

Capital Markets Stability Act — Draft for Consultation

MINISTER OF FINANCE

Draft / Ébauche — January 2016 / janvier 2016

NOTICE

This revised consultation draft of the *Capital Markets Stability Act* is published for public comment as contemplated in 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 of Canada’s financial system affects 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 of Canada’s financial system and on the Canadian economy as a whole;

Whereas the 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 under the [*Capital Markets Regulatory Authority Act*].

“authorized foreign bank”

« **banque étrangère autorisée** »

“**authorized foreign bank**” has the same meaning as in section 2 of the *Bank Act*.

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

“Chief Regulator”

« **régulateur en chef** »

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

“clearing house”

« **chambre de compensation** »

“clearing house” means a person that provides clearing or settlement services for trades in securities or derivatives or that provides a centralized facility as a depository of securities. It includes a central counter-party but does not include

- (a) a Canadian financial institution;
- (b) an authorized foreign bank; 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.

“Council of Ministers”

« Conseil des ministres »

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

“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.

“credit rating”

« notation »

“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.

“Crown corporation”

« société d’État »

“Crown corporation” means

- (a) a Crown corporation as defined in section 83 of the *Financial Administration Act*;
- (b) a corporation of which Her Majesty in right of a province holds more than 50% of the shares; or

(c) a corporation of which the lieutenant governor in council of a province is entitled to appoint a majority of the directors.

“dealer”

« **courtier** »

“dealer” means a person that

(a) engages in or holds themselves out as engaging in the business of trading in securities or derivatives as principal, agent or mandatary; or

(b) acts as an underwriter.

“decision”

« **décision** »

“decision” means

(a) when used in relation to the Authority, an order made by the Authority under Part 1 or 2 or section 85 or 86; and

(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.

“derivative”

« **instrument dérivé** »

“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. This definition does not, however, include a contract or instrument that is within a prescribed class.

“designated trade repository”

« **répertoire des opérations désigné** »

“designated trade repository” means a person that is designated by the Authority under subsection 11(1).

“director”

« **administrateur** »

“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.

“individual”

« **particulier** »

“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.

“investment fund”

« **fonds d’investissement** »

“investment fund” means

- (a) an issuer whose primary purpose is to invest money provided by its security holders and whose securities entitle the holder to receive on demand, or within a specified period after the demand, an amount computed by reference to the value of a proportionate interest in the whole or in part of the issuer’s net assets including a separate fund or trust account; or
- (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* concluded on August 28, 2014, as amended from time to time, and any successor agreement.

“Minister”

« **ministre** »

“**Minister**” means the Minister of Finance.

“officer”

« **dirigeant** »

“officer”, with respect to a person, means

- (a) the chair or a vice-chair of the person’s board of directors, the chief executive officer, the chief operating officer, the chief financial officer, the president, a vice-president, the secretary, the assistant secretary, the treasurer, the assistant treasurer or the 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** » ou « **quiconque** »

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

“prescribed”

Version anglaise seulement

“**prescribed**” means prescribed by regulation.

“record”

« **dossier** »

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

“security”

« **valeur mobilière** »

“**security**” includes any contract, instrument or unit commonly known as a security but does not include a contract, instrument or unit that is within a prescribed class.

“self-regulatory organization”

« **organisme d’autoréglementation** »

“**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** »

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

(b) 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 under the [*Capital Markets Regulatory Authority Act*].

“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 related to capital markets

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

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 of Canada’s financial system through the management of systemic risk related to capital markets; and

(b) to protect capital markets, investors and others from 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, by order, provide that any provision of this Act or the regulations is not binding on Her Majesty in right of Canada or a province, on an agent or class of agents of Her Majesty in right of Canada or on an agent or mandatary or class of agents or mandataries of Her Majesty in right of 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 risk related to capital markets;
- (c) contribute, as part of the Canadian financial regulatory framework, to the stability 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 Governor in Council may, on the Minister's recommendation, make an order assigning to the Authority the administration of any provision of the *Bank Act* or its regulations.

Consultation

(2) The Minister must consult with the Council of Ministers before making a recommendation.

References to this Act

(3) In sections 26 to 41, 72, 83 to 86 and 96, any reference to this Act or its regulations is also to be read as a reference to the provisions of the *Bank Act* or its regulations, respectively, 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. (1) 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 risk related to capital markets; or
- (b) conducting policy analysis related to the Authority's mandate and the purposes of this Act.

