections 149 to 152 are in addition to, and without derogation from, any other rights or defences that the plaintiff or defendant may have at law.

### **Limitation period**

**171.** (1) No action is to be commenced under any of sections 149 to 152

- (a) in relation to a misrepresentation in a document, later than the earlier of
  - (i) three years after the day on which the document was first released, and
  - (ii) six months after the day on which a news release was issued, disclosing that leave has been granted to commence such an action under this Act or under comparable legislation in another province or territory of Canada;
- (b) in relation to a misrepresentation in a public oral statement, later than the earlier of
  - (i) three years after the day on which the statement was made, and
  - (ii) six months after the day on which a news release was issued, disclosing that leave has been granted to commence such an action under this Act or under comparable legislation in another province or territory of Canada; and
- (c) in relation to a failure to make timely disclosure, later than the earlier of
  - (i) three years after the day on which the disclosure was required to be made, and
  - (ii) six months after the day on which a news release was issued, disclosing that leave has been granted to commence such an action under this Act or under comparable legislation in another province or territory of Canada.

### **Same**

(2) A limitation period established by subsection (1) in respect of an action is suspended on the date on which a notice of application or motion for leave under section 166 is filed with the court and resumes running on the date

- (a) the court grants leave or dismisses the application or motion, and
  - (i) all appeals have been exhausted, or
  - (ii) the time for an appeal has expired without an appeal being filed; or
- (b) the application or motion is abandoned or discontinued.

## **PART 14 GENERAL**

### **DECISIONS AND PROCEEDINGS**

#### **Power of Authority re: decisions**

**172.** (1) The Authority may impose conditions, restrictions ~~and~~or requirements in its decisions.

#### **Power to revoke or vary decisions**

(2) The Authority may revoke or vary any of its decisions if the Authority considers that it would not be prejudicial to the public interest to do so.

#### **Opportunity to be heard**

(3) However, the Authority must not revoke or vary a decision without giving an opportunity to be heard to each person:

(a) who had an opportunity to be heard when the decision was made; and

(b) who is directly affected by the decision.

#### **Powers of Chief Regulator re: decisions**

**173.** (1) The Chief Regulator may impose conditions, restrictions ~~and~~or requirements in his or her decisions.

#### **Power to revoke or vary decisions**

(2) The Chief Regulator, or a person who is authorized under section 14 to exercise a power or perform a duty of the Chief Regulator, may revoke or vary any of his, her or its decisions if the Chief Regulator or person, as the case may be, considers that it would not be prejudicial to the public interest to do so, whether or not the decision has been filed with a court.

#### **Opportunity to be heard**

(3) However, the Chief Regulator or the person authorized under section 14 must not revoke or vary a decision without giving an opportunity to be heard to each person:

(a) who had an opportunity to be heard when the decision was made; and

(b) who is directly affected by the decision.

### **Powers of Tribunal re: decisions**

**174.** (1) The Tribunal may impose conditions, restrictions or requirements in its decisions.

### **Power to revoke or vary decisions**

(2) On application by the Chief Regulator or by a person directly affected by a decision of the Tribunal, the Tribunal may vary or revoke the decision if the Tribunal considers that it would not be prejudicial to the public interest to do so, whether or not the decision has been filed with a court.

### **Limitation period**

**175.** (1) No proceeding, other than a proceeding under Parts 12 and 13, is to be commenced later than six years after the day on which the last event that gave rise to the proceeding occurred.

### **Same**

(2) Subsection (1) applies whether the last event that gave rise to the proceeding occurred before, on or after the day on which subsection (1) comes into force.

### **Privative clauses**

#### **Decisions of Authority**

**176.** (1) A decision of the Authority is final and, except for judicial review, is not subject to appeal or review by the Tribunal or by any court.

#### **Decisions of Chief Regulator**

(2) If a decision of the Chief Regulator may be reviewed under section 99, the decision is not subject to judicial review and is not to be restrained, prohibited, removed, set aside or otherwise dealt with other than under that section.

#### **Decisions of Tribunal**

(3) If a decision of the Tribunal may be appealed under section 100, the decision is not subject to judicial review and it is not to be restrained, prohibited, removed, set aside or otherwise dealt with other than under that section.

## Decisions of certain others

(4) If a decision of a recognized auditor oversight organization or recognized self-regulatory organization may be reviewed under section 13, the decision is not subject to judicial review and it is not to be restrained, prohibited, removed, set aside or otherwise dealt with other than under that section.

## Admissibility in evidence of certified statements

**177.** A statement concerning any of the following matters that purports to be certified by the Chief Regulator is, without proof of the office or signature of the person certifying it, admissible in evidence for all purposes in any action, proceeding or prosecution:

- (a) the registration or non-registration of a person under this Act or the regulations;
- (b) the filing or non-filing of a record required or permitted to be filed under capital markets law; or
- (c) any other matter or information related to the matters referred to in paragraph (a) or (b).

