

Capital Markets Stability Act — Draft for Consultation

MINISTER OF FINANCE

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NOTICE

This consultation draft of the *Capital Markets Stability Act* is published for public comment at the same time as the *Memorandum of Agreement Regarding the Cooperative Capital Markets Regulatory System*.

The draft Act is a legislative proposal that is subject to legislative approval. It will not become law unless introduced in the appropriate form in, and enacted by, Parliament.

Please refer to the site <http://ccmr-ocrmc.ca> for important information on how to provide comments on the consultation draft.

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Capital Markets Stability Act — Draft for Consultation

Preamble

Whereas the stability and integrity of Canada’s financial system affect the well-being and prosperity of all Canadians;

Whereas events and circumstances in domestic and international capital markets can have a profound effect on the stability and integrity of Canada’s financial system and on the Canadian economy as a whole;

Whereas effective detection, prevention and management of systemic risk to Canada’s financial system require comprehensive monitoring and regulation;

Whereas the detection, prevention and punishment of criminal conduct in Canada’s capital markets are essential to the integrity of those markets;

Whereas it is desirable for capital markets regulation to be coordinated among federal and provincial governments;

And whereas governments have proposed to create a cooperative capital markets regulatory regime;

Now, therefore, Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

SHORT TITLE

Short title

1. This Act may be cited as the *Capital Markets Stability Act*.

INTERPRETATION

Definitions

2. The following definitions apply in this Act.

“Authority”
« *Autorité* »

“Authority” means the Capital Markets Regulatory Authority established in accordance with the Memorandum of Agreement.

“benchmark”
« *indice de référence* »

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

“Canadian financial institution”
« *institution financière canadienne* »

“Canadian financial institution” means

- (a) a bank listed in Schedule I or II to the *Bank Act*;
- (b) a body corporate to which the *Trust and Loan Companies Act* applies;
- (c) an association to which the *Cooperative Credit Associations Act* 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*;

(e) a trust, loan or insurance corporation incorporated by or under an Act of the legislature of a province;

(f) a cooperative credit society incorporated and regulated by or under an Act of the legislature of a province; and

(g) a treasury branch established and regulated by or under an Act of the legislature of a province.

“capital markets intermediary”
« *inter-médiaire* »

“capital markets intermediary” means a person that, as a significant part of its business, trades in securities or derivatives or provides services related to trading or holding securities or derivatives, and includes

(a) a dealer;

(b) an issuer whose primary purpose is to invest money provided by its security holders, including an investment fund;

(c) a pension fund;

(d) a person that directs or manages the business, operations or affairs of an issuer referred to in paragraph (b) or of a pension fund;

(e) a person that manages the investments of clients that have granted the person discretionary authority to do so; and

(f) a person that is within a class of persons that are prescribed to be capital markets intermediaries.

“Chief Regulator”
« *Régulateur en chef* »

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

“Council of Ministers”
« *Conseil des ministres* »

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

“clearing house”
« *chambre de compensation* »

“clearing house” means a person that provides clearing or settlement services for trades in securities or derivatives and includes a central counter-party. It does not include

(a) a Canadian financial institution;

(b) an authorized foreign bank listed in Schedule III to the *Bank Act*; or

(c) the Canadian Payments Association or its successors.

“company”
« *société* »

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

“cooperative credit society”
« *coopérative de crédit* »

“cooperative credit society” has the same meaning as in section 2 of the *Cooperative Credit Associations Act* and includes a “central cooperative credit society” and a “local cooperative credit society”, as those terms are defined in that section.

“court”
« *tribunal* »

“court” means

(a) in Ontario, the Superior Court of Justice;

(b) in Quebec, the Superior Court of the province;

(c) in Nova Scotia and British Columbia, the Supreme Court of the province;

(d) in New Brunswick, Manitoba, Saskatchewan and Alberta, the Court of Queen’s Bench for the province;

(e) in Prince Edward Island and Newfoundland and Labrador, the trial division of the Supreme Court of the province; and

(f) in Yukon and the Northwest Territories, the Supreme Court of the territory, and in Nunavut, the Nunavut Court of Justice.

This definition does not apply in Part 5.

<p>“credit rating” « notation »</p>	<p>“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.</p>
<p>“credit rating organization” « organisme de notation »</p>	<p>“credit rating organization” means a person that issues credit ratings that are publicly disclosed or distributed by subscription.</p>
<p>“dealer” « courtier »</p>	<p>“dealer” means a person</p> <p>(a) that engages in or holds themselves out as engaging in the business of trading in securities or derivatives as principal, agent or mandatary; or</p> <p>(b) that acts as an underwriter.</p>
<p>“decision” « décision »</p>	<p>“decision” means</p> <p>(a) when used in relation to the Authority, an order made by the Authority under Part 1 or 2 or section 96 or 97; or</p> <p>(b) when used in relation to the Chief Regulator or the Tribunal, a decision, direction, order or ruling made, or a requirement imposed, by the Chief Regulator or the Tribunal, as the case may be, under a power conferred by this Act.</p>
<p>“derivative” « instrument dérivé »</p>	<p>“derivative” means 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.</p>
<p>“designated trade repository” « répertoire des opérations désigné »</p>	<p>“designated trade repository” means a person that is designated by the Chief Regulator under subsection 11(1).</p>
<p>“director” « administrateur »</p>	<p>“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.</p>
<p>“individual” « particulier »</p>	<p>“individual” means a natural person other than in their capacity as a trustee or other person that administers the property of another, or as an executor, administrator or other legal representative.</p>
<p>“investment fund” « fonds d’investissement »</p>	<p>“investment fund” means</p> <p>(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; or</p>

(b) an issuer, other than one referred to in paragraph (a), 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 that 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 that is an investment fund.

“investment fund manager”
« gestionnaire de fonds d’investissement »

“investment fund manager” means a person that directs or manages the business, operations or affairs of an investment fund.

“issuer”
« émetteur »

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

“Memorandum of Agreement”
« Protocole d’accord »

“Memorandum of Agreement” means the *Memorandum of Agreement Regarding the Cooperative Capital Markets Regulatory System*, as amended from time to time.

“Minister”
« ministre »

“Minister” means the Minister of Finance.

“officer”
« dirigeant »

“officer”, with respect to a person, means

(a) a chair or vice-chair of the person’s board of directors, a chief executive officer, chief operating officer, chief financial officer, president, vice-president, 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).

“person”
« personne »

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

“prescribed”
Version anglaise seulement

“prescribed” means prescribed by regulation.

“record”
« dossier »

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

“security”
« valeur mobilière »

“security” includes any contract, instrument or unit commonly known as a security.

“self-regulatory organization”
« organisme d’autorégulation »

“self-regulatory organization” means a self-regulatory organization that is recognized under the securities or derivatives legislation of a province.

“systemically important”
« d’importance systémique »

“systemically important”

(a) in respect of a trading facility, means one that is designated as systemically important under subsection 18(1);

(b) in respect of a clearing house, means one that is designated as systemically important under subsection 20(1);

(c) in respect of a credit rating organization, means one that is designated as systemically important under subsection 23(1);

(d) in respect of a benchmark, means one that is designated as systemically important under subsection 25(1);

(e) in respect of a capital markets intermediary, means one that is designated as systemically important under subsection 27(1); and

(f) in respect of a security or derivative, means one that is within a class of securities or derivatives that is prescribed to be systemically important.

“trade”
« opération » “trade” includes any acquisition or disposition of a security and any transaction involving a derivative.

“trading facility”
« système de négociation » “trading facility” means a person that operates a system that facilitates trading in securities or derivatives by bringing together the orders for securities or derivatives of multiple buyers and sellers in order for those orders to be matched.

“trade repository”
« répertoire des opérations » “trade repository” means a person that collects and maintains reports of completed trades made by other persons.

“Tribunal”
« Tribunal » “Tribunal” means the Tribunal established in accordance with the Memorandum of Agreement.

“underwriter”
« placeur » “underwriter” means a person that, as principal or mandator, agrees to purchase securities with a view to selling them or that, as agent or mandatary, offers for sale or sells securities, and includes a person that has a direct or indirect participation in such sales or offers.

Systemic risk **3.** (1) In this Act, systemic risk related to capital markets means a threat to the stability or integrity of Canada’s financial system that originates in, is transmitted through or impairs capital markets and that has the potential to have an adverse effect on the Canadian economy.

Integrity (2) For the purposes of subsection (1), integrity of the financial system means the structural integrity of all or any significant part of that system, including

- (a) its continuous and orderly operation without disruption;
- (b) its soundness, cohesion and resilience;
- (c) the avoidance of its structural impairment; and
- (d) the maintenance of public confidence in its structural integrity.

PURPOSES

Purposes of Act **4.** The purposes of this Act are, as part of the Canadian capital markets regulatory framework,

- (a) to promote and protect the stability and integrity of Canada’s financial system through the management of systemic risk related to capital markets; and
- (b) to protect capital markets against the commission of financial crimes.

HER MAJESTY

- Act binding on Her Majesty **5.** (1) This Act is binding on Her Majesty in right of Canada or a province.
- Exceptions (2) Despite subsection (1), the Governor in Council may make orders providing that any provision of this Act or the regulations is not binding on Her Majesty in right of Canada or a province or on an agent or class of agents of Her Majesty in right of Canada or a province.

CAPITAL MARKETS REGULATORY AUTHORITY

- Administration of this Act **6.** (1) The Authority is responsible for the administration of this Act and, in doing so, its mandate is to
- (a) monitor activity in capital markets, including by collecting, aggregating and analyzing information;
 - (b) detect, identify and mitigate systemic risks related to capital markets;
 - (c) contribute, as part of the Canadian financial regulatory framework, to the stability and integrity of the financial system;
 - (d) provide leadership and coordination in enforcing criminal law related to capital markets; and
 - (e) coordinate Canada's international involvement in regulating capital markets, including developing policy and representing Canada in international forums related to that regulation.
- Fulfilling mandate (2) In fulfilling that mandate, the Authority must coordinate, to the extent practicable, its regulatory activities with those of other federal, provincial and foreign financial authorities so as to promote efficient capital markets, to achieve effective regulation and to avoid imposing an undue regulatory burden.
- Bank Act* **7.** (1) The Minister may, after consultation with the Council of Ministers, make an order assigning to the Authority the administration of any provision of the *Bank Act* or its regulations.
- References to this Act (2) In sections 36 to 51, 84, 95 to 97 and 108, any reference to this Act or its regulations is also to be read respectively as a reference to the provisions of the *Bank Act* or its regulations whose administration is assigned to the Authority.
- Funds payable to Authority **8.** All funds payable under this Act, other than fines imposed as punishment for an offence, are to be paid to the Authority.