Factors to consider

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

- (a) whether the keeping of records and information is already required by capital markets or financial legislation in Canada or elsewhere; and

(b) the extent to which it is practicable to obtain the records and information from another source.

Request of Chief Regulator

10. (1) 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

(a) monitoring activity in capital markets or detecting, identifying or mitigating systemic risk related to capital markets; or

(b) conducting policy analysis related to the Authority's mandate and the purposes of this Act.

Factor to consider

(2) Before making a request, the Chief Regulator must consider the extent to which it is practicable to obtain the records and information in a timely manner from another source.

Designated trade repositories

11. (1) The Authority may, on application by a trade repository, make an order designating the trade repository as a designated trade repository.

Terms

(2) The Authority may, at any time, impose terms on a designation after giving the trade repository an opportunity to be heard.

Content of regulations

(3) The regulations may prescribe requirements, prohibitions and restrictions for designated trade repositories, including in relation to

(a) the collection, retention, use and disclosure of information, including with respect to information systems, internal controls and risk management;

(b) access to their services; and

(c) reporting to the Chief Regulator.

Disclosure of personal information to Authority

12. A person may disclose personal information to the Authority if the disclosure is for the purpose of the administration of this Act or 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, 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 the disclosure is consistent with the purposes for which the information was obtained.

Disclosure to certain persons, authorities or entities

15. (1) The Authority may disclose any information obtained under this Act to a financial regulatory authority, trading facility, clearing house, designated trade repository, self-regulatory organization, governmental authority or regulatory body, in Canada or elsewhere, if the disclosure is for the purpose of

(a) promoting and protecting the stability of Canada's financial system through the management of systemic risk related to capital markets; or

(b) assisting in the administration of capital markets or financial legislation in Canada or elsewhere.

Other disclosure

(2) The Authority may disclose any information obtained under this Act to any person, authority or entity that is not referred to in subsection (1) if the Authority considers that exceptional circumstances exist for doing so and that the disclosure is necessary for a purpose set out in that subsection.

Disclosure outside Canada

16. Before the Authority discloses information to a person, authority, entity or agency outside Canada, the Authority must enter into an agreement or arrangement 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 28(3)(b), he or she must provide the person that gave the evidence with notice that it may be disclosed, and for what purpose, and with an opportunity to be heard, unless

(a) the disclosure is made in a proceeding that is commenced or for the purposes of a proceeding that is 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****BENCHMARKS****Designation order — systemically important benchmark**

18. (1) The Authority may 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 an order under subsection (1), the Authority must consider the following factors:
- (a) whether the benchmark is used in respect of securities or derivatives;
 - (b) the value of the 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;
 - (g) whether and how the benchmark is already regulated; and
 - (h) any other risk-related factors that the Authority considers appropriate.

Opportunity to be heard

- (3) Before making an order under subsection (1), the Authority must give any person that the Authority considers would be directly affected by the order an opportunity to be heard.

Content of regulations

19. 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 those benchmarks;
- (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.

PRODUCTS AND PRACTICES

Systemically important products

20. (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 total of 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 them;
- (f) the interconnectedness between securities or derivatives within the class and other components of capital markets or the 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 capital markets or the financial system;
- (h) whether and how the securities or derivatives within the class are already regulated; and
- (i) any other risk-related factors that the Authority considers appropriate.

Content of regulations

21. 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 such derivatives;
- (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

22. (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 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 capital markets or the financial system;
- (e) the type of persons that are engaging in the practice;
- (f) whether and how the practice is already regulated; and
- (g) any other risk-related factors that the Authority considers appropriate.

Content of regulations

23. 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

- (a) policies and procedures for risk management and internal controls;
- (b) disclosure to the public of information whose disclosure is not otherwise required;
- (c) transparency;
- (d) aspects of governance and organizational and ownership structure that are related to risk management;
- (e) capital, leverage and financial resources;
- (f) margin, collateral, credit protection and position limits;
- (g) the use of credit ratings, including how investment policies govern that use; and
- (h) conflicts of interest related to the determination of credit ratings.

URGENT ORDERS

Urgent orders

24. (1) The Authority may make an urgent order if, in its opinion, the order is necessary to address a serious and immediate systemic risk related to capital markets.