## INTERJURISDICTIONAL MATTERS

### Decisions, etc., in other participating provinces and territories

#### Authority

**178.** (1) A power exercised, duty performed or decision made by the Authority under [**the *Capital Markets Act***] or a regulation made under it of another participating province or territory is deemed to be a power exercised, duty performed or decision made by the Authority under this Act or a regulation ~~made under it~~.

#### Chief Regulator

(2) A power exercised, duty performed or decision made by the Chief Regulator under [**the *Capital Markets Act***] or a regulation made under it of another participating province or territory is deemed to be a power exercised, duty performed or decision made by the Chief Regulator under this Act or a regulation ~~made under it~~.

#### Tribunal

(3) A decision made by the Tribunal under [**the *Capital Markets Act***] or a regulation made under it of another participating province or territory is deemed to be a decision made by the Tribunal under this Act or a regulation ~~made under it~~.

## Evidence to be taken in another jurisdiction

179. (1) The Chief Regulator may apply to ~~a~~the superior court for an order
- (a) appointing a person to take the evidence of a witness in ~~a~~another jurisdiction ~~outside of for use in a proceeding in~~ this province or territory ~~for use in a proceeding~~ related to the administration or enforcement of ~~this Act~~capital markets law or the regulation of capital markets; and
  - (b) providing for the issuance of a letter of request directed to the judicial authority of the jurisdiction in which the witness is believed to be located, requesting the judicial authority to compel the witness to be examined by the person appointed under paragraph (a) in order to give testimony on oath or solemn affirmation and to produce information, records and things that are relevant to the subject matter of the proceeding.

## Practice and procedure

(2) The practice and procedure in connection with an appointment under this section, the taking of evidence and the certifying and return of the appointment are, as far as possible, the same as those that govern similar matters in civil proceedings in the court.

## Admissibility of evidence

(3) The making of an order under subsection (1) does not determine whether evidence obtained as a result of the order is admissible in the proceeding.

## Evidence request from another jurisdiction

180. ~~A~~The superior court may make any or all of the following orders if the court is satisfied that a judicial authority of competent jurisdiction outside of this province or territory has, on behalf of a body empowered by law to regulate trading in securities or derivatives, authorized the taking of evidence of a witness within this province or territory for use in a proceeding before the body:

- (a) compelling the witness to be examined by the person appointed in the manner and form directed by the judicial authority in order to give testimony on oath or solemn affirmation;
- (b) compelling the witness to produce records and things mentioned in the order; ~~and~~

- (c) giving any directions that the court considers appropriate as to the time and place for the examination and any other matters related to it.

### **Execution of warrant issued in another ~~province~~jurisdiction**

**181.** (1) If a court of another jurisdiction issues a warrant for the arrest of a person on a charge of contravening the provisions of an Act or regulations of that jurisdiction that are similar to provisions of capital markets law, and if the person is or is suspected to be in this province or territory, a court of this province or territory may, on satisfactory proof of the handwriting of the person who issued the warrant, make an endorsement on the warrant ~~in the required form~~.

#### **Same**

(2) A warrant that is endorsed under subsection (1) is sufficient authority to the following persons to execute the warrant within this province or territory, to take the person arrested under the warrant out of, or anywhere in, this province or territory and to re-arrest that person anywhere within this province or territory:

- (a) the person bringing the warrant;
- (b) all other persons to whom it was originally directed;
- (c) all peace officers within this province or territory.

#### **Same**

(3) If a peace officer of this ~~province or territory or of~~for another jurisdiction who is passing through this province or territory has in his or her custody a person arrested in another jurisdiction under a warrant endorsed under subsection (1), the peace officer is entitled to hold, take and re-arrest the person anywhere in this province or territory under the warrant without proof of the warrant or the endorsement.

## **RECORDS**

### **Filing of records**

**182.** Unless otherwise provided by capital markets law, records required to be filed under capital markets law must be filed with the Chief Regulator in the prescribed manner.

### **Linguistic versions of records**

**183.** Unless otherwise provided by capital markets law, if a record is required to be filed under capital markets law, all linguistic versions of that record that are sent to security holders or potential investors must also be filed as soon as practicable after they are so sent.

### **Alternative format, method for filing, etc.**

**184.** The Chief Regulator may, for the filing, sending, delivering or providing of a record, permit the use of a format or method that is different from the format or method required by the regulations or specified by the Chief Regulator.

### **Record as amended**

**185.** Unless otherwise provided under capital markets law, a reference to a specific record includes a reference to any amendment of it that is permitted or required under capital markets law.