PART 1

INFORMATION COLLECTION AND DISCLOSURE

- Duty to keep and provide information **9.** The regulations may prescribe requirements in relation to the keeping of records and information and the provision of records and information to the Authority or a designated 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.
- Request of Chief Regulator **10.** At the request of the Chief Regulator, a person must, at the time and in the form that the Chief Regulator specifies, provide him or her with the records and information that he or she requires for the purposes of

	<p>(a) monitoring activity in capital markets or detecting, identifying or mitigating systemic risks related to capital markets; or</p> <p>(b) conducting policy analysis related to the Authority's mandate and the purposes of this Act.</p>
Designated trade repositories	11. (1) The Authority may, on application by a trade repository and after consultation with the Chief Regulator, make an order designating the trade repository as a designated trade repository.
Terms	(2) The Authority may, at any time but only after consultation with the Chief Regulator, impose terms on a designation after giving the person an opportunity to make representations.
Content of regulations	(3) The regulations may prescribe requirements, prohibitions and restrictions for designated trade repositories, including in relation to <p>(a) the collection, retention, use and disclosure of information, including with respect to information systems, internal controls and risk management;</p> <p>(b) access to their services; and</p> <p>(c) reporting to the Chief Regulator.</p>
Disclosure of personal information to Authority	12. A trading facility, a clearing house, a credit rating organization, a capital markets intermediary, a trade repository, a self-regulatory organization, a financial regulatory authority, a governmental or regulatory authority or any other person may disclose personal information to the Authority if the disclosure is for the purpose of the administration of this Act or of assisting in the administration of capital markets or financial legislation in Canada or elsewhere.
Confidential information	13. (1) Information obtained by the Authority under this Act that is not publicly available information is, subject to sections 14 and 15 and the regulations, confidential and must be treated accordingly.
Disclosure to law enforcement	(2) Nothing in subsection (1) prevents disclosure of the information to a law enforcement agency if the disclosure is not otherwise prohibited by law.
Disclosure of aggregated information	(3) Nothing in subsection (1) prevents disclosure of the information in an aggregated form from which it is not possible to ascertain information relating to any identifiable person.
Disclosure of information	14. Information obtained by the Authority under this Act may be disclosed if <p>(a) the disclosure is consistent with the purposes for which the information was obtained; or</p> <p>(b) the Authority considers that the public interest in disclosure outweighs any private interest in keeping the information confidential.</p>
Disclosure of information — administration of Act and other legislation	15. (1) The Chief Regulator may disclose any information obtained under this Act to a financial regulatory authority, a trading facility, a clearing house, a designated trade repository, a self-regulatory organization or a governmental or regulatory authority, in Canada or elsewhere, if the disclosure is for the purpose of <p>(a) promoting and protecting the stability and integrity of Canada's financial system through the management of systemic risk related to capital markets; or</p> <p>(b) assisting in the administration of capital markets or financial legislation in Canada or elsewhere.</p>
Other disclosure of information	(2) The Chief Regulator may disclose any information obtained under this Act to any person, authority or entity that is not referred to in subsection (1) if the Chief Regulator considers that excep-

tional circumstances exist for doing so and that the disclosure is necessary for a purpose set out in paragraph (1)(a) or (b).

Disclosure
outside Canada

16. Before the Chief Regulator discloses information to a person, authority, entity or agency outside Canada, the Authority must enter into an arrangement or agreement with the person, authority, entity or agency regarding the terms of the disclosure.

Disclosure of
compelled
evidence

17. Before the Chief Regulator discloses evidence given under paragraph 38(3)(b), he or she must provide the person who gave the evidence with notice that it may be disclosed and for what purpose, and with an opportunity to make representations, unless

(a) the disclosure is made in a proceeding commenced or proposed to be commenced under Part 3 or in an examination of a witness; or

(b) the Tribunal authorizes the disclosure on *ex parte* application by the Chief Regulator.

PART 2

SYSTEMIC RISK

MARKET INFRASTRUCTURE ENTITIES

Trading Facilities

Designation
order —
systemically
important
trading facility

18. (1) The Authority may, after consultation with the Chief Regulator, make an order designating a trading facility as systemically important if, in the Authority's opinion, the activities or material financial distress of the trading facility or the failure of or disruption to its functioning could pose a systemic risk related to capital markets.

Factors to
consider

(2) In making the order, the Authority must consider the following factors:

(a) the effect that the material financial distress of the trading facility or the failure of or disruption to its functioning would have on capital markets, the financial system, financial institutions or sectors that are significant to the economy;

(b) the concentration of trading on the trading facility and the availability of substitutes for its services;

(c) the volume and value of trades processed by the trading facility and the number of participants that trade on it;

(d) the nature and extent of the trading facility's interdependencies, relationships and other interactions; and

(e) any other risk-related factors that the Authority considers appropriate.

Notice and
representations

(3) Before making the order, the Authority must notify the Council of Ministers of its intention to make the order and give the trading facility an opportunity to make representations.

Content of
regulations

19. The regulations may, in order to address a systemic risk related to capital markets, prescribe requirements, prohibitions and restrictions for systemically important trading facilities, including in relation to

(a) policies and procedures for risk management and internal controls;

(b) the transparency of trades;

(c) trading rules and related controls on trading facilities or their participants;

- (d) aspects of governance and organizational and ownership structure related to risk management;
- (e) capital, leverage and financial resources; and
- (f) plans for business continuity, recovery and winding up.

Clearing Houses

Designation order — systemically important clearing house

20. (1) The Authority may, after consultation with the Chief Regulator, make an order designating a clearing house as systemically important if, in the Authority's opinion, the activities or material financial distress of the clearing house or the failure of or disruption to its functioning could pose a systemic risk related to capital markets.

Factors to consider

(2) In making the order, the Authority must consider the following factors:

- (a) the effect that the material financial distress of the clearing house or the failure of or disruption to its functioning would have on capital markets, the financial system, financial institutions or sectors that are significant to the economy;
- (b) the concentration of clearing or settlement services provided by the clearing house and the availability of substitutes for its services;
- (c) the volume and value of trades cleared or settled by the clearing house and the number of its clearing members;
- (d) the aggregate exposure of the clearing house to its members and counterparties;
- (e) the nature and extent of the clearing house's interdependencies, relationships and other interactions; and
- (f) any other risk-related factors that the Authority considers appropriate.

Notice and representations

(3) Before making the order, the Authority must notify the Council of Ministers of its intention to make the order and give the clearing house an opportunity to make representations.

Content of regulations

21. The regulations may, in order to address a systemic risk related to capital markets, prescribe requirements, prohibitions and restrictions for systemically important clearing houses, including in relation to

- (a) policies and procedures for risk management and internal controls;
- (b) the transparency of clearing or settlement activities and exposure to risk;
- (c) the timeliness of the clearing or settlement of trades;
- (d) margin and collateral;
- (e) policies and procedures for defaults by their members or counterparties;
- (f) aspects of governance and organizational and ownership structure related to risk management;
- (g) capital and financial resources; and
- (h) plans for business continuity, recovery and winding up.

Concurrence of Bank of Canada

22. The concurrence of the Bank of Canada is required before taking any of the following actions:

- (a) making an order under section 20;
- (b) making a regulation referred to in section 21;

- (c) making an order under subsection 34(1) or (4) in respect of a systemically important clearing house; or
- (d) taking any action under Part 3 in respect of a systemically important clearing house.

CREDIT RATING ORGANIZATIONS

Designation order — systemically important credit rating organization

23. (1) The Authority may, after consultation with the Chief Regulator, make an order designating a credit rating organization as systemically important if, in the Authority's opinion, the activities of the credit rating organization could pose a systemic risk related to capital markets.

Factors to consider

(2) In making the order, the Authority must consider the following factors:

- (a) whether the credit ratings issued by the credit rating organization are used for regulation, including capital markets regulation;
- (b) the number of credit ratings issued by the credit rating organization and the value of securities to which those credit ratings apply;
- (c) the number and type of persons that rely on those credit ratings;
- (d) the markets that are affected by those credit ratings;
- (e) the availability of substitutes for those credit ratings; and
- (f) any other risk-related factors that the Authority considers appropriate.

Notice and representations

(3) Before making the order, the Authority must notify the Council of Ministers of its intention to make the order and give the credit rating organization an opportunity to make representations.

Content of regulations

24. (1) The regulations may, in order to address a systemic risk related to capital markets, prescribe requirements, prohibitions and restrictions for systemically important credit rating organizations, including in relation to

- (a) disclosure to the public;
- (b) policies and procedures for risk management and internal controls;
- (c) governance, compliance mechanisms and accountability procedures related to the determination of credit ratings;
- (d) conflicts of interest; and
- (e) policies, procedures and standards for the development and application of methodologies for determining credit ratings.

Limitation

(2) Nothing in this Act permits the Authority to regulate the content of credit ratings or of methodologies for determining them.

BENCHMARKS

Designation order — systemically important benchmark

25. (1) The Authority may, after consultation with the Chief Regulator, make an order designating a benchmark as systemically important if, in the Authority's opinion, impairment to the benchmark's reliability or a loss of public confidence in its integrity or credibility could pose a systemic risk related to capital markets.

Factors to consider

(2) In making the order, the Authority must consider the following factors:

- (a) whether the benchmark is used in respect of securities or derivatives;
- (b) the value of securities or derivatives that are referenced to the benchmark;
- (c) the markets whose securities or derivatives are referenced to the benchmark;
- (d) the number and type of persons that rely on the benchmark;
- (e) the availability of substitutes for the benchmark;
- (f) the process by which the benchmark is determined; and
- (g) any other risk-related factors that the Authority considers appropriate.

Content of regulations

26. The regulations may, in order to address a systemic risk related to capital markets, prescribe requirements, prohibitions and restrictions respecting systemically important benchmarks, including in relation to

- (a) submissions of information for the purpose of determining them;
- (b) their design, determination and dissemination;
- (c) plans for continuity, recovery and cessation;
- (d) governance, compliance and accountability; and
- (e) any other aspects of benchmark administration.