Content of urgent orders

- (2) An urgent order may, to the extent that the Authority considers it necessary to address the risk,
 - (a) prohibit or restrict a person from trading in a security or derivative, reducing their capital or financial resources or engaging in a practice;
 - (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

- (3) An 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.

Extension

(4) Despite subsection (3), the Authority may make an order once to extend an urgent order for a further period of up to 15 days.

Opportunity to be heard not required

(5) Before making an order under subsection (1) or (4), the Authority is not required to give any person an opportunity to be heard if, in the Authority's opinion, doing so would undermine the effect of the order or is not practicable or appropriate.

Opportunity to be heard

(6) If no opportunity to be heard is given before an order is made under subsection (1) or (4), the Authority must, as soon as feasible after making the order, give any person that the Authority considers would be directly affected by the order an opportunity to be heard.

Notice — nature of risk

(7) As soon as feasible after the Authority is of the opinion that an urgent order is necessary to address a serious and immediate systemic risk related to capital markets, it must notify the Council of Ministers and the capital markets regulator of each province that does not have a Minister on that Council about the nature of the risk.

Notice — order

(8) As soon as feasible after making an order under subsection (1) or (4), the Authority must provide the Council of Ministers and the capital markets regulator of each province that does not have a Minister on that Council with a copy of the order and notify them of the purpose of the order and the nature of the risk.

Reasons

(9) 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

(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 directions

25. (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 24 if, in the Minister's opinion, the direction is necessary to address a serious and immediate 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 *Canada Gazette* 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 of Canada's capital markets or financial system.

Statutory Instruments Act

(4) The *Statutory Instruments Act* does not apply in respect of a direction.

PART 3**ADMINISTRATION AND ENFORCEMENT****DESIGNATION****Power to designate**

26. (1) The Chief Regulator may designate persons or classes of persons to exercise the powers set out 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**

27. (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.

Inquiry — order authorizing exercise of powers

28. (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:

(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).

Contempt

(5) The failure or refusal of a person to attend, give evidence or produce records or other things if required to do so 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 that gives evidence if required to do so 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 anything that is relevant to the inquiry and

- (a) examine anything in the place;
- (b) use any means of communication in the place or cause it to be used;
- (c) use, or cause to be used, any electronic device or other system in the place in order to examine data 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 anything 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) An order prohibiting communication takes effect when it is served on the person that 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 that 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

- (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 that is subject to the prohibition.

Duty to assist

29. The person that is subject to a review under section 27 or an inquiry under section 28 and their directors, officers, employees, agents and mandataries, and the owner or person that is in charge of a place that is entered under subsection 28(7) and every person that 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 27(1) or the authorized person to inquire into a matter as set out in subsection 28(1), as the case may be.

Warrant for dwelling-house

30. (1) If the place referred to in subsection 28(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 *ex parte* application, a justice, as defined in section 2 of the *Criminal Code*, may issue a warrant authorizing a designated or authorized person that 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

- (a) the dwelling-house is a place referred to in subsection 28(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 28(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

31. (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 28(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 28(7) and is not liable for doing so.

Use of force

32. 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

33. (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 frequency and duration of the contravention;
- (b) any actual or anticipated profits as a result of the contravention;
- (c) the person's history of compliance with this Act;
- (d) the need to deter similar conduct by that person or others; and
- (e) 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

34. (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.

Content 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 60 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, on notice to the Chief Regulator, to make representations to the Tribunal with respect to the violation and the proposed penalty, and the manner for doing so;
 - (e) the right of the person to apply to the Tribunal for an extension of the period specified in the notice; and
 - (f) 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.

Extension of period

- (3) On application by the person, the Tribunal may extend the period specified in the notice.

Payment of penalty

35. (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 Tribunal

- (2) If the person makes representations in accordance with the notice, the Tribunal 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.

Notice of decision

- (3) The Tribunal must cause notice of any decision made under subsection (2) to be issued and served on the person together with notice of the right to apply for review under subsection 91(1).

Failure to pay or make representations

- (4) A person that neither pays the penalty nor makes representations in accordance with the notice or within the period extended under subsection 34(3) is deemed to have committed the violation and the Chief Regulator must impose the penalty proposed in the notice.

Notice of penalty

- (5) The Chief Regulator must cause notice of a penalty imposed under subsection (4) to be issued and served on the person.

Debt due to Authority

36. 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

37. (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 is a party to and liable for the violation whether or not the person that actually committed the violation is proceeded against.