## **DISCLOSURES TO AND BY THE AUTHORITY**

### **Duty to keep and provide records, etc.**

**186.** The regulations may prescribe requirements in relation to the keeping of records and the provision of records and information to the Authority or a ~~designated~~recognized trade repository for the purposes of

- (a) monitoring activity in capital markets or detecting, identifying or mitigating systemic risks related to capital markets; or
- (b) conducting policy analysis related to the Authority's mandate and the purposes of this Act.

### **Duty to provide records to Authority**

**187.** At the request of the Authority, a market participant or other person must, at the time and in the form that the Authority specifies, provide it with the records and information it requires for the purposes of

- (a) monitoring activity in capital markets or detecting, identifying or mitigating systemic risks related to capital markets; or



- (b) conducting policy analysis related to the Authority's mandate and the purposes of this Act.

### **Immunity re disclosure to Authority**

**188.** (1) No action for damages may be commenced against a person for having disclosed any information to the Authority or to anyone acting under its authorization if the person reasonably believes that the information

- (a) is true, in the case where the person is providing the information at the request of a peace officer who is investigating an offence under capital markets law, a designated ~~person~~reviewer conducting a review under section 103 or an authorized ~~person~~investigator conducting an investigation under section 104; or
- (b) is true and may be related to an offence or a contravention under capital markets law, in any other case.

### **Effect of disclosure**

(2) The disclosure of information to the Authority or a trade repository that is made in good faith by a person in compliance or intended compliance with capital markets law

- (a) does not constitute a breach of any contractual provision to which the person or any other person is subject; and
- (b) does not constitute any other basis of liability, and no action lies or may be commenced, against the person or any other person in respect of the person's disclosure.

### **Permission to disclose to Authority**

**189.** A person may disclose personal information to the Authority if the disclosure is for the purpose of the administration or enforcement of ~~this Act~~capital markets law or the regulation of capital markets or for the purpose of assisting in the administration or enforcement of capital markets or financial legislation or the regulation of capital markets in Canada or elsewhere.

### **Collection of personal information**

**190.** The Authority may collect, directly or indirectly, any personal information that it considers relevant to the exercise of powers or the performance of duties under this Act and the regulations.

## Public consultation of records

**191.** A record required to be filed under capital markets law must be made available by the Chief Regulator during business hours for public inspection unless the Chief Regulator considers that

- (a) a person whose information appears in the record would be unduly prejudiced by disclosure of the information; and
- (b) the person's interest in keeping the record confidential outweighs the public interest in having it disclosed.

## Public list of non-compliant persons

**192.** The Chief Regulator may publish a list of persons who are not in compliance with a requirement of capital markets law.

## Duty of confidentiality

**193.** (1) Information obtained by the Authority under this Act that is not publicly available information is, subject to subsections (2) and (3) ~~and the regulations~~, confidential and must be treated accordingly.

## Disclosure

- (2) Nothing in subsection (1) prevents the disclosure of information in Canada or elsewhere
  - (a) to a law enforcement agency if the disclosure is not otherwise prohibited by law;
  - (b) to a capital markets or financial regulatory authority, a recognized entity, a designated entity, a market place that is neither a recognized entity nor a designated entity, a trade repository, a clearing agency, self-regulatory organization, a governmental or regulatory authority if the disclosure is for the purpose of the administration or enforcement of ~~this Act~~ capital markets law or the regulation of capital markets or for the purpose of assisting in the administration or enforcement of capital markets or financial legislation or the regulation of capital markets in Canada or elsewhere;
  - (c) to a person providing services to the Authority; or

- (d) to any other person, authority, entity or agency, if the Chief Regulator considers that exceptional circumstances exist for doing so and that it is necessary for the purposes of this Act.

## Same

- (3) Nothing in subsection (1) prevents disclosure of the information
  - (a) if it is disclosed in an aggregated form from which it is not possible to ascertain information relating to any identifiable person;
  - (b) if the disclosure is consistent with the purposes for which the information was obtained; or
  - (c) if the Authority considers that the public interest in disclosure outweighs any private interest in keeping the information confidential.

## Disclosure outside Canada

**194.** Before the Authority discloses information to a person, authority, entity or agency outside Canada, the Authority must enter into an agreement, arrangement, commitment or understanding with the person, authority, entity or agency regarding the conditions of that disclosure.

## ~~Prohibition re: privileged~~Privileged information

~~195. For greater certainty, no person shall disclose privileged documents, privileged information or information based on privileged information pursuant to section 187, 189, 193 or 194.~~195. (1) Nothing in this Act shall be construed to affect the privilege that exists between a solicitor and his or her client in relation to information or records that are subject to that privilege.

## Consent to disclosure

(2) If a person consents to the disclosure to the Authority of information or a record that is subject to privilege, the consent neither negates nor constitutes a waiver of the privilege and the privilege continues for all other purposes.