CAPITAL MARKETS INTERMEDIARIES

Designation order — systemically important capital markets intermediary

27. (1) The Authority may, after consultation with the Chief Regulator, make an order designating a capital markets intermediary, other than a Canadian financial institution or an agent of Her Majesty in right of Canada or a province, as systemically important if, in the Authority’s opinion, the activities or material financial distress of the capital markets intermediary could pose a systemic risk related to capital markets.

Factors to consider

(2) In making the order, the Authority must consider the following factors:

- (a) the capital markets intermediary’s vulnerability to material financial distress or insolvency resulting from, among other things, its leverage, liquidity, off-balance-sheet exposure or reliance on short-term funding;
- (b) the capital markets intermediary’s size and the volume and value of trading by it;
- (c) the importance of the capital markets intermediary with respect to particular market activities;
- (d) the availability of substitutes for the capital markets intermediary’s products and services;
- (e) the nature and extent of the capital markets intermediary’s interdependencies, relationships and other interactions;
- (f) the nature, interconnectedness and mix of the capital markets intermediary’s activities;
- (g) the complexity of the capital markets intermediary’s business, structure or operations; and
- (h) any other risk-related factors that the Authority considers appropriate.

Notice and representations

(3) Before making the order, the Authority must notify the Council of Ministers of its intention to make the order and give the capital markets intermediary an opportunity to make representations.

Content of regulations

28. The regulations may, in order to address a systemic risk related to capital markets, prescribe requirements, prohibitions and restrictions for systemically important capital markets intermediaries, including in relation to

- (a) policies and procedures for risk management and internal controls;
- (b) disclosure to the public of information whose disclosure is not otherwise required;
- (c) aspects of governance and organizational and ownership structure related to risk management;
- (d) capital, leverage and financial resources;
- (e) liquidity;
- (f) plans for business continuity, recovery and winding up; and
- (g) activities that pose a systemic risk related to capital markets.

Orders — serious risk

29. (1) In order to address a systemic risk related to capital markets that the Authority considers serious and about to be realized, it may, after consultation with the Chief Regulator and with the Minister's prior approval, make an order imposing on a systemically important capital markets intermediary one or more of the following obligations:

- (a) to dispose of a security, derivative or other asset;
- (b) to increase its capital or financial resources;
- (c) not to enter into a merger or business combination;
- (d) to terminate or restrict its activities;
- (e) to implement its plans for business continuity, recovery or winding up; and
- (f) to do anything else that is necessary to address the risk.

Opportunity to make representations

(2) Before requesting the Minister's approval, the Authority must give the capital markets intermediary an opportunity to make representations.

Minister to notify Council

(3) Before giving approval, the Minister must notify the Council of Ministers about the proposed order, its purpose and the nature of the risk.

PRODUCTS AND PRACTICES

Systemically important products

30. (1) The regulations may prescribe a class of securities or derivatives to be systemically important if, in the Authority's opinion, the trading in, the holding of positions in or the direct or indirect dealing with securities or derivatives within the class could pose a systemic risk related to capital markets.

Factors to consider

(2) In making a regulation referred to in subsection (1), the Authority must consider the following factors:

- (a) the characteristics of the securities or derivatives within the class, their terms, their degree of standardization and the structure under which they are created or issued;
- (b) the complexity of the securities or derivatives within the class;
- (c) the value of the securities or derivatives within the class and the volume and value of trading in them;

- (d) the number and type of persons that trade in, hold positions in or deal with the securities or derivatives within the class;
- (e) the purposes for which the securities or derivatives within the class are used and the availability of substitutes for those securities or derivatives;
- (f) the interconnectedness between securities or derivatives within the class and other components of the capital markets or financial system;
- (g) the extent to which the trading in, holding of positions in or dealing with securities or derivatives within the class could transmit risks through the capital markets or financial system; and
- (h) any other risk-related factors that the Authority considers appropriate.

Content of
regulations

31. The regulations may, in order to address a systemic risk related to capital markets, prescribe requirements, prohibitions and restrictions respecting systemically important securities and derivatives, including in relation to

- (a) trading on a trading facility;
- (b) clearing and settlement;
- (c) disclosure to the public of information whose disclosure is not otherwise required;
- (d) the transparency of trades;
- (e) the method or process used to price or value the securities or derivatives;
- (f) rates, indices or other underlying interests of a derivative;
- (g) capital, leverage and financial resources;
- (h) liquidity;
- (i) margin, collateral, credit protection and position limits;
- (j) policies and procedures for risk management; and
- (k) the retention of credit or investment risk.

Systemically
risky practices

32. (1) The regulations may prescribe a practice to be systemically risky if, in the Authority's opinion, the practice could pose a systemic risk related to capital markets.

Factors to
consider

(2) In making a regulation referred to in subsection (1), the Authority must consider the following factors:

- (a) the financial effect or consequences of engaging in the practice;
- (b) the manner in which the practice makes use of maturity transformation, liquidity transformation, credit risk transfer or leverage;
- (c) the extent to which the practice is engaged in;
- (d) the extent to which the practice could transmit risks through the capital markets or financial system;
- (e) the type of persons that are engaging in the practice and the extent to which they are regulated as systemically important capital markets intermediaries or otherwise regulated under capital markets or financial legislation in Canada or elsewhere;
- (f) the extent to which the practice can be otherwise regulated under this Act; and

	(g) any other risk-related factors that the Authority considers appropriate.
Content of regulations	<p>33. The regulations may, in order to address a systemic risk related to capital markets, prescribe requirements, prohibitions and restrictions respecting practices that are prescribed to be systemically risky, including in relation to</p> <ul style="list-style-type: none"> (a) policies and procedures for risk management and internal controls; (b) disclosure to the public; (c) transparency; (d) aspects of governance and organizational and ownership structure related to risk management; (e) capital, leverage and financial resources; and (f) margin, collateral, credit protection and position limits.
URGENT ORDERS	
Urgent orders	<p>34. (1) The Authority may, after consultation with the Chief Regulator, make an urgent order if, in the Authority's opinion, the order is necessary to address a serious and immediate systemic risk related to capital markets.</p>
Content of urgent orders	<p>(2) The urgent order may, to the extent that the Authority considers it necessary to address the risk,</p> <ul style="list-style-type: none"> (a) prohibit or restrict a person from trading in a security or derivative, reducing their capital or financial resources, engaging in a practice or doing anything else; (b) suspend or restrict trading in a security or derivative or class of securities or derivatives; and (c) suspend or restrict trading on a trading facility.
Duration	<p>(3) The urgent order takes effect immediately or on the day specified in it and has effect for not longer than 15 days after the day on which it takes effect.</p>
Extension	<p>(4) Despite subsection (3), the Authority may, after consultation with the Chief Regulator, make an order once to extend the urgent order for a further period of up to 15 days.</p>
Opportunity to make representations not required	<p>(5) In making an order under subsection (1) or (4), the Authority is not required to give anyone an opportunity to make representations if, in the Authority's opinion, doing so would undermine the effect of the order or is not practicable or appropriate.</p>
Notice — nature of risk	<p>(6) As soon as feasible after the Authority is of the opinion that an urgent order is necessary to address an immediate and serious systemic risk related to capital markets, it must notify the Council of Ministers about the nature of the risk.</p>
Notice — order	<p>(7) As soon as feasible after making an order under subsection (1) or (4), the Authority must provide the Council of Ministers with a copy of the order, its purpose and the nature of the risk.</p>
Reasons	<p>(8) As soon as feasible after making an order under subsection (1) or (4), the Authority must publish a statement that sets out the reasons for making the order and the nature of the risk unless the Authority is of the opinion that doing so would be contrary to the purposes of this Act or that</p> <ul style="list-style-type: none"> (a) a person whose information appears in the statement would be unduly prejudiced by disclosure of the information; and (b) the person's interest in keeping the information confidential outweighs the public's interest in having it disclosed.

Minister's direction	35. (1) The Minister may, after consultation with the Authority and the members of the Council of Ministers representing the major capital markets jurisdictions, as defined in the Memorandum of Agreement, give a written direction to the Authority to make, amend or repeal an urgent order referred to in section 34 if, in the Minister's opinion, the direction is necessary to address an immediate and serious systemic risk related to capital markets.
Compliance	(2) The Authority must comply with the direction as soon as feasible.
Publication	(3) The Minister must cause a notice to be published in the <i>Canada Gazette</i> that the direction was given as soon as the Minister is of the opinion that the publication of the notice will not have an adverse effect on the stability or integrity of Canada's capital markets or financial system.
<i>Statutory Instruments Act</i>	(4) The <i>Statutory Instruments Act</i> does not apply in respect of the direction.

PART 3
ADMINISTRATION AND ENFORCEMENT

DESIGNATION

Power to designate	36. (1) The Chief Regulator may designate persons or classes of persons to exercise powers referred to in the designation for the purposes of the administration and enforcement of this Act.
Certificate of designation	(2) The Chief Regulator must provide every designated person with a certificate of designation.

REVIEWS AND INQUIRIES

Review — business and conduct	37. (1) A person designated for the purpose of verifying compliance with this Act may, for that purpose, review the business and conduct of any person.
Requirement to provide records or things	(2) A person designated for the purpose of verifying compliance with this Act may, for that purpose, require any person to provide the designated person, within a specified period, with any records or other things in their possession or control, including, except where prohibited by law, any filings, reports or other information provided to any other regulatory agency whether within or outside Canada.
Powers — entry	(3) In conducting a review under subsection (1) of a systemically important trading facility, a systemically important clearing house, a systemically important credit rating organization, a systemically important capital markets intermediary or a designated trade repository, the designated person may enter a place that they have reasonable grounds to believe contains any thing that is relevant to the review and <ul style="list-style-type: none"> (a) examine any thing 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 contained in, or available to, the device or system; (d) prepare a record, or cause one to be prepared, based on the data; (e) use, or cause to be used, any copying equipment at the place and make copies of any record; and (f) remove any thing from the place for examination or copying.