Contravention by investment fund manager

(2) If an investment fund commits a violation, the investment fund manager is a party to and liable for the violation whether or not the investment fund that actually committed the violation is proceeded against.

Vicarious liability

38. 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**

39. (1) If the Tribunal considers that it is necessary to address a systemic risk related to capital markets, it may, after holding a hearing, make one or more of the following orders:

- (a) an order that a person comply, or that a person's directors and officers cause the person to comply, with this Act;
- (b) an order that trading cease in respect of any security or derivative or class of securities or derivatives specified in the order;
- (c) an order that a person cease trading in all securities or the securities or classes of securities specified in the order;
- (d) an order that a person cease trading in all derivatives or the derivatives or classes of derivatives specified in the order;
- (e) an order that a designated trade repository, an issuer of systemically important securities or a party to a systemically important derivative make changes to its practices and procedures.

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 of Canada's capital markets or financial system, the Tribunal may make a temporary order, other than one under paragraph (1)(e), without holding 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 by the order an opportunity to be heard, make an order extending a temporary order until a hearing is held and the Tribunal decides whether 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

40. (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;
- (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.

Order remains in force

(2) An order made under subsection (1) must specify that it remains in force until the Tribunal, in writing, revokes it or consents to release a particular fund, security or property from it.

Non-application

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

Notice

(4) An 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.

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 holding a hearing, make an order extending the order.

Declaration of non-compliance

41. (1) In addition to any other powers of the Chief Regulator, he or she 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.

Interim orders

- (3) On application made under subsection (1), the Federal Court or the court may make any interim order that it considers appropriate.

ORDERS FOR THE PRODUCTION OF INFORMATION

Definitions

42. The following definitions apply in sections 43 to 46.

“capital markets intermediary”

« **intermédiaire** »

“**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 in or holding securities or derivatives. It does not include a trading facility or clearing house.

“judge”

« **jugé** »

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

“justice”

« **jugé de paix** »

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

“territorial division”

« **circonscription territoriale** »

“**territorial division**” has the same meaning as in section 2 of the *Criminal Code*.

Production order

43. (1) On *ex parte* application by a peace officer or a person designated under subsection 26(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 in 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 or other identifying information for all persons that traded in a specified security or derivative during a specified period;
- (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 in a specified

security or derivative during a specified period and the time at and date on which the trade took place.

Conditions for making an order

- (2) Before making an order under subsection (1), 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 will be subject to the order has possession or control of the information that is to be produced.

Terms

- (3) The order may contain the 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 26(1), the judge or justice who made the order, or a judge or justice of the same court, may revoke or vary the order. The peace officer or the designated person must, as soon as feasible, give notice of the revocation or variation to the person that is subject to the order.

Limitation

- (5) A person that is under investigation for the offence referred to in subsection (2) is not to be made subject to the order.

Order

44. (1) On *ex parte* application by a peace officer or a person designated under subsection 26(1), a judge or justice may order an issuer, a capital markets intermediary or a party to a derivative that is not an individual 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;
- (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 an order under subsection (1), 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 respecting the non-disclosure of the existence of the order and terms to protect a privileged communication between a person who is qualified to give legal advice and their client.

Power to revoke or vary

(4) On *ex parte* application by a peace officer or a person designated under subsection 26(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 revoke or vary the order. The peace officer or the designated person must, as soon as feasible, give notice of the revocation or variation to the person that is subject to the order.

Limitation

(5) A person that is under investigation for the offence referred to in subsection (2) is not to be made subject to the order.

Application for review of production order

45. (1) Before they are required by an order made under section 43 or 44 to produce a document, the person that is subject to the order may apply in writing to the judge or justice who made the order or to a judge or justice of the same court to revoke or vary the order.

Notice required

(2) The person may make the application only if they give notice of their intention to do so to a peace officer or person designated under subsection 26(1) named in the order within 30 days after the day on which the order is made.

No obligation to produce

(3) The person is not required to prepare or produce the document until a final decision is made with respect to the application.

Revocation or variation of order

(4) The judge or justice may revoke or vary the order if satisfied that

(a) it is unreasonable in the circumstances to require the applicant to prepare or produce the document; or

(b) production of the document would disclose information that is privileged or otherwise protected from disclosure by law.

Effect of order

46. An order made under section 43 or 44 has effect throughout Canada and, for greater certainty, no endorsement is needed for it the order to be effective in a territorial division that is not the one in which the order is made.