## Disclosure of compelled evidence

**196.** Before the Chief Regulator discloses evidence given under paragraph 104 (4) (b), he or she must provide the person who gives the evidence with notice that it may be disclosed and for what purpose, and must give the person an opportunity to ~~make representations~~be heard, unless

- (a) the disclosure is made in a proceeding commenced or proposed to be commenced under this Act or in an examination of a witness; or
- (b) the Tribunal authorizes the disclosure, on an application made without notice by the Chief Regulator, if the Tribunal considers it to be in the public interest.

## OTHER MATTERS

### Publication of notices, etc., by Authority

**197.** The Authority complies with a requirement of capital markets law to publish or ~~otherwise~~to make ~~available~~accessible a notice or other ~~information~~record if the Authority provides the notice or ~~information~~record in electronic form through an electronic medium or posts it on the public website maintained by the Authority.

### Methods for delivery of notices

**198.** (1) Unless otherwise provided by capital markets law ~~or ordered by the Chief Regulator~~, a record that under capital markets law is required to be sent or delivered to a person must be

- (a) personally delivered to the person;
- (b) transmitted by electronic means to the person; or
- (c) mailed to that person.

### Same

(2) If, under subsection (1), a record is transmitted by electronic means or mailed to a person, the record must be transmitted or mailed to that person

- (a) at the latest address known for that person by the sender of the record,
- (b) at the address for service filed by that person with the Authority, or
- (c) at the address of the person's lawyer if the person, or the lawyer, has advised that the lawyer is acting for the person.

### **Personal delivery to the Chief Regulator**

(3) A record is deemed to have been personally delivered to the Chief Regulator if the record is deposited at the office of the regulatory division of the Authority during its business hours.

### **Deemed receipt**

(4) A record is deemed to have been received by the person to whom it was sent or delivered

- (a) if mailed by ordinary mail, on the seventh day after mailing;
- (b) if mailed by registered mail, on the earlier of the seventh day after mailing or the day its receipt was acknowledged in writing by the person to whom it was sent or delivered or by a person accepting it on that person's behalf; or
- (c) if transmitted by electronic means in accordance with the regulations, at the time prescribed.

### **Effect of returned mail**

(5) If, on two consecutive occasions, the records sent or delivered by an issuer to a security holder in accordance with subsection (2) are returned, the issuer is not required to send or deliver any further records to the security holder until the security holder informs the issuer in writing of the security holder's new address.

### **Enforcement by court**

**199.** A certified copy of a decision made by the Tribunal under this Act or a decision made by the Chief Regulator under subsection 90 (4) may be filed with the superior court and, upon being filed, the decision may be enforced as if it were an order of the court.

### **Collection from third party**

**200.** (1) If a person owes money to the Authority under section 90 and if the Chief Regulator receives information that a third party is, or is about to become, indebted to the person, the Chief Regulator may demand of the third party that the money be paid to the Authority on account of the person's liability to the Authority.

### **Duty to pay**

(2) The third party must pay the money demanded under subsection (1) to the Authority as soon as practicable after the later of

- (a) the receipt of the demand; and
- (b) the date the money is due to be paid to the person named in the demand.

### **Effect of payment**

(3) Money paid to the Authority under this section discharges the indebtedness of the third party to the person named in the demand to the extent of the amount of money paid to the Authority.

### **Effect of non-payment**

(4) If, after receipt of a demand under this section, a third party fails to pay the money to the Authority as required under subsection (2) or makes a payment to the person named in the demand, the third party is liable to Authority for the lesser of

- (a) the third party's indebtedness to the person plus the amount of the indebtedness paid by the third party to the person; and
- (b) the amount owed to the Authority by the person, including any interest and penalty.

### **Notice of demand**

(5) If a demand is made on a third party under this section, the Chief Regulator must, in the same manner and at the same time, notify the person of the demand.

### **Immunity from proceedings for damages**

#### **Immunity of the Authority, Tribunal members**

**201.** (1) No action for damages lies, and no action may be commenced, against the Authority, any director, officer, employee or agent of the Authority or any member of the Tribunal for any act done in good faith in the performance or intended performance of any duty or in the exercise or the intended exercise of any power under capital markets law, or for any neglect or default in the performance or exercise in good faith of such duty or power.

#### **Immunity of recognized auditor oversight organization**

(2) No action for damages lies, and no action may be commenced, against a recognized auditor oversight organization or any member, director, officer, employee or agent of the organization for any act done in good faith in the performance or intended performance of any

duty or in the exercise or the intended exercise of any power under capital markets law, or for any neglect or default in the performance or exercise in good faith of such duty or power.