Normal business hours	(4) For greater certainty, the designated person may enter the place only during normal business hours.
Production of certificate	(5) The designated person must, if so requested, produce their certificate of designation to the occupant or person in charge of the place.
Inquiry — order authorizing exercise of powers	38. (1) The Chief Regulator may, by order, authorize a person to exercise, for the purpose of inquiring into any matter relating to compliance with this Act or with a foreign jurisdiction's capital markets legislation, any of the powers set out in this section if the Chief Regulator is satisfied that the exercise of the powers is appropriate in the circumstances.
Scope and powers	(2) The Chief Regulator must set out in the order the scope of the inquiry and the powers that the authorized person may exercise.
Summons and production	(3) If specified in the order, the authorized person may, for the purpose of the inquiry, do one or more of the following: <ul style="list-style-type: none"> (a) summon the attendance, before the authorized person, of any person; (b) compel any person to give evidence on oath or otherwise; (c) compel any person to produce records or other things or classes of records or things.
Copies	(4) The authorized person may make, or cause to be made, copies of any records or other things produced under paragraph (3)(c).
Power of contempt	(5) The failure or refusal of a person to attend, give evidence or produce records or other things under subsection (3) makes that person, on application to the Federal Court or a court by the authorized person, liable to be found in 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	(6) A person giving evidence under subsection (3) may be represented by counsel.
Powers — entry	(7) If specified in the order, the authorized person may, for the purpose of the inquiry, enter a place that they have reasonable grounds to believe contains any thing that is relevant to the inquiry and <ul style="list-style-type: none"> (a) examine any thing 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 contained in, or available to, the device or system; (d) prepare a record, or cause one to be prepared, based on the data; (e) use, or cause to be used, any copying equipment at the place and make copies of any record; and (f) remove any thing from the place for examination or copying.
Normal business hours	(8) For greater certainty, the authorized person may enter the place only during normal business hours.
Production of authorization	(9) The authorized person must, if so requested, produce their authorization order to the occupant or person in charge of the place.

Prohibition on communication	(10) 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 inquiry to another person except the person's lawyer.
When effective	(11) The order prohibiting communication is effective once it is served on the person who is subject to the prohibition.
Variation or revocation	(12) On a request made in writing and on notice to the other party by the authorized person or the person who is subject to the prohibition, the Chief Regulator may revoke the order prohibiting communication or vary it, including by extending the period.
Considerations	(13) In making, revoking or varying the order prohibiting communication, the Chief Regulator must consider <ul style="list-style-type: none"> (a) the effect of disclosure of the information covered by the prohibition on the conduct of the inquiry; (b) whether the disclosure could cause harm to the commercial or financial interests or the reputation of any person; and (c) the rights and interests of the person who is subject to the prohibition.
Duty to assist	39. The person who is subject to a review under section 37 or an inquiry under section 38 and their directors, officers, employees, agents and mandataries, and the owner or person who is in charge of a place that is entered under subsection 37(3) or 38(7) and every person who is in the place, must give all assistance that is reasonably required to enable the designated person to verify compliance as set out in subsection 37(1) or the authorized person to inquire into a matter as set out in subsection 38(1), as the case may be.
Warrant for dwelling-house	40. (1) If the place referred to in subsection 37(3) or 38(7) is a dwelling-house, the designated or authorized person must not enter it without the occupant's consent except under the authority of a warrant issued under subsection (2).
Authority to issue warrant	(2) On <i>ex parte</i> application, a justice, as defined in section 2 of the <i>Criminal Code</i> , may issue a warrant authorizing a designated or authorized person who is named in it to enter a dwelling-house, subject to any conditions specified in the warrant, if the justice is satisfied by information on oath that <ul style="list-style-type: none"> (a) the dwelling-house is a place referred to in subsection 37(3) or 38(7); (b) entry to the dwelling-house is necessary for the purpose of verifying compliance with this Act or of inquiring into a matter as set out in subsection 38(1); and (c) entry was refused by the occupant or there are reasonable grounds to believe that entry will be refused or consent to entry cannot be obtained from the occupant.
Entry on private property	41. (1) A designated or authorized person may enter on and pass through private property for the purpose of gaining entry to a place referred to in subsection 37(3) or 38(7) and is not liable for doing so. For greater certainty, no person has a right to object to that use of the property and no warrant is required, unless the property is a dwelling-house.
Person accompanying designated or authorized person	(2) A person may, at the designated or authorized person's request, accompany that person to assist them in gaining entry to a place referred to in subsection 37(3) or 38(7) and is not liable for doing so.

Use of force **42.** In executing a warrant to enter a dwelling-house, a designated or authorized person must not use force unless the use of force has been specifically authorized in the warrant and the person is a peace officer or is accompanied by a peace officer.

ADMINISTRATIVE MONETARY PENALTIES

Violations **43.** (1) Every person that contravenes a provision of this Act — other than a provision of Part 5 — or of the regulations commits a violation for which they are liable to an administrative monetary penalty.

Purpose of penalty (2) The purpose of a penalty is to promote compliance with this Act and not to punish.

Factors for penalty (3) The following factors must be taken into account when determining the amount of a penalty:

- (a) the purpose of the penalty;
- (b) the nature of the person's conduct, including its frequency and duration;
- (c) the seriousness of any systemic risk related to capital markets that was or could have been caused by the contravention;
- (d) any actual or anticipated profits as a result of the contravention;
- (e) the person's history of compliance with this Act;
- (f) the need to deter similar conduct by that person or others; and
- (g) any other factor that the Chief Regulator considers relevant.

Maximum penalty (4) The maximum penalty for a violation is the sum of any amounts obtained, or payments or losses avoided, as a result of the contravention and

- (a) in the case of an individual, \$1 million; or
- (b) in the case of a person other than an individual, \$15 million.

Notice of violation **44.** (1) The Chief Regulator may issue a notice of violation and cause it to be served on a person if the Chief Regulator has reasonable grounds to believe that the person has committed a violation.

Contents of notice (2) The notice of violation must set out

- (a) the name of the person believed to have committed the violation;
- (b) every act or omission for which the notice is served and every provision at issue;
- (c) the administrative monetary penalty that the person is liable to pay and the time and manner of payment;
- (d) the right of the person, within 30 days after the day on which the notice is served or within any longer period that the Chief Regulator specifies, to pay the penalty or to make representations to the Chief Regulator with respect to the violation and the proposed penalty, and the manner for doing so; and
- (e) the fact that, if the person does not pay the penalty or make representations in accordance with the notice, the person will be deemed to have committed the violation and the Chief Regulator will impose the penalty in respect of it.

Payment of penalty **45.** (1) If the person that is served with a notice of violation pays the proposed penalty, the person is deemed to have committed the violation and proceedings in respect of it are ended.

Representations to Chief Regulator	(2) If the person makes representations in accordance with the notice, the Chief Regulator must decide, on a balance of probabilities, whether the person committed the violation and, if so, may impose the penalty proposed, a lesser penalty or no penalty.
Failure to pay or make representations	(3) A person that neither pays the penalty nor makes representations in accordance with the notice is deemed to have committed the violation and the Chief Regulator must impose the penalty proposed in the notice.
Notice of decision	(4) The Chief Regulator must cause notice of any decision made under subsection (2) or the penalty imposed under subsection (3) to be issued and served on the person together with, in the case of a decision made under subsection (2), notice of the right to apply for review under subsection 103(1).
Debt due to Authority	46. A penalty is a debt due to the Authority, which may be recovered in the Federal Court or a court.
Contravention by directors or officers	47. (1) If a person other than an individual commits a violation, any of the person's directors or officers who authorized, permitted or acquiesced in the contravention are also liable for the violation.
Contravention by investment fund manager	(2) If an investment fund commits a violation, the investment fund manager is also liable for the violation.
Vicarious liability	48. A person is liable for a violation that is committed by their employee acting within the scope of their employment or their agent or mandatary acting within the scope of their authority, whether or not the employee, agent or mandatary is identified or proceeded against.

ORDERS

Orders of Tribunal	<p>49. (1) If the Tribunal considers that it is necessary to protect the stability or integrity of Canada's capital markets or financial system, it may, after a hearing, make one or more of the following orders:</p> <p>(a) an order that a person comply, or that a person's directors and officers cause them to comply, with this Act;</p> <p>(b) an order that trading cease in respect of any security or derivative or class of securities or derivatives specified in the order;</p> <p>(c) an order that a person cease trading in all securities or the securities or classes of securities specified in the order;</p> <p>(d) an order that a person cease trading in all derivatives or the derivatives or classes of derivatives specified in the order; and</p> <p>(e) an order that an issuer of systemically important securities, a party to a systemically important derivative, a systemically important trading facility, a systemically important clearing house, a systemically important credit rating organization, a systemically important capital markets intermediary or a designated trade repository make changes to its practices and procedures.</p>
Temporary order	(2) If the Tribunal considers that the length of time required to conclude a hearing before making an order under subsection (1) could be prejudicial to the stability or integrity of Canada's capital markets or financial system, the Tribunal may make a temporary order, other than one under paragraph (1)(e), without a hearing, to have effect for not longer than 15 days after the day on which the temporary order is made.
Extension of temporary order	(3) If the Tribunal considers it necessary, it may, on application by the Chief Regulator and after giving any person that the Tribunal considers would be directly affected an opportunity to make rep-

representations, make an order extending a temporary order until a hearing is held and the Tribunal decides whether or not to make an order under subsection (1).

Notice (4) The Tribunal must give written notice of an order made under subsection (2) or (3) to every person that the Tribunal considers would be directly affected by the order.

Freeze order **50.** (1) If the Tribunal considers it expedient for the administration of this Act or to assist in the administration of a foreign jurisdiction's capital markets legislation, the Tribunal may order that a person do one or both of the following:

(a) retain any funds, securities, derivatives or other property of another person that they have on deposit, under their control or for safekeeping and to hold those funds, securities, derivatives or that property until the Tribunal, in writing, revokes the order or consents to release a particular fund, security or property from its order; and

(b) refrain from withdrawing any funds, securities, derivatives or other property from another person that has them on deposit, under their control or for safekeeping.

Non-application (2) Unless it states otherwise, an order does not apply to funds, securities, derivatives or property in a clearing house or to securities in the process of being transferred by a transfer agent.

Notice (3) The order may be made without notice, in which event, copies of it must be sent to the persons named in it either immediately or within the period that is specified in the order.

Clarification, variation or revocation (4) A person directly affected by the order may apply to the Tribunal for clarification or to have it varied or revoked.

Duration (5) The order has effect for not longer than 15 days after the day on which it is made.

Extension (6) Despite subsection (5), the Tribunal may, on application by the Chief Regulator and after giving a person directly affected by the order an opportunity to make representations, make an order extending the order.