Offence

47. A person that contravenes an order made under section 43 or 44 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**

48. (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 liable

(a) on proceedings by way of indictment,

(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,

(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

49. (1) If a person other than an individual commits an offence under section 48, other than for a contravention of section 72, 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 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 48, other than for a contravention of section 72, 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 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

50. In a prosecution for an offence under section 48, other than for a contravention of section 72, 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 mandatory acting within the scope of their authority, whether or not the employee, agent or mandatory 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

51. No person is to be convicted of an offence under section 48, other than for a contravention of section 71 or 72, if the person establishes that they exercised due diligence to prevent the commission of the offence.

PART 5

CRIMINAL OFFENCES

Fraud

52. (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 or not that person is identified, or the public of any property or service.

Conduct relating to 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 that 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

53. (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 that 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

54. (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 in a security or a derivative; or
- (b) an artificial value or price for a security or a derivative.

Punishment

(2) Every person that 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

55. (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 that 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

56. (1) The following definitions apply in this section and section 57.

“associate”

« lié »

“associate”, in respect of a person, means

- (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;
- (b) a partner, other than a limited partner, of the person;
- (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;
- (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; and
- (e) a relative of the person 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.

“beneficial ownership”

« **propriété effective** »

“**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 any other securities intermediary acting as nominee.

“**common-law partner**”

« **conjoint de fait** »

“**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**”

« **titre de créance** »

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

“**insider**”

« **initié** »

“**insider**” means

- (a) a director or officer of an issuer;
- (b) a director or officer of a person that is itself an insider or subsidiary of an issuer;
- (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
- (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.

“**material change**”

« **changement important** »

“**material change**” means

- (a) in relation to an issuer other than an investment fund
 - (i) a change in the issuer’s business, operations or capital that would reasonably be expected to have a significant effect on the market price or value of a security of the issuer, or
 - (ii) a decision to implement a change referred to in subparagraph (i) made by the issuer’s directors, or by the issuer’s senior management that believes that confirmation of the decision by the directors is probable; or
- (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 that 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 that 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.

“related financial instrument”

« instrument financier connexe »

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

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

“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 57.

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,

(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), (iii) or (iv);

(c) the person is a director, officer or employee of the issuer or a person described in subparagraph (a)(ii), (iii) or (iv) 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 in a special relationship with the issuer.

Insider trading

57. (1) Every person that is 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.

Tipping

(4) Unless it is necessary in the course of their business, every issuer whose securities are publicly traded or person in a special relationship with such an issuer commits an offence if they inform another person 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 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 that might use it in such a transaction.

Tipping based on action

(5) Unless it is necessary in the course of business, every person that is evaluating whether to do or proposes to do one or more of the actions set out in subsection (7) commits an offence if 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 that 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 is evaluating whether to do or 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 that might use it in such a transaction.

Actions

- (7) 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 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 that commits an offence under subsection (1), (4), (5) or (6) is guilty of an indictable offence and liable to imprisonment for a term of not more than 10 years.

Misrepresentation

58. (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 or not that person is identified, 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 that 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 56(1).

“misrepresentation”

« **présentation inexacte de faits** »

“misrepresentation” means

- (a) an untrue statement of a material fact; or
- (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.

Criminal breach of trust

59. (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 that 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

60. (1) Every person commits forgery if they make 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 that commits forgery is

(a) guilty of an indictable offence and liable to imprisonment for a term of not more than 10 years; or

(b) guilty of an offence punishable on summary conviction.

Criminal Code

(3) The definitions “**document**” and “**false document**” in section 321 of the *Criminal Code* 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

61. (1) Every person commits an offence if they, knowing or believing that a document in relation to a security, derivative, trade or issuer is forged,

(a) use, deal with or act on it as if it were genuine;

(b) cause or attempt to cause any person to use, deal with or act on it as if it were genuine;

(c) transfer, sell or offer to sell it or make 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) possess it with intent to commit an offence under any of paragraphs (a) to (c).

Punishment

(2) Every person that commits an offence under subsection (1) is

(a) guilty of an indictable offence and liable to imprisonment for a term of not more than 10 years; or

(b) 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

62. No peace officer is guilty of an offence under section 60 or 61 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

63. (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 that contravenes subsection (1) is

(a) guilty of an indictable offence and liable to imprisonment for a term of not more than five years; or

(b) guilty of an offence punishable on summary conviction.