### **Immunity of recognized self-regulatory organization**

(3) No action for damages lies, and no action may be commenced, against a recognized self-regulatory organization or a director, officer, employee or agent of the organization for any act done in good faith in the performance or intended performance of any duty or in the exercise or the intended exercise of any power that has been delegated to the recognized self-regulatory organization under section 14, or for any neglect or default in the performance or exercise in good faith of such duty or power.

### **Immunity for compliance**

(4) No action for damages lies, and no action may be commenced, any person for any act done or omitted to be done as a result of compliance with this Act or any decision of the Authority, Tribunal or Chief Regulator.

## **PART 15 REGULATIONS, FORMS AND POLICIES**

### **Regulations**

**202.** (1) Subject to sections 205 to 210, the Authority may make regulations for carrying out the purposes and provisions of this Act, including regulations~~...~~

- 1. governing
  - i. recognized entities,
  - ii. designated entities,
  - iii. entities exempt from recognition or designation,
  - iv. market places,
  - v. issuers and registrants,
  - vi. boards of directors of recognized entities, designated entities, market places and issuers, including members of that board, a committee of that board or its members and any other person performing comparable functions, and

- vii. auditors of issuers or registrants;
- 2. establishing restrictions and processes for the review and approval of the ownership, control and direction of a recognized entity, designated entity or market place;
- 3. governing registration, including
  - i. qualifications of registrants and of the persons whom registrants are required to appoint or designate under this Act,
  - ii. suspension, termination and reinstatement of registration,
  - iii. duration of registration,
  - iv. eligibility criteria and requirements for registrants and their officers, including the imposition of duties and standards, and
  - v. prohibitions and restrictions applicable to registrants and their officers;
- 4. governing trading, acquiring and making representations about securities or derivatives, including prescribing prohibitions and restrictions relating to trading, acquiring and making representations;
- 5. governing changes of the ownership of, or control or direction over, a registrant, recognized entity or designated entity;
- 6. prohibiting changes to the terms of a rights offering in an amendment to a prospectus;
- 7. governing activities, in connection with distributions, in which registrants or issuers are permitted to engage or are prohibited from engaging;
- 8. prescribing requirements for the escrow of securities in connection with a distribution;
- 9. governing investment funds, including
  - i. requirements for their distributors, promoters, advisers and administrators,
  - ii. custody of their assets,
  - iii. calculation of their value,



iv. prohibiting or restricting investment practices and investments,

v. matters requiring approval by some or all of an investment fund's security holders, and what constitutes approval by the security holders for specified types of matters,

vi. payments related to sales charges, commissions or sales incentives, or to advising, administrative or management services provided to investment funds,

vii. reimbursement of costs in connection with the organization of investment funds, and

viii. sales and redemptions of investment funds or the securities of an investment fund;

10. governing meetings of issuers with security holders, including

i. requirements for voting by proxy or otherwise,

ii. circumstances in which a vote of security holders must be done by poll,

iii. requirements relating to communication with registered, legal and beneficial owners of securities, including requirements relating to persons that hold securities on behalf of beneficial owners,

iv. requirements relating to persons involved in or activities and practices relating to the solicitation, collection, submission, tabulation and validity of proxy votes and voting instructions, and

v. matters requiring approval of an issuer's security holders and what constitutes approval by the security holders for specified types of matters, including prescribing classes of security holders who are, or are not, entitled to vote;

11. governing take-over bids, issuer bids, insider bids, going-private transactions, related party transactions, business combinations and other similar transactions, including, during or in anticipation of the bid, transaction or combination, in relation to

i. any documents to be filed or delivered,

ii. the conduct or management of the affairs of an issuer that is the subject of a bid, transaction or combination,

iii. the conduct of the directors and officers, or persons performing comparable functions, of an issuer that is the subject of a bid, transaction or combination;

12. governing professional companies and PC representatives, including

i. the application of capital markets law to a professional company or PC representative,

ii. the legal relationship between a dealer, adviser or self-regulatory organization and a professional company or a PC representative, and the legal relationship between a professional company and a PC representative,

iii. the legal authority of a dealer, adviser or self-regulatory organization over a professional company or a PC representative,

iv. the liability of a professional company and its shareholders, directors, officers and employees or a PC representative to a client or the liability of a registered dealer or registered adviser to a client when a professional company or a PC representative acts as a dealer or adviser to that client,

v. the law applicable to the confidential, ethical or fiduciary relationships between a professional company or a PC representative and a client,

vi. the application of a PC representative's obligations to shareholders, directors, officers and employees of the professional corporation with respect to communications made or information received by the PC representative,

vii. the compellability of a professional company and its shareholders, directors, officers and employees or a PC representative in a proceeding or action under this Act,

viii. the liability of a dealer, an adviser, a PC representative or a professional company and its shareholders, directors or officers in a proceeding or action under this Act,

ix. the ownership or vesting of shares in a professional company, and

x. the activities a professional company can carry on;