Declaration of non-compliance **51.** (1) In addition to any other powers he or she has, the Chief Regulator may apply to the Federal Court or a court for a declaration that a person has not complied with or is not complying with this Act and for any order under subsection (2).

Orders of court (2) If the Federal Court or the court makes a declaration of non-compliance, it may make any order that it considers appropriate with respect to the person that is the subject of the declaration, including one or more of the following orders:

(a) an order that the person comply with this Act;

(b) an order requiring the person to pay to the Authority any amounts obtained as a result of the non-compliance;

(c) an order requiring the person to pay to the Authority any costs of its review, inquiry, investigation and proceedings in respect of the non-compliance;

(d) an order rescinding a transaction relating to trading in securities or derivatives;

(e) if the person that is the subject of the declaration is a systemically important trading facility, a systemically important clearing house or a systemically important capital markets intermediary, an order appointing officers and directors in place of or in addition to all or any of the person's officers and directors;

	(f) an order that a person is prohibited, either permanently or for a period specified in the order, from becoming or acting as a director or officer or as both a director and officer of a systemically important trading facility, a systemically important clearing house or a systemically important capital markets intermediary; and
	(g) an order that a person is prohibited from acting in a management capacity for a systemically important trading facility, a systemically important clearing house or a systemically important capital markets intermediary.
Interim orders	(3) On application made under subsection (1), the Federal Court or the court may make any interim order that it considers appropriate.
Appointment by court	52. (1) A court may, on application of the Chief Regulator, make an order appointing a receiver, receiver-manager, sequestrator, trustee or liquidator of all or any part of the property of a systemically important trading facility, a systemically important clearing house or a systemically important capital markets intermediary.
Condition for making appointment	(2) The court may make the order only if it is satisfied that the appointment is necessary to address a systemic risk related to capital markets.
Admissibility	(3) 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	(4) The court may make the order on an application without notice, in which case the period of appointment must not be for more than 15 days.
Application to continue order	(5) If an order is made without notice, the Chief Regulator may apply to the court within 15 days after the day on which the order is made to continue the order or for another order that the court considers appropriate.
Powers of appointee	(6) The court appointee is the receiver, receiver-manager, sequestrator, 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. 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 cease	(7) If an order for appointment is made, the powers of the person's directors that the court appointee is authorized to exercise must not be exercised by the directors until the appointee is discharged by the court.
Fees and expenses	(8) The court 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.

ORDERS FOR THE PRODUCTION OF INFORMATION

Definitions	53. The following definitions apply in sections 54 and 55.
“judge” « <i>jugé</i> »	“judge” means a judge of a superior court of criminal jurisdiction, as defined in section 2 of the <i>Criminal Code</i> .
“justice” « <i>jugé de paix</i> »	“justice” has the same meaning as in section 2 of the <i>Criminal Code</i> .

Production order
— names

54. (1) On *ex parte* application by a peace officer or a person designated under subsection 36(1), a judge or justice may order one or more of the following:

(a) that a trading facility, clearing house or self-regulatory organization produce a document, in the form specified in the order, containing the names of all dealers, other than those who are individuals, that traded a specified security or derivative during a specified period;

(b) that a trade repository produce a document, in the form specified in the order, containing the legal entity identifiers of all persons that 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, in the form specified in the order, containing the names of all persons on whose behalf the dealer 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 this Act 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 that 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 *ex parte* application by a peace officer or a person designated under subsection 36(1), 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 designated person must, as soon as feasible, give notice of the revocation or variation to the person who is subject to the order.

Order for
production

55. (1) On *ex parte* application by a peace officer or a person designated under subsection 36(1), a judge or justice may order a capital markets intermediary that is not an individual, a party to a derivative that is not an individual or an issuer 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 designated person 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 designated person 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 designated person 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 this Act 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 that 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 their client or, in Quebec, between a lawyer or notary and their client, and with respect to the non-disclosure of the existence of the order.
Power to revoke or vary	(4) On <i>ex parte</i> application by a peace officer or a person designated under subsection 36(1), 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 designated person must, as soon as feasible, give notice of the revocation or variation to the person who is subject to the order.
Effect of order	56. An order made under section 54 or 55 has effect throughout Canada.
Offence	57. A person that contravenes an order made under section 54 or 55 without lawful excuse is guilty of an offence punishable on summary conviction and is liable to a fine of not more than \$250,000 or to imprisonment for a term of not more than six months, or to both.

PART 4
GENERAL OFFENCES

Contravention of Act	58. (1) Every person that contravenes a provision of this Act — other than a provision of Part 5 — or of the regulations is guilty of an offence and is liable <ul style="list-style-type: none"> (a) on proceedings by way of indictment, <ul style="list-style-type: none"> (i) in the case of an individual, to a fine of not more than \$5 million or to imprisonment for a term of not more than five years, or to both, or (ii) in the case of a person other than an individual, to a fine of not more than \$25 million; or (b) on summary conviction, <ul style="list-style-type: none"> (i) in the case of an individual, to a fine of not more than \$250,000 or to imprisonment for a term of not more than one year, or to both, or (ii) in the case of a person other than an individual, to a fine of not more than \$5 million.
Exception	(2) Despite subsection (1), a person that contravenes a prescribed provision of a regulation is not guilty of an offence.
Directors and officers	59. (1) If a person other than an individual commits an offence under section 58, other than for a contravention of section 84, any of the person's directors or officers who authorized, permitted or acquiesced in the commission of the offence is a party to and guilty of the offence and is liable on conviction to the punishment provided for the offence, whether or not the person has been prosecuted or convicted.
Investment fund manager	(2) If an investment fund commits an offence under section 58, other than for a contravention of section 84, the investment fund manager — or, if the investment fund manager is an individual, the investment fund manager who authorized, permitted or acquiesced in the commission of the offence — is a party to and guilty of the offence and is liable on conviction to the punishment provided for the offence, whether or not the investment fund has been prosecuted or convicted.
Offences by employees, agents or mandataries	60. In a prosecution for an offence under section 58, other than for a contravention of section 84, it is sufficient proof of the offence to establish that it was committed by the accused's employee acting within the scope of their employment, or the accused's agent or mandatary acting within the scope of their authority, whether or not the employee, agent or mandatary 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.

Due diligence

61. No person is to be convicted of an offence under section 58, other than for a contravention of section 83 or 84, if the person establishes that they exercised due diligence to prevent the commission of the offence.

PART 5

CRIMINAL OFFENCES

Fraud

62. (1) Every person commits an offence if, by deceit, falsehood or other fraudulent means, they engage in conduct relating to a security, a derivative or the underlying interest of a security or a derivative that defrauds a person, whether ascertained or not, or the public of any property or service.

Conduct relating to a security or derivative

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

Punishment

(3) Every person who commits an offence under subsection (1) is

(a) guilty, if the value of the subject matter of the offence is more than \$5,000, of an indictable offence and liable to imprisonment for a term of not more than 14 years; or

(b) guilty, if the value of the subject matter of the offence is not more than \$5,000,

(i) of an indictable offence, and liable to imprisonment for a term of not more than two years, or

(ii) of an offence punishable on summary conviction.

Minimum punishment

(4) When a person is prosecuted on indictment and convicted of one or more offences referred to in subsection (1), the court that imposes the sentence must impose a minimum punishment of imprisonment for a term of two years if the total value of the subject matter of the offences is more than \$1 million.

Affecting value or market price

63. (1) Every person commits an offence if, by deceit, falsehood or other fraudulent means and with intent to defraud, they affect the value or market price of a security, a derivative or the underlying interest of a security or a derivative.

Punishment

(2) Every person who commits an offence under subsection (1) is guilty of an indictable offence and liable to imprisonment for a term of not more than 14 years.

Market manipulation

64. (1) Every person commits an offence if they engage in conduct relating to a security, a derivative or the underlying interest of a security or a derivative with the intent to create, and the conduct can reasonably be expected to create,

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

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

Punishment

(2) Every person who commits an offence under subsection (1) is guilty of an indictable offence and liable to imprisonment for a term of not more than 10 years.

False information — benchmark

65. (1) Every person commits an offence if they provide another person with information for the purpose of determining a benchmark knowing that, or being reckless as to whether, the information is false or misleading.

Benchmark manipulation

(2) Every person commits an offence if they engage in conduct relating to a benchmark with the intent to produce a false or misleading determination of the benchmark.

Punishment	(3) Every person who commits an offence under subsection (1) or (2) is guilty of an indictable offence and liable to imprisonment for a term of not more than 10 years.
Definitions	66. (1) The following definitions apply in this section and section 67.
“associate” « <i>lié</i> »	<p>“associate”, in respect of a person, means</p> <p>(a) an issuer of which the person beneficially owns or controls, directly or indirectly, voting securities entitling the person to more than 10% of the voting rights attached to the issuer’s outstanding securities;</p> <p>(b) a partner, other than a limited partner, of the person;</p> <p>(c) a trust in which the person has a substantial beneficial interest — or, in Quebec, a substantial share as beneficiary — or in respect of which the person serves as trustee;</p> <p>(d) an estate in which the person has a substantial beneficial interest or in respect of which the person serves as administrator or executor or in a similar capacity, or in Quebec, a succession in which the person has a substantial share as heir or legatee or in respect of which the person serves as liquidator of the succession; and</p> <p>(e) the person’s relative who has the same home as the person, including the person’s spouse or common-law partner or a relative of the person’s spouse or common-law partner.</p>
“beneficial ownership” « <i>propriété effective</i> »	“beneficial ownership” means, in Quebec, ownership of securities by the registered owner or ownership of securities through a trustee or other person that administers the property of another, a mandatary or other intermediary acting as nominee.
“common-law partner” « <i>conjoint de fait</i> »	“common-law partner”, in relation to an individual, means a person who is cohabiting with the individual in a conjugal relationship, having so cohabited for a period of at least one year.
“debt security” « <i>titre de créance</i> »	“debt security” means a bond, debenture, note or other evidence of indebtedness, whether secured or unsecured.
“insider” « <i>initié</i> »	<p>“insider” means</p> <p>(a) a director or officer of an issuer;</p> <p>(b) a director or officer of a person that is itself an insider or subsidiary of an issuer;</p> <p>(c) a person that, directly or indirectly, has beneficial ownership of, or control or direction over, or a combination of beneficial ownership of and control or direction over, 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; or</p> <p>(d) an issuer that has purchased, redeemed or otherwise acquired a security of its own issue, for as long as it continues to hold that security.</p>
“material change” « <i>changement important</i> »	<p>“material change” means</p> <p>(a) in relation to an issuer other than an investment fund</p> <p>(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</p>

(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 that confirmation of the decision by the directors is probable; and

(b) in relation to an issuer that 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 or the directors of the issuer’s investment fund manager,

(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”
« fait important »

“material fact” means a fact that would reasonably be expected to have a significant effect on the market price or value of a security or derivative.