Conspiracy

64. Every person that conspires with anyone 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

65. (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 52 to 55 and 57 to 61 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 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) 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 53 to 55 and 57 to 59, the value of the subject matter of the offence is more than \$1 million.

Non-mitigating circumstances

(2) A court that is imposing a sentence for an offence referred to in any of sections 52 to 55, 57 to 61, 63 and 64 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

66. (1) When an offender is convicted, or is discharged on the conditions prescribed in a probation order under section 730 of the *Criminal Code*, of an offence referred to in section 52 or 59, 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 a prohibition order 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 that is bound by a prohibition order and who does not comply with the order is

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

(b) guilty of an offence punishable on summary conviction.

Proceedings

67. Despite the definition of “**Attorney General**” in section 2 of the *Criminal Code*, 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 *Criminal Code* to the Attorney General.

Immunity

68. 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

(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 that is investigating such an offence or conducting a review under section 27 or an authorized person that is inquiring into a matter under section 28; 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

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

Duty to comply with undertaking

70. A person that gives a written undertaking to the Authority, the Chief Regulator or the Tribunal must comply with the undertaking.

False or misleading statements to Authority

71. (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.

72. (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 officer, 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

73. (1) Subject to sections 75 to 81, the Authority may make regulations for carrying out the purposes and provisions of this Act, including regulations

- (a) that are referred to in this Act or that prescribe anything that by this Act is to be prescribed;
- (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;
- (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;
- (d) respecting the collection, use and disclosure of information; and
- (e) defining words and expressions for the purposes of this Act.

Classes

(2) For greater certainty, the regulations may establish classes and distinguish among them.

Incorporation by reference

74. (1) The regulations may incorporate by reference any document, 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 *Canada Gazette* 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

75. (1) The Authority must publish a notice of every regulation that it proposes to make.

Content of notice

(2) The notice must include the following:

- (a) the proposed regulation;
- (b) a description of the proposed regulation and the reasons for it;
- (c) a description of the anticipated costs and benefits of the proposed regulation;
- (d) a description of all the alternatives to the proposed regulation that were considered by the Authority and the reasons for not proposing their adoption; and
- (e) in the case of a proposal for a regulation referred to in subsection 20(1) or 22(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

- (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:

- (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

76. (1) The Authority must submit to the Council of Ministers, for approval, any proposed regulation other than one to which subsection 75(4) applies — and must attach to it

- (a) a copy of any notices published under section 75;
- (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 75, 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:

- (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

77. The Authority must submit to the Council of Ministers, for approval, any proposed regulation to which subsection 75(4) applies.

Action by Council of Ministers

78. (1) Within 60 days after the day on which a proposed regulation is submitted for approval, the Council of Ministers may

- (a) approve the proposed regulation;
- (b) reject the proposed regulation; or
- (c) return the proposed regulation to the Authority for further consideration.

Proposed regulations without notice

(2) However, the period is seven days in the case of a proposed regulation to which subsection 75(4) applies.

Return of proposed regulation

(3) If the Council of Ministers returns the proposed regulation under paragraph 1(c), the Council may specify what is to be considered and the process to be followed.

Review period before making regulation

79. The Authority may make a regulation only if the Council of Ministers

- (a) notifies the Authority that it approves the making of the regulation; or
- (b) has not, during the applicable period set out in subsection 78(1) or (2), approved it, rejected it or returned it to the Authority for further consideration.

Coming into force of regulations

80. (1) If a regulation does not provide for the coming into force of one or more of its provisions, those provisions come into force on a day or days to be fixed by order of the Authority.

Publication of order

(2) The order must be published as soon as feasible after it is made.

Automatic repeal of certain regulations

81. (1) A regulation to which paragraph 75(4)(a) or (c) applies

- (a) must not amend a regulation;
- (b) must not repeal a regulation other than one to which paragraph 75(4)(a) or (c) applies;
- (c) may suspend the application of the provisions of another regulation made under this Act; and
- (d) is repealed 18 months after the day on which it comes into force, if it has not already been repealed.

Publication of statement — exemptions, etc.

(2) As soon as feasible after the coming into force of a regulation to which paragraph 75(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.

Publication of statement — urgent regulation

(3) As soon as feasible after the coming into force of a regulation to which paragraph 75(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 20(1) or 22(1), the statement must also include an analysis of any factors the Authority is required to consider in making the regulation.