13. prohibiting persons from acquiring or trading in a security before, during or after an offer to acquire, acquisition, redemption, related party transaction, business combination or similar transaction in respect of the security;

14. prescribing requirements, prohibitions, restrictions and thresholds in respect of early warning;
15. prescribing requirements to be met by persons that acquire an interest or right in or to, or a right or obligation associated with, a related financial instrument;
16. prescribing circumstances in which a person does not contravene this Act, including prescribing defenses to any liability provision and the availability of any defenses;
17. governing conflicts of interest, including the identification, disclosure or management of conflicts of interest;
18. exempting a person, trade, distribution, security or derivative from any provision of Parts 2 to 9 or any requirement referred to in section 182 or 183;
19. governing conditions for the purposes of an exemption referred to in paragraph 18, including conditions relating to compliance in a regulation or an exemption with the securities legislation of another jurisdiction or with a recognized entity's regulatory instruments;
20. conferring a discretion on the Chief Regulator with respect to records, including the acceptance, delivery, filing, management, processing, review or audit of records;
21. prescribing standards and criteria for determining whether and when a material change or material fact has been generally disclosed;
22. governing records, including their format, filing, service, sending, delivery, receipt, retention and validity, and the time periods for their filing, service, sending, delivery, receipt, retention and validity;
23. limiting any requirement to send records;
24. governing periods during which distributions may take place and during which authorizations, designations, acceptances, approvals or receipts issued by the Chief Regulator are effective;
25. limiting the amounts that a person other than the Authority may charge for compiling or distributing records relating to an issuer;
26. governing the collection, use and disclosure of information;

27. governing the use of records prepared in accordance with securities legislation of another jurisdiction to comply with this Act;
28. prescribing circumstances in which a record may be, or is deemed to be, incorporated into another record;
29. authorizing the Chief Regulator, for the purposes of a regulation, to include persons or classes of persons within a prescribed class;
30. defining words and expressions for the purposes of this Act;
31. prohibiting or restricting any matter or conduct involving a benchmark and regulating submissions of information for the purpose of determining a benchmark and the administration of a benchmark;
32. prescribing prohibitions, restrictions or requirements in relation to self-dealing and authorizing a person within a class of persons, or a committee of persons within a class of committees, to exempt a mutual fund or investment fund from one or more of those requirements in respect of a transaction or class of transactions;
33. prescribing anything that is required or permitted under this Act to be prescribed or that is required or permitted under this Act to be done in accordance with the regulations or as provided in the regulations.

### **Exception**

(2) Despite subsection (1), the Authority may not make a regulation with respect to paragraph (f) of the definition of “security” in section 2 or paragraph 12 of subsection (1) unless requested by the Council of Ministers in accordance with section 211.

### **Fees and charges**

(3) A regulation may establish and require the payment of fees and charges to the Authority and may set the amount or specify the manner of calculating them.

### **Regulate or prohibit**

(4) A regulation relating to a matter may regulate, restrict or prohibit the matter in whole or in part.

### General or specific

(5) A regulation may be general or specific in its application and may differentiate in any way and on any basis that the Authority considers appropriate.

### Subdelegation

(6) A regulation may include conditions that consist of the approval or absence of objection by the Chief Regulator and conditions relating to the compliance with the securities legislation of another jurisdiction or with a recognized entity's regulatory instruments.

### **Incorporation by reference**

**203.** (1) ~~The regulations~~ A regulation may incorporate by reference any material, regardless of its source, either as it exists on a particular date or as amended from time to time.

### **Public access**

(2) The Authority must ensure that material that is incorporated by reference is accessible to the public.

### **No finding of guilt or administrative sanction**

(3) A person is not liable to be found guilty of an offence or subjected to an administrative sanction for any contravention in respect of which material that is incorporated by reference in a regulation is relevant unless, at the time of the alleged contravention, the material was accessible as required by subsection (2) or it was otherwise accessible to that person.

### **Forms**

~~204. (1) Subject to the regulations, if this Act or the regulations provide that a record is to be prepared, filed, provided or sent in a required form, the Chief Regulator may specify the form, additional contents and other particulars relating to the record, including specifying~~

~~— (a) the principles to be applied in its preparation; and~~

~~— (b) any accompanying records to be filed with it.~~

### **Same**

~~— (2) The Chief Regulator may specify different requirements under subsection (1) for different classes of persons, trades, securities or derivatives.~~

## Publication

~~—(3) If the Chief Regulator specifies a structure or additional contents for a form, he or she must publish the entire form.~~

## Notice of proposed regulation

**205.** (1) The Authority must publish a notice of every regulation that it proposes to make.

### Content of notice

(2) The notice must include the following:

- (a) the proposed regulation;
- (b) a description of the proposed regulation and the reasons for it; ~~and~~
- (c) a description of the anticipated costs and benefits of the proposed regulation; and

(d) a discussion of all alternatives to the proposed regulation that were considered by the Authority and the reasons for not proposing the adoption of the alternatives considered.