“related financial instrument”
« instrument financier connexe »

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

(a) an instrument, agreement or security whose market price or value or payment or settlement obligations are derived from, referenced to or based on the market price, value or payment or settlement obligations of the security; or

(b) an instrument, agreement 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.

“subsidiary”
« filiale »

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

“voting security”
« valeur mobilière avec droit de vote »

“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.

Interpretation

(2) The interpretive provisions in subsections (3) to (6) apply in this section and section 67.

Affiliation

(3) A person is affiliated with another person if one of them is the subsidiary of the other or if each of them is controlled by the same person.

Control

(4) A person controls another person if

(a) the person beneficially owns or exercises direct or indirect control or direction over voting securities of the other person — unless the person holds those voting securities only to secure an obligation — and the votes carried by those voting securities, if exercised, would entitle their holder to elect a majority of the other person’s directors;

(b) the other person is a partnership, other than a limited partnership, and the person holds more than 50% of the interests or shares of the partnership; or

(c) the other person is a limited partnership and the person is the general partner of the limited partnership.

Beneficial
ownership

(5) A person beneficially owns securities that are beneficially owned

(a) by an issuer controlled by that person; or

(b) by an affiliate of that person or of that issuer.

Special
relationships

(6) A person is in a special relationship with an issuer if

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

(i) the issuer,

(ii) a person that is evaluating whether to make, or that proposes to make, a take-over bid for securities of the issuer,

(iii) a person that is evaluating whether to become, or that proposes to become, a party to an amalgamation, merger, reorganization, arrangement or similar business combination with the issuer, or

(iv) a person that is evaluating whether to acquire, or that proposes to acquire, a substantial portion of the issuer's property;

(b) the person has engaged, is engaging, is 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) the person is a director, officer or employee of the issuer or a person described in subparagraph (a)(ii) or (iii) or paragraph (b);

(d) the person learned of a material change with respect to the issuer or a material fact with respect to securities of the issuer while the person was a person described in paragraph (a), (b) or (c); or

(e) the person learns of a material change with respect to the issuer, or a material fact with respect 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 to know that the other person is a person in a special relationship with the issuer.

Insider trading

67. (1) Every person in a special relationship with an issuer whose securities are publicly traded commits an offence if they use knowledge of a material change with respect to the issuer, or a material fact with respect to securities of the issuer, that they know has not been generally disclosed to trade a security of the issuer or to enter into a transaction involving a related financial instrument.

Inference

(2) For the purposes of subsection (1), a court may infer from the fact that the person had knowledge of the material change or material fact before or at the time they traded, or entered into the transaction, that the person used that knowledge to trade or enter into the transaction.

Defence

(3) No person is to be convicted of an offence under subsection (1) if the person reasonably believed that the other party to the trade or transaction knew of the material change or material fact at the time of the trade or transaction.

Tippling

(4) Every issuer whose securities are publicly traded or person in a special relationship with such an issuer commits an offence if, unless it is necessary in the course of their business, they inform another person of a material change with respect to the issuer, or a material fact with respect to securi-

ties of the issuer, that they know has not been generally disclosed when they know or ought reasonably to know that the other person might

- (a) use the information in a transaction related to the issuer; or
- (b) disclose the information to a third person who might use it in such a transaction.

Tipping based
on action

(5) Every person proposing to do one or more of the actions set out in subsection (7) commits an offence if, unless it is necessary in order to effect the proposed action or actions, they inform another person of a material change with respect to an issuer whose securities are publicly traded, or a material fact with respect to securities of that issuer, that they know has not been generally disclosed, when they know or ought reasonably to know that the other person might

- (a) use the information in a transaction related to the issuer; or
- (b) disclose the information to a third person who might use it in such a transaction.

Recommending

(6) Every person that is an issuer whose securities are publicly traded, that is in a special relationship with such an issuer or that proposes to do one or more of the actions set out in subsection (7) commits an offence if they recommend or encourage another person to trade a security of the issuer or to enter into a transaction involving a related financial instrument, when they

- (a) know of a material change with respect to the issuer, or a material fact with respect to securities of the issuer, that they know has not been generally disclosed; and
- (b) know or ought reasonably to know that the other person might
 - (i) use the information in a transaction related to the issuer, or
 - (ii) disclose the information to a third person who might use it in such a transaction.

Actions

(7) Any of the following are actions for the purposes of subsections (5) and (6):

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

Meaning of
entering into a
transaction

(8) For the purposes of subsections (1) and (6), entering into a transaction includes terminating or materially amending an existing obligation with respect to a related financial instrument.

Punishment

(9) Every person who commits an offence under subsection (1) or any of subsections (4) to (6) is guilty of an indictable offence and liable to imprisonment for a term of not more than 10 years.

Misrepresenta-
tion

68. (1) Every person commits an offence if they knowingly or recklessly make a misrepresentation knowing that, or being reckless as to whether, it would

- (a) induce a person, whether that person is ascertained or not, to trade or not to trade a security or a derivative; or
- (b) deceive a person about a security, a derivative, a trade or an issuer.

Punishment

(2) Every person who commits an offence under subsection (1) is guilty of an indictable offence and liable to imprisonment for a term of not more than 10 years.

Definitions

(3) The following definitions apply in this section.

“material fact” « fait important »	“material fact” has the same meaning as in subsection 66(1).
“misrepresentation” « présentation inexacte de faits »	<p>“misrepresentation” means</p> <p>(a) an untrue statement of a material fact; or</p> <p>(b) an omission to state a material fact that is required to be stated or that is necessary to prevent a statement from being false or misleading in the circumstances in which it is made.</p>
Criminal breach of trust	69. (1) Every dealer or investment fund manager or employee, agent or mandatary of a dealer or investment fund manager commits an offence if the dealer or investment fund manager has a legal duty to hold another person’s assets in trust or separate and apart from its own assets and the dealer, investment fund manager, employee, agent or mandatary converts, with intent to defraud and in contravention of that duty, the other person’s assets or any part of them to a use that is not authorized.
Punishment	(2) Every person who commits an offence under subsection (1) is guilty of an indictable offence and liable to imprisonment for a term of not more than 14 years.
Forgery	70. (1) Every person commits forgery who makes a false document in relation to a security, a derivative, a trade or an issuer, knowing the document to be false, with intent
	(a) that it should in any way be used or acted on as genuine, to the prejudice of anyone whether within Canada or not; or
	(b) that a person should be induced, by the belief that it is genuine, to do or to refrain from doing anything, whether within Canada or not.
Punishment	(2) Every person who commits forgery is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years.
<i>Criminal Code</i>	(3) The definitions “document” and “false document” in section 321 of the <i>Criminal Code</i> and subsections 366(2) to (5) of that Act apply in relation to the conduct described in subsection (1).
Use, trafficking or possession of forged document	71. (1) Every person commits an offence who, knowing or believing that a document in relation to a security, a derivative, a trade or an issuer is forged,
	(a) uses, deals with or acts on it as if it were genuine;
	(b) causes or attempts to cause any person to use, deal with or act on it as if it were genuine;
	(c) transfers, sells or offers to sell it or makes it available to any person knowing that, or being reckless as to whether, an offence will be committed under paragraph (a) or (b); or
	(d) possesses it with intent to commit an offence under any of paragraphs (a) to (c).
Punishment	(2) Every person who commits an offence under subsection (1)
	(a) is guilty of an indictable offence and liable to imprisonment for a term of not more than 10 years; or
	(b) is guilty of an offence punishable on summary conviction.
Wherever forged	(3) For the purposes of proceedings under this section, the place where a document was forged is not material.
Exemption for peace officers	72. No peace officer is guilty of an offence under section 70 or 71 if the acts alleged to constitute the offence were committed by the peace officer for the sole purpose of establishing or maintaining a covert identity for use in the course of the peace officer’s duties or employment.

Threats and
retaliation
against
employees

73. (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) with the intent to prevent the employee from providing information to the Authority or a law enforcement agency respecting an offence that the employee believes has been or is being committed contrary to this Act by the employer or an officer or employee of the employer or, if the employer is a corporation, by one or more of its directors;

(b) with the intent to compel the employee to do anything that is an offence under this Act;

(c) with the intent to prevent the employee from doing anything that is required to be done in order that an offence not be committed under this Act; or

(d) with the intent to retaliate against the employee because the employee

(i) has provided information referred to in paragraph (a) to the Authority or a law enforcement agency,

(ii) has not done anything that is an offence under this Act, or

(iii) has done anything that is required to be done in order that an offence not be committed under this Act.

Punishment

(2) Every person who contravenes subsection (1) is guilty of

(a) an indictable offence and liable to imprisonment for a term not exceeding five years; or

(b) an offence punishable on summary conviction.

Conspiracy

74. Every person who conspires with any one to commit an indictable offence under this Act is guilty of an indictable offence and liable to the same punishment as that to which an accused who is guilty of that offence would, on conviction, be liable.

