

Caution:

This consultation draft is intended to facilitate dialogue concerning its contents. Note that it will not become law unless a bill is passed by the Legislative Assembly. Should the decision be made to introduce a bill in the Legislative Assembly, the comments received during consultation will be considered during the preparation of the bill. The content, structure, form and wording of both language versions of the consultation draft are subject to change as a result of the consultation process and as a result of review, editing and correction by the Office of Legislative Counsel.

CAPITAL MARKETS ACT — CONSULTATION DRAFT

CONTENTS

PART I **INTERPRETATION**

- [1.](#) Purposes of Act
- [2.](#) Fundamental principles
- [3.](#) Definitions
- [4.](#) Affiliation
- [5.](#) Control
- [6.](#) Subsidiary
- [7.](#) Beneficial ownership
- [8.](#) Insiders of a mutual fund
- [9.](#) Special relationships
- [10.](#) Crown bound, exceptions

PART II **RECOGNIZED ENTITIES**

- [11.](#) Requirement to be recognized
- [12.](#) Recognition of entities
- [13.](#) Prescribed requirements governing recognized entities
- [14.](#) Restriction re by-laws, etc., of recognized entities
- [15.](#) Prescribed requirements governing entities exempt from recognition
- [16.](#) Duty to provide information
- [17.](#) Duty of recognized self-regulatory organizations, recognized exchanges
- [18.](#) Power to make decisions re recognized entities, recognized exchanges

PART III **DESIGNATED ENTITIES AND OTHER MARKETPLACES**

- [19.](#) Designation of entities
- [20.](#) Prescribed requirements governing designated entities
- [21.](#) Restriction re by-laws, etc., of designated entities
- [22.](#) Prescribed requirements governing entities exempt from designation
- [23.](#) Prescribed requirements governing other marketplaces
- [24.](#) Duty to provide information
- [25.](#) Restriction re credit ratings, methodologies, etc.
- [26.](#) Authority to make decisions re designated entities
- [27.](#) Authority to make decisions re other marketplaces
- [28.](#) Designation of benchmarks and benchmark administrators
- [29.](#) Duties of designated benchmark administrators
- [30.](#) Duties of benchmark contributors
- [31.](#) Duties of certain service providers, security holders, others
- [32.](#) Duties of benchmark users
- [33.](#) Duty to provide information re designated benchmark
- [34.](#) Order to provide information to designated benchmark administrator

PART IV **REGISTRATION**

- [35.](#) Requirement to be registered
- [36.](#) Exemptions for certain financial institutions
- [37.](#) Registration
- [38.](#) Prescribed requirements governing registrants
- [39.](#) Duty to submit further information, etc.
- [40.](#) Duties re financial accounting, etc.
- [41.](#) Revocation or suspension of registration
- [42.](#) Surrender of registration

PART V
DISTRIBUTION OF SECURITIES

- [43.](#) Activities of issuers, registrants in connection with a distribution
- [44.](#) Activities of purchasers
- [45.](#) Requirement to file prospectus, etc.
- [46.](#) Exemption for debt securities of governments in Canada
- [47.](#) Exemptions for securities of certain financial institutions
- [48.](#) Exemption for government incentive securities
- [49.](#) Restriction on distribution of records
- [50.](#) Preliminary prospectus requirements
- [51.](#) Prospectus requirements
- [52.](#) Prescribed offering document requirements
- [53.](#) Requirement to provide further information, etc.
- [54.](#) Order to provide information, etc., re distribution of previously issued securities
- [55.](#) Permitted activities under preliminary prospectus
- [56.](#) Exception: defective preliminary prospectus
- [57.](#) Order to cease trading
- [58.](#) Obligation to send prospectus, etc.
- [59.](#) Escrow of securities

PART VI
TRADES OF DERIVATIVES

- [60.](#) Trades of derivatives
- [61.](#) Prescribed disclosure document for designated derivatives
- [62.](#) Duty to provide information
- [63.](#) Effect of failure to comply
- [64.](#) Derivatives that are securities for prescribed purposes