### Same

(3) In the notice, the Authority must invite interested persons to make written comments about the proposed regulation ~~and the proposed forms~~ within a period of at least 90 days after the publication.

### Exception to publication

(4) Despite subsection (1), a notice is not required to be published in any of the following circumstances:

- (a) the Authority considers that it would not be prejudicial to the public interest if the notice is not published, and the proposed regulation exempts a class of persons, trades, intended trades, distributions, securities or derivatives or all persons, trades, intended trades, distributions, securities or derivatives from any requirement contained in Parts 2 to 9 or the regulations ~~related to those Parts~~;
- (b) the Authority considers that it would not be prejudicial to the public interest if the notice is not published, and the proposed regulation prescribes that

- (i) all issuers within a class of issuers are not reporting issuers,
  - (ii) all issuers within a class of issuers are not mutual funds,
  - (iii) all issuers within a class of issuers are not non-redeemable investment funds,
  - (iv) all persons within a class of persons are not insiders,
  - (v) all persons within a class of persons are not market participants,
  - (vi) all trades within a class of trades are not distributions,
  - (vii) all contracts or instruments within a class of contracts or instruments are not derivatives,
  - (viii) a security, or class of securities, is not a security;
  - (ix) a derivative, or class of derivatives, is not a designated derivative; or
  - (x) a person, or class of persons, is not a market place.
- (c) the proposed regulation ~~is~~would be an amendment and the Authority considers that it does not change an existing regulation in a material way; ~~or~~
- (d) the Authority considers that there is an urgent need for the proposed regulation ~~to be necessary in order~~ to address a substantial risk of material harm to investors or to the integrity or stability of capital markets; or
- (e) the proposed regulation would be made under paragraph 96 (1) (b).

### Changes to proposal

(5) If, after publication of the notice and consideration of the comments, the Authority proposes to change the proposed regulation in a way that it considers material, the Authority must publish a notice of changes that includes the following:

- (a) the proposed regulation with the proposed changes; and
- (b) a description of the changes and the reasons for them.

### Comments regarding changes

(6) In the notice of changes, the Authority must invite interested persons to make written comments about the changes within a period of at least 30 days after the publication.

### Submission after comment period

(7) When the Authority is required to invite comments under this section, the Authority may submit the regulation to the Council of Ministers under subsection 206 (1) only after the end of any comment periods and after considering all comments received.

### Submission of regulations to Council of Ministers

**206.** (1) The Authority must submit to the Council of Ministers for approval any regulation made by it, other than one to which subsection 205 (4) applies, and must attach to it

- (a) a copy of any notices published under section 205;
- (b) a summary of any written comments received about the regulation; and
- (c) the analysis by the Authority of any significant issues and concerns brought to its attention during the comment periods.

### Submission after comment period

~~—(2) When the Authority is required to invite comments under section 205, the Authority may submit the regulation to the Council of Ministers under this section only after the end of any comment periods and after considering all comments received.~~

### Publication

(3) As soon as practicable after submitting the regulation to the Council of Ministers, the Authority must publish it together with the following information:

- (a) the date on which the regulation was submitted to the Council of Ministers;
- (b) the date on which the regulation is intended to come into force;



- (c) a description of the regulation and the reasons for it;
- (d) a summary of any written comments received about the regulation; and
- (e) the response of the Authority to the significant issues and concerns brought to its attention during the comment periods.

### **Approval**

(4) A regulation is considered to be approved by the Council of Ministers if the Council of Ministers has not

- (a) rejected or returned the regulation to the Authority for further consideration within 60 days after the day on which the regulation is submitted for approval; or
- (b) rejected the regulation after the regulation has been reconsidered by the Authority in accordance with section 208.

### **Submission of expedited regulations to Council of Ministers**

**207.** (1) The Authority must submit to the Council of Ministers, for approval, any regulation made by it to which subsection 205 (4) applies.

### **Approval**

(2) A regulation to which subsection 205 (4) applies is considered to be approved by the Council of Ministers if the Council of Ministers has not,

- (a) rejected or returned the regulation to the Authority for further consideration within 30 days after the day on which the regulation is submitted for approval; or
- (b) rejected the regulation after the regulation has been reconsidered by the Authority in accordance with section 208.

### **Returned for consideration**

**208.** 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.

## Coming into force of regulations

**209.** (1) If a regulation does not provide for the coming into force of one or more of its provisions, those provisions come into force on a day or days to be fixed by order of the Authority.