Sentencing —
aggravating
circumstances

75. (1) Without limiting the generality of section 718.2 of the *Criminal Code*, a court that is imposing a sentence for an offence referred to in any of sections 62 to 65 and 67 to 71 must consider the following as aggravating circumstances:

(a) the magnitude, complexity, duration or degree of planning of the offence committed was significant;

(b) the offence adversely affected, or had the potential to adversely affect, the stability or integrity of the Canadian economy or financial system or any financial market in Canada or investor confidence in such a financial market;

(c) the offence involved a large number of victims;

(d) the offence had a significant impact on the victims, given their personal circumstances including their age, health and financial situation;

(e) in committing the offence, the offender took advantage of the high regard in which the offender was held in the community;

(f) the offender did not comply with a licensing or registration requirement, or professional standard, that is normally applicable to the activity or conduct that forms the subject matter of the offence;

(g) the offender destroyed, withheld or concealed records related to the offence or to the disbursement of the proceeds of the offence; and

	(h) if the offence is an offence referred to in any of sections 63 to 65 and 67 to 69, the value of the subject matter of the offence is more than \$1 million.
Non-mitigating factors	(2) A court that is imposing a sentence for an offence referred to in any of sections 62 to 65, 67 to 71, 73 and 74 must not consider as mitigating circumstances the offender's employment, employment skills or status or reputation in the community if those circumstances were relevant to, contributed to or were used in the commission of the offence.
Record of proceedings	(3) The court must cause to be stated in the record the aggravating and mitigating circumstances it took into account when determining the sentence.
Prohibition order	76. (1) When an offender is convicted, or is discharged on the conditions prescribed in a probation order under section 730 of the <i>Criminal Code</i> , of an offence referred to in section 62 or 69, the court that sentences or discharges the offender, in addition to any other punishment that may be imposed for that offence or any other condition prescribed in the order of discharge, may make, subject to the conditions or exemptions that the court directs, an order prohibiting the offender from seeking, obtaining or continuing any employment, or becoming or being a volunteer in any capacity, that involves having authority over the money or other property of another person.
Duration	(2) The prohibition may be for any period that the court considers appropriate, including any period to which the offender is sentenced to imprisonment.
Court may vary order	(3) A court that makes an order of prohibition or, if the court is for any reason unable to act, another court of equivalent jurisdiction in the same province, may, on application of the offender or the prosecutor, require the offender to appear before it at any time and, after hearing the parties, that court may vary the conditions prescribed in the order if, in the opinion of the court, the variation is desirable because of changed circumstances.
Offence	(4) Every person who is bound by an order of prohibition and who does not comply with the order is <p>(a) guilty of an indictable offence and liable to imprisonment for a term not exceeding two years; or</p> <p>(b) guilty of an offence punishable on summary conviction.</p>
Court to consider restitution order	77. (1) When an offender is convicted, or is discharged under section 730 of the <i>Criminal Code</i> , of an offence referred to in section 62 or 69, the court that sentences or discharges the offender, in addition to any other measure imposed on the offender, must consider making a restitution order under section 738 or 739 of that Act.
Inquiry by court	(2) As soon as feasible after a finding of guilt and in any event before imposing the sentence, the court must inquire of the prosecutor if reasonable steps have been taken to provide the victims with an opportunity to indicate whether they are seeking restitution for their losses, the amount of which must be readily ascertainable.
Adjournment	(3) On application of the prosecutor or on its own motion, the court may adjourn the proceedings to permit the victims to indicate whether they are seeking restitution or to establish their losses, if the court is satisfied that the adjournment would not interfere with the proper administration of justice.
Form for victims	(4) Victims may indicate whether they are seeking restitution by completing Form 34.1 in Part XXVIII of the <i>Criminal Code</i> or a form approved for that purpose by the Lieutenant Governor in Council of the province where the court has jurisdiction or by using any other method approved by the court, and, if they are seeking restitution, must establish their losses, the amount of which must be readily ascertainable, in the same manner.

Reasons	(5) If a victim seeks restitution and the court decides not to make a restitution order, it must give reasons for its decision and must cause those reasons to be stated in the record.
Community impact statement	78. (1) For greater certainty, for the purpose of determining the sentence to be imposed on an offender, or whether the offender should be discharged under section 730 of the <i>Criminal Code</i> , in respect of an offence referred to in section 62 or 69, the court may consider a statement made by a person on a community's behalf describing the harm done to, or losses suffered by, the community arising from the commission of the offence.
Procedure	(2) The statement must <ul style="list-style-type: none"> (a) be prepared in writing and filed with the court; (b) identify the community on whose behalf the statement is made; and (c) explain how the statement reflects the community's views.
Copy of statement	(3) The clerk of the court must provide a copy of the statement, as soon as feasible after a finding of guilt, to the offender or counsel for the offender, and to the prosecutor.
Proceedings	79. Despite the definition of "Attorney General" in section 2 of the <i>Criminal Code</i> , either the Attorney General of Canada or the Attorney General or Solicitor General of a province may commence and conduct proceedings in relation to an offence referred to in this Part, and for that purpose may exercise any of the powers or perform any of the duties assigned under the <i>Criminal Code</i> to the Attorney General.
Immunity	80. No civil action lies against a person for having voluntarily disclosed any information to the Authority or to a peace officer if the person reasonably believes that the information <ul style="list-style-type: none"> (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 this Act, a designated person who is investigating such an offence or conducting a review under section 37 or an authorized person who is inquiring into a matter under section 38; or (b) is true and may be related to an offence or a contravention under this Act, in any other case.

PART 6

GENERAL

DUTIES AND PROHIBITIONS

Duty to comply with decision	81. A person must comply with a decision of the Authority, the Chief Regulator or the Tribunal.
Duty to comply with undertaking	82. 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 Authority	83. (1) A person must not make or provide an oral or written statement to the Authority or to anyone acting under its authorization that, in a material respect and at the time at which it is made or provided, is untrue or omits information necessary to prevent it from being false or misleading in the circumstances in which it is made or provided.
Exception	(2) A person does not contravene subsection (1) if they did not know, and in the exercise of reasonable diligence would not have known, that the statement was untrue or that it omitted information necessary to prevent it from being false or 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.
No destruction, etc.	84. (1) A person must not, and must not attempt to, destroy, withhold or conceal any information, property or thing reasonably required for a review, inquiry, investigation or proceeding under this Act if they know or ought reasonably to know that a review, inquiry, investigation or proceeding is being, or is likely to be, conducted.
No obstruction	(2) A person must not knowingly obstruct a Tribunal member or an employee, agent or mandatary of the Authority in the exercise of their powers or the performance of their duties and functions under this Act.

REGULATIONS AND POLICY STATEMENTS

Regulations	<p>85. (1) Subject to sections 87 to 93, the Authority may make regulations for carrying out the purposes and provisions of this Act, including regulations</p> <p>(a) that are referred to in this Act or that prescribe anything that by this Act is to be prescribed;</p> <p>(b) fixing fees and charges or the manner of their calculation, including fees and charges for the late provision of records and information, and providing for their payment;</p> <p>(c) respecting records, including their format, filing, provision, service, sending, delivery, receipt and retention, and the time periods for their filing, provision, service, sending, delivery, receipt and retention;</p> <p>(d) respecting the collection, use and disclosure of information; and</p> <p>(e) defining words and expressions for the purposes of this Act.</p>
Classes distinguished	(2) For greater certainty, the regulations may establish classes and distinguish among them.
Incorporation by reference	86. (1) The regulations 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.
No registration or publication	(2) For greater certainty, a document that is incorporated by reference in a regulation is not required to be transmitted for registration or published in the <i>Canada Gazette</i> by reason only that it is incorporated by reference.
Accessibility	(3) The Authority must ensure that a document that is incorporated by reference is accessible.
No finding of guilt or administrative sanction	(4) 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 a document that is incorporated by reference in a regulation is relevant unless, at the time of the alleged contravention, it was accessible as required by subsection (3) or it was otherwise accessible to that person.
Notice of proposed regulation	87. (1) The Authority must publish a notice of every regulation that it proposes to make.
Content of notice	<p>(2) The notice must include the following:</p> <p>(a) the proposed regulation;</p> <p>(b) a description of the proposed regulation and the reasons for it;</p> <p>(c) a description of the anticipated costs and benefits of the proposed regulation; and</p>

	(d) in the case of a proposal for a regulation referred to in subsection 30(1) or 32(1), an analysis of any factors the Authority is required to consider in making the regulation.
Comments	(3) In the notice, the Authority must invite interested persons to make written comments about the proposed regulation within a period of at least 90 days after the day on which the notice is published.
Exception to publication	(4) Despite subsection (1), a notice is not required to be published if <ul style="list-style-type: none"> (a) the proposed regulation only grants an exemption or removes a restriction and the Authority considers it necessary to make the proposed regulation without delay; (b) the proposed regulation is an amendment and the Authority considers that it does not change an existing regulation in a material way; or (c) the Authority considers that there is an urgent need for the proposed regulation in order to address a systemic risk related to capital markets.
Changes to proposal	(5) If, after publication of the notice and consideration of the comments or after the Council of Ministers returns the proposed regulation to the Authority for further consideration, 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: <ul style="list-style-type: none"> (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 day on which the notice of changes is published.
Submission of proposed regulations to Council of Ministers	88. (1) The Authority must submit to the Council of Ministers, for approval, any proposed regulation — other than one to which subsection 87(4) applies — and must attach to it <ul style="list-style-type: none"> (a) a copy of any notices published under section 87; (b) a summary of any written comments received about the proposed regulation; and (c) the Authority's analysis 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 87, the Authority may submit the proposed regulation to the Council of Ministers only after the end of any comment periods and after considering all comments received.
Publication	(3) As soon as feasible after submitting the proposed regulation to the Council of Ministers, the Authority must publish it together with the following information: <ul style="list-style-type: none"> (a) the date on which the proposed regulation was submitted to the Council of Ministers; (b) the date on which the proposed regulation is intended to come into force; (c) a description of the proposed regulation and the reasons for it; (d) a summary of any written comments received about the proposed regulation; and (e) the Authority's response to any significant issues and concerns brought to its attention during the comment periods.
Proposed regulations without notice	89. The Authority must submit to the Council of Ministers, for approval, any proposed regulation to which subsection 87(4) applies.