PART VII
REPORTING ISSUERS AND PRESCRIBED OTHERS – DISCLOSURE AND GOVERNANCE OBLIGATIONS

DISCLOSURE AND REPORTING

- [65.](#) Disclosure requirements, reporting issuers and others
- [66.](#) Disclosure requirements, insiders
- [67.](#) Information from directors, etc.
- [68.](#) Limit on amount charged for compiling, etc., records

GOVERNANCE AND CONFLICTS OF INTEREST

- [69.](#) Governance of reporting issuers, etc.
- [70.](#) Governance and oversight of investment funds
- [71.](#) Business conduct of investment funds
- [72.](#) Duties re financial accounting, etc.
- [73.](#) Role of security holders in certain decisions
- [74.](#) Issuer's meetings with security holders
- [75.](#) Requirement to solicit proxies
- [76.](#) Information circular re proxy solicitation

PART VIII
TAKE-OVER BIDS, ISSUER BIDS AND CERTAIN OTHER TRANSACTIONS

- [77.](#) Definition of "interested person"
- [78.](#) Early warning
- [79.](#) Requirement re take-over bid, issuer bid
- [80.](#) Certain other bids, transactions and combinations
- [81.](#) Requirement re recommendation
- [82.](#) Conflicts of interest — offeror, etc.
- [83.](#) Prohibitions on acquiring, trading
- [84.](#) Order varying a prescribed period
- [85.](#) Application to the Tribunal — orders re public interest, etc.
- [86.](#) Application to court — orders re non-compliance

PART IX
MARKET CONDUCT

- [87.](#) Requirement to keep records
- [88.](#) Duty of good faith
- [89.](#) Duty to investment fund
- [90.](#) Duties re conflicts of interest
- [91.](#) Duties re trading, clearing and settlement
- [92.](#) Duties re promotional activities
- [93.](#) False or misleading statements — general
- [94.](#) False or misleading statements, information about reporting issuers, etc.
- [95.](#) Prohibited representations — securities
- [96.](#) Prohibited representations — derivatives

97.	Market manipulation
98.	Fraud
99.	Benchmark – false or misleading information
100.	Benchmark manipulation
101.	Interpretation: entering into a transaction
102.	Insider trading
103.	Front-running
104.	Defences
105.	Unfair practice
106.	Using name of another registrant
107.	Representation of registration
108.	Representation re approval by Commission, Chief Regulator
109.	Declaration of short position
110.	Obstruction
111.	No reprisal
112.	Breach of trust
113.	False or misleading statements to the Chief Regulator, etc.
114.	Aiding and abetting, counselling
115.	Conspiracy

PART X

ORDERS, REVIEWS AND APPEALS

POWERS OF THE TRIBUNAL AND THE CHIEF REGULATOR

116.	Orders of the Tribunal — general
117.	Automatic effect of certain orders of other provinces and territories
118.	Automatic effect of certain settlement agreements of other provinces and territories
119.	Order to pay administrative monetary penalty
120.	Disgorgement order and compensation payments
121.	Settlement order
122.	Freeze order
123.	Cease-trade order — extraordinary circumstances
124.	Cease-trade order — failure to file, to complete filing
125.	Various orders — non-compliance
126.	Exemption orders
127.	Designation orders
128.	Duration of class orders re exemption, designation
129.	Order re: recognition or designation for purposes of a rule
130.	Order to extend a period
131.	Order re: when distribution concluded
132.	Order re: filing of records, etc.
133.	Court orders — general
134.	Court appointment of receiver, etc.
135.	Court order re costs

APPEAL OR REVIEW OF CERTAIN DECISIONS

136.	Appeal of the Tribunal's decision
137.	Review of the Chief Regulator's decision
138.	Review of decisions of recognized entities
139.	Privative clauses

PART XI

ADMINISTRATION AND ENFORCEMENT

INTERPRETATION

140.	Definitions
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GENERAL POWERS

141.	Complaints and dispute resolution
142.	Order to provide information, etc., to Chief Regulator
143.	Order re books and records of banks
144.	Order to pay costs of investigation, etc.