## Publication of order

(2) The Authority must publish the order ~~must be published~~ as soon as practicable after it is made.

## Automatic revocation of certain regulations

**210.** (1) A regulation to which paragraph 205 (4) (a), (b) ~~or~~, (d) or (e) applies

- (a) must not amend a regulation;
- (b) must not revoke a regulation other than one to which paragraph 205 (4) (a), (b) or (d) applies;
- (c) may suspend the application of the provisions of another regulation made under this Act; and
- (d) is revoked 18 months after the day on which it comes into force, if it has not already been revoked.

## Extension

(2) Despite paragraph (1) (d), if the Authority determines that a regulation to which paragraph 205 (4) (a), (b) or (d) applies should be continued in order to allow for publication and comment of the regulation in accordance with subsection 205 (1), then the regulation is revoked 36 months after the day on which it comes into force.

## Exception

~~—(3) Subsection (2) does not apply to a regulation made under section 96 extending an order that applies to a class of persons, trades, intended trades, distributions, securities or derivatives.~~

## Publication of statement

(4) As soon as practicable after the coming into force of a regulation to which subsection 205 (4) applies, the Authority must publish a statement that includes

- (a) with respect to a regulation to which paragraph 205 (4) (a), (b), (c) or (e) applies, a description of the regulation, the reasons for the regulation and the day on which the regulation will be revoked;
- (b) with respect to a regulation to which paragraph 205 (4) (c) applies, a description of the regulation and the reasons for the regulation; and
- (c) with respect to a regulation to which paragraph 205 (4) (d) applies, a description of the regulation, the reasons for it, the nature of the urgency, the risk involved and the day on which the regulation will be revoked.

### **Request by Council of Ministers**

**211.** (1) The Council of Ministers may request that the Authority consult on a matter that the Council specifies and consider making a regulation about it.

### **Report**

(2) The Authority must report to the Council of Ministers on the Authority's response to the request within one year after the day on which the request is made.

### **Forms**

**211.1** (1) Subject to the regulations, if this Act or the regulations provide that a record is to be prepared, filed, provided or sent in a required form, the Chief Regulator may specify the form, additional contents and other particulars relating to the record, including specifying

- (a) the principles to be applied in its preparation; and
- (b) any accompanying records to be filed with it.

### **Same**

(2) The Chief Regulator may specify different requirements under subsection (1) for different classes of persons, trades, securities or derivatives.

### **Publication**

(3) If the Chief Regulator specifies a structure or additional contents for a form, he or she must publish the entire form.

## Guidance from ~~Chief Regulator~~the Authority

212. (1) The ~~Chief Regulator~~Authority may issue policy statements and other material that ~~he or she~~the Authority considers advisable to provide guidance on ~~his or her~~its interpretation of this Act and the regulations and guidance on the exercise of ~~his or her~~its powers.

### Policy statements

(2) Before the ~~Chief Regulator~~Authority issues a policy statement, ~~he or she~~the Authority must publish the proposed policy statement and invite interested persons to make written comments about it within a period of at least ~~30~~60 days after the publication.

### Proposed material changes

(3) If, after the proposed policy statement is published, the Authority proposes to make changes to it that the Authority considers material, the Authority must publish

(a) the proposed policy statement incorporating the changes;

(b) a concise statement of the purpose of the changes; and

(c) the reasons for the changes.

### Same

(4) Upon publication of proposed changes referred to in subsection (3), the Authority must invite interested persons to make written comments with respect to the proposed changes within such period as the Authority considers appropriate.

### Public access to regulations, etc.

213. The Authority must ensure that the following documents are accessible to the public:

- (a) current and previous versions of the regulations;
- (b) the current versions of any forms specified by the Chief Regulator under section ~~204~~211.1; and
- (c) the current versions of the policy statements and other material issued under section 212.

### **Proof of the regulations**

**214.** In any proceeding in which any regulation is relevant, a certificate purporting to be issued by the Authority that includes any of the following statements is, in the absence of evidence to the contrary, presumed to be authentic and to be proof of the matters set out in those statements:

- (a) a statement that the text attached to the certificate is the text of the regulation as of a specified time or period; or
- (b) a statement regarding the manner in which that text was accessible as of a specified date or period.

### **No finding of guilt or administrative sanction**

**215.** A person is not liable to be found guilty of an offence or subjected to an administrative sanction for any contravention of a regulation unless, at the time of the alleged contravention, the regulation was accessible to the public as required by section 213 or it was otherwise accessible to that person.

## **PART 16 TRANSITION**

### **Transitional matters**

**216.**

[Intentionally omitted]

End of ~~Provincial Capital Markets Act: A Consultation Draft~~draft.