Action by Council of Ministers	<p>90. (1) Within 60 days after the day on which a proposed regulation is submitted for approval, the Council of Ministers may</p> <p>(a) approve the proposed regulation;</p> <p>(b) reject the proposed regulation; or</p> <p>(c) return the proposed regulation to the Authority for further consideration.</p>
Proposed regulations without notice	<p>(2) However, the period is seven days in the case of a proposed regulation to which subsection 87(4) applies.</p>
Review period before making regulation	<p>91. The Authority may make a regulation only if the Council of Ministers</p> <p>(a) notifies the Authority that it approves the making of the regulation; or</p> <p>(b) has not, during the applicable period set out in subsection 90(1) or (2), rejected it or returned it to the Authority for further consideration.</p>
Coming into force of regulations	<p>92. (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.</p>
Publication of order	<p>(2) The order must be published as soon as practicable after it is made.</p>
Automatic repeal of certain regulations	<p>93. (1) A regulation to which paragraph 87(4)(a) or (c) applies</p> <p>(a) must not amend a regulation;</p> <p>(b) must not repeal a regulation other than one to which paragraph 87(4)(a) or (c) applies;</p> <p>(c) may suspend the application of the provisions of another regulation made under this Act; and</p> <p>(d) is repealed one year after the day on which it comes into force, if it has not already been repealed.</p>
Publication of statement — exemptions, etc.	<p>(2) As soon as feasible after the coming into force of a regulation to which paragraph 87(4)(a) applies, the Authority must publish a statement that includes a description of the regulation, the reasons for it and the day on which it will be repealed.</p>
Publication of statement — urgent regulation	<p>(3) As soon as feasible after the coming into force of a regulation to which paragraph 87(4)(c) applies, the Authority must publish a statement that includes a description of the regulation, the reasons for it, the nature of the urgency and the systemic risk involved and the day on which the regulation will be repealed. In the case of a regulation referred to in subsection 30(1) or 32(1), the statement must also include an analysis of any factors the Authority is required to consider in making the regulation.</p>
Request by Council of Ministers	<p>94. (1) The Council of Ministers may request that the Authority consult on a matter that the Council specifies and consider making a regulation on it.</p>
Report	<p>(2) The Authority must report to the Council of Ministers on its response to the request within one year after the day on which the request is made.</p>
Policy statements	<p>95. (1) The Authority may issue policy statements and other material that it considers advisable to provide guidance on its interpretation of this Act and the exercise of its powers.</p>
Comments	<p>(2) Before the Authority issues a policy statement, it must publish the proposed policy statement and invite interested persons to make written comments about it within a period of at least 30 days after the day on which the policy statement is published.</p>

ORDERS

Exemptions	96. The Authority may, in a particular case, on application or on its own initiative, make an order exempting a specified person, trade, security or derivative from a provision of the regulations if the Authority is satisfied that the exemption would not hinder it in carrying out its mandate or result in a systemic risk related to capital markets.
Extension of time periods or vary	97. The Authority may, on application or on its own initiative, make an order extending a period in the regulations if it considers that doing so would be appropriate in a particular case.

DECISIONS

General

Terms	98. The Authority, the Chief Regulator and the Tribunal may impose any terms in their decisions.
Limitation	99. Despite sections 18 and 18.1 of the <i>Federal Courts Act</i> , a decision is not, to the extent that it may be reviewed under section 103, subject to review or to be restrained, prohibited, removed, set aside or otherwise dealt with other than under that section.
Power to revoke or vary	100. The Authority and the Chief Regulator may revoke or vary any of their decisions if the Authority or the Chief Regulator, as the case may be, considers that doing so would not be contrary to the purposes of this Act.

Tribunal

Filing decision with court	101. A certified copy of a decision made by the Tribunal may be filed with the Federal Court or a court and, on being filed, has the same force and effect as a judgment of that court.
Power to revoke or vary — Tribunal	102. The Tribunal may, on application by the Chief Regulator or a person directly affected by a decision of the Tribunal, revoke or vary the decision if the Tribunal considers that doing so would not be contrary to the purposes of this Act, whether or not the decision has been filed with the Federal Court or a court.
Right to apply for review	103. (1) A person who is directly affected may, on notice to the Chief Regulator, apply to the Tribunal for a review of a decision of the Chief Regulator other than a decision made under section 34.
Time limit	(2) Notice of an application for review must be filed with the Tribunal within 30 days after the day on which the decision is made or within any longer period that the Tribunal specifies.
Chief Regulator	(3) The Chief Regulator is a party to a review under this section.
Disposition on review	(4) The Tribunal may confirm a decision under review or make another decision that it considers appropriate.
Limitation — systemic risk	(5) However, the Tribunal may substitute its own determination of whether something could pose a systemic risk related to capital markets for that of the Chief Regulator only if the Chief Regulator's determination is unreasonable.
Stay of decision	(6) The Tribunal may grant a stay of a decision under review until disposition of the review.

OTHER MATTERS

<i>Statutory Instruments Act</i> — orders	104. The <i>Statutory Instruments Act</i> does not apply in respect of an order made by the Authority or the Chief Regulator under this Act.
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Limitation period or prescription	105. Proceedings under this Act, other than a prosecution by indictment, may be commenced up to six years after the day on which the last event that gave rise to the proceedings occurred.
Immunity	<p>106. (1) No action or other proceeding for damages lies against the following for any act done or omitted to be done in good faith in the exercise of any power, or in the performance of any duty, that under this Act is intended or authorized to be exercised or performed:</p> <p>(a) the Authority and any of its directors, officers, employees, agents and mandataries; and</p> <p>(b) the Tribunal members.</p>
No liability for complying with Act	(2) No action or other proceeding for damages lies against 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, the Chief Regulator or the Tribunal.
No liability — directors	107. No action or other proceeding for damages lies against a director of the Authority for any act, omission, obligation or liability of the Authority, the Tribunal members or the Authority's officers, employees, agents or mandataries.
Evidence outside Canada	<p>108. (1) The Chief Regulator may apply to the Federal Court or a court for an order</p> <p>(a) appointing a person to take the evidence of a witness outside Canada for use in a proceeding related to the administration of this Act; and</p> <p>(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 them 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 records and things that are relevant to the subject matter of the proceeding.</p>
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 outside Canada	109. (1) The Federal Court or a court may make an order referred to in subsection (2) if it is satisfied that a judicial authority of competent jurisdiction outside Canada has, on behalf of a financial regulatory authority or other body empowered by law to regulate trading in securities or derivatives, duly authorized the taking of evidence of a witness within Canada for use at a proceeding before the financial regulatory authority or body.
Court order	<p>(2) The court may make an order</p> <p>(a) compelling the witness to be examined by the person appointed in the manner and form directed by the judicial authority outside Canada in order to give testimony on oath or solemn affirmation;</p> <p>(b) compelling the witness to produce records and things mentioned in the order; and</p> <p>(c) giving any directions that it considers appropriate as to the date, time and place for the examination and any other matters related to it.</p>

PART 7

TRANSITIONAL PROVISIONS

110. For the period before the day on which section 6 comes into force,

(a) the Governor in Council may designate as responsible for the administration of this Act the Minister of Finance or any division or branch of the federal public administration, or any corporation or other entity established by an Act of Parliament, that has powers and duties relating to capital markets or the financial system;

(b) the reference to the “Authority” in section 85 is to be read as a reference to the Governor in Council on the recommendation of the Minister of Finance;

(c) any other reference to the “Authority” and any reference to the “Chief Regulator” in this Act are to be read as a reference to the person or entity that is designated; and

(d) for greater certainty, if the Minister of Finance is designated, that Minister is not subject to any requirements in this Act to obtain that Minister’s consent or to notify that Minister.

PART 8

CONSEQUENTIAL AMENDMENTS

CRIMINAL CODE

111. Paragraph (g) of the definition “Attorney General” in section 2 of the *Criminal Code* is replaced by the following:

(g) with respect to proceedings in relation to an offence referred to in section 380, means either the Attorney General of Canada or the Attorney General or Solicitor General of the province in which those proceedings are taken and includes the lawful deputy of any of them;

112. (1) Subparagraph (a)(lxx) of the definition “offence” in section 183 of the Act is repealed.

(2) The definition “offence” in section 183 of the Act is amended by striking out “or” at the end of paragraph (i) and adding the following after that paragraph:

(i.1) any of the following provisions of the *Capital Markets Stability Act*, namely,

(i) section 62 (fraud),

(ii) section 63 (affecting market price),

(iii) section 64 (market manipulation),

(iv) section 65 (benchmarks),

(v) section 67 (insider trading),

(vi) section 68 (misrepresentation),

(vii) section 69 (criminal breach of trust),

(viii) section 70 (forgery),

(ix) section 71 (use, trafficking or possession of forged document),

(x) section 73 (threats and retaliation against employees),

(xi) section 74 (conspiracy), or

(xii) section 76 (non-compliance with prohibition order), or

2004, c. 3, s.
2(2)

113. Subsection 380(2) of the Act is replaced by the following:

Affecting public
market

(2) Every one who, by deceit, falsehood or other fraudulent means, whether or not it is a false pretence within the meaning of this Act, with intent to defraud, affects the public market price of merchandise or anything that is offered for sale to the public is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen years.

2004, c. 3, s. 3;
2011, c. 6, s.
3(1)(E)

114. (1) The portion of subsection 380.1(1) of the Act before paragraph (a) is replaced by the following:

Sentencing —
aggravating
circumstances

380.1 (1) Without limiting the generality of section 718.2, when a court imposes a sentence for an offence referred to in section 380, it shall consider the following as aggravating circumstances:

2011, c. 6, s.
3(5)

(2) Subsections 380.1(1.1) and (2) of the Act are replaced by the following:

Non-mitigating
factors

(2) When a court imposes a sentence for an offence referred to in section 380, it shall not consider as mitigating circumstances the offender's employment, employment skills or status or reputation in the community if those circumstances were relevant to, contributed to, or were used in the commission of the offence.

2004, c. 3, ss. 4
and 5

115. Sections 382 to 384 of the Act are repealed.

1994, c. 44, s. 26

116. Section 400 of the Act is repealed.

2004, c. 3, s.
8(1)

117. The portion of subsection 487.3(1) of the Act before paragraph (a) is replaced by the following:

Order denying
access to
information used
to obtain a
warrant or
production order

487.3 (1) A judge or justice may, on application made at the time of issuing a warrant under this or any other Act of Parliament or a production order under section 487.012 or 487.013 or section 54 or 55 of the *Capital Markets Stability Act*, or of granting an authorization to enter a dwelling-house under section 529 or an authorization under section 529.4 or at any time thereafter, make an order prohibiting access to and the disclosure of any information relating to the warrant, production order or authorization on the ground that

1985, c. 18 (3rd
Supp.)

OFFICE OF THE SUPERINTENDENT OF FINANCIAL INSTITUTIONS ACT

2001, c. 9, s. 467

118. Subsection 6(1) of the *Office of the Superintendent of Financial Institutions Act* is replaced by the following:

Duties, powers
and functions of
the Superinten-
dent

6. (1) The Superintendent has the powers, duties and functions assigned to the Superintendent by the Acts referred to in the schedule to this Part and shall examine into and report to the Minister from time to time on all matters connected with the administration of the provisions of those Acts except those that are consumer provisions as defined in section 2 of the *Financial Consumer Agency of Canada Act* or those whose administration is assigned to the Capital Markets Regulatory Authority under subsection 7(1) of the *Capital Markets Stability Act*.