Request by Council of Ministers

82. (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.

Report

(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.

Policy statements

83. (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.

Comments on proposal

(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 60 days after the day on which the policy statement is published.

Changes to proposal

(3) If, after publication of the proposed policy statement and consideration of the comments, the Authority proposes to change the proposed policy statement in a way that it considers material, the Authority must publish a notice of changes that includes the following:

- (a) the proposed policy statement with the proposed changes;
- (b) a description of the changes and the reasons for them; and
- (c) an invitation to 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.

ORDERS**Exemptions by Governor in Council**

84. The Governor in Council may make an order exempting a specified Crown corporation from a provision of this Act or the regulations.

Exemptions by Authority

85. 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 periods

86. The Authority may, on application or on its own initiative, make an order extending a period set out in the regulations if it considers that doing so would be appropriate in a particular case.

DECISIONS

*General***Terms**

87. The Authority, the Chief Regulator and the Tribunal may impose any terms in their decisions.

Power to revoke or vary

88. 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**

89. 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

90. 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

91. (1) A person that is directly affected by a decision of the Chief Regulator may, on notice to the Chief Regulator, apply to the Tribunal for a review of the decision except in the case of 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**Statutory Instruments Act — orders**

92. The *Statutory Instruments Act* does not apply in respect of an order made by the Authority or the Chief Regulator under this Act.

Limitation period or prescription

93. 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

94. (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:

- (a) the Authority and any of its directors, officers, employees, agents and mandataries; and
- (b) the Tribunal members.

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 for the purpose of complying with this Act or any decision of the Authority, the Chief Regulator or the Tribunal.

No liability — directors

95. 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

96. (1) The Chief Regulator may apply to the Federal Court or a court for an order

- (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
- (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.

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, to the extent practicable, the same as those that govern similar matters in civil proceedings in the Federal Court or 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

97. (1) The Federal Court or a court may make one or more of the orders 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

(2) The Federal Court or the court may make an order

(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;

(b) compelling the witness to produce records and things mentioned in the order; and

(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.

Five-year review

98. (1) Five years after the day on which this section comes into force, and after consulting with the Council of Ministers, the Minister must cause a review of this Act and its administration and operation to be conducted.

Report

(2) The Minister must, within one year after the day on which the review is completed, deliver a report on the review to the Council of Ministers.

Tabling in Parliament

(3) The Minister must, after the report is delivered to the Council of Ministers, cause the report to be laid before each House of Parliament on any of the first 15 days on which that House is sitting.

PART 7**TRANSITIONAL PROVISIONS****Power of Governor in Council**

99. 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 86 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 under paragraph (a); and

(d) for greater certainty, if the Minister of Finance is designated under paragraph (a), 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

R.S., c. C-46

CRIMINAL CODE

2014, c. 23, s. 2

100. 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 sections 121.1 and 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;

2004, c. 15, s. 108

101. (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 adding the following after paragraph (i):

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

(i) section 52 (fraud),

(ii) section 53 (affecting value or market price),

(iii) section 54 (market manipulation),

(iv) section 55 (benchmarks),

(v) section 57 (insider trading),

(vi) section 58 (misrepresentation),

(vii) section 59 (criminal breach of trust),

(viii) section 60 (forgery),

- (ix) section 61 (use, trafficking or possession of forged document),
- (x) section 63 (threats and retaliation against employees),
- (xi) section 64 (conspiracy),
- (xii) section 66 (non-compliance with prohibition order),

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

102. 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 14 years.

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

103. (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

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

1994, c. 44, s. 26

105. Section 400 of the Act is repealed.

2014, c. 31, s. 22(1)

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

Order denying access to information

487.3 (1) On application made at the time an application is made for a warrant under this or any other Act of Parliament, an order under any of sections 487.013 to 487.018 or section 43 or

44 of the *Capital Markets Stability Act*, or an authorization under section 529 or 529.4, or at a later time, a justice, a judge of a superior court of criminal jurisdiction or a judge of the Court of Quebec may make an order prohibiting access to, and the disclosure of, any information relating to the warrant, order or authorization on the ground that

R.S., c. 18 (3rd Supp.), Part I

OFFICE OF THE SUPERINTENDENT OF FINANCIAL INSTITUTIONS ACT

2001, c. 9, s. 467

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

Duties, powers and functions of the Superintendent

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*.