REVIEWS AND INVESTIGATIONS

145.	Review of market participants and others
146.	Investigation — order authorizing exercise of powers
147.	Order prohibiting disclosure of investigation
148.	Confidentiality of compelled evidence
149.	Prohibition on use of compelled testimony
150.	Duty to assist
151.	Entry to dwelling-house
152.	Entry on private property

WARRANTS AND ORDERS

153.	Warrant to enter a place or dwelling-house
154.	Preservation demand
155.	Preservation order – computer data
156.	General production order
157.	Production order — records, etc.
158.	Production order — names, etc.
159.	Production order to trace specified communication
160.	Production order — transmission data
161.	Production order — tracking data
162.	Production order — financial data
163.	Conditions in preservation and production orders
164.	Order prohibiting disclosure
165.	Particulars — production orders
166.	Application for review of production order
167.	Destruction of preserved computer data and documents — preservation demand or order
168.	Voluntary preservation, production
169.	Self-incrimination
170.	Assistance order

OFFENCES AND PENALTIES

171.	Offences and penalties
172.	Liability of directors, officers, employees, agents
173.	Offences re: actions of employees, agents
174.	Increased fines for specified contraventions
175.	Procedural matters

PART XII CIVIL LIABILITY

176.	Definitions
177.	Actions relating to prospectus or prescribed offering document
178.	Actions relating to prospectus or prescribed offering document — after conversion, etc.
179.	Actions relating to prospectus or prescribed offering document — prescribed converting securities
180.	No liability — prospectus or prescribed offering document
181.	Actions relating to take-over or issuer bid circular
182.	No liability — circular
183.	Actions relating to prescribed disclosure documents
184.	No liability — prescribed disclosure document
185.	No derogation — rights of action
186.	Records incorporated by reference
187.	Defence — forward-looking information
188.	Standard of reasonableness
189.	Liability of trader, offeror or issuer
190.	Action for damages — insider trading, etc.
191.	Payment of benefit — insider trading, etc.
192.	Action on behalf of issuer — insider trading, etc.
193.	Action on behalf of investor — front-running
194.	Action on behalf of investment fund — improper use of information
195.	Notice of application
196.	Order to cooperate
197.	Orders as to costs
198.	Rescission — registered dealer
199.	Rescission of purchase — prospectus or prescribed offering document
200.	Rescission of purchase — continuous distribution
201.	Rescission of purchase — mutual fund security
202.	Rescission of purchase — prescribed disclosure document
203.	Withdrawal from scholarship plan, etc.
204.	Class proceeding
205.	Notice of date — trial
206.	Intervention by Chief Regulator
207.	Limitation period

PART XIII CIVIL LIABILITY FOR SECONDARY MARKET DISCLOSURE

INTERPRETATION AND APPLICATION

208.	Definitions
209.	Non-application

CAUSES OF ACTION AND DEFENCES

210.	Documents released by responsible issuer
211.	Public oral statements by responsible issuer

212.	Influential persons
213.	Failure to make timely disclosure
214.	Multiple roles
215.	Multiple misrepresentations
216.	No implied or actual authority
217.	Conditions for liability — certain misrepresentations
218.	Conditions for liability — failure to make timely disclosure
219.	No liability for misrepresentation — reasonable investigation
220.	No liability for failure to make timely disclosure — confidential filing
221.	Circumstances to be considered
222.	No liability — plaintiff's knowledge
223.	No liability — immediate notice

DAMAGES

224.	Assessment of damages — acquisition of securities
225.	Proportionate liability
226.	Liability limit

PROCEDURAL MATTERS

227.	Leave required
228.	Notice
229.	Restriction on discontinuation
230.	Intervention by Chief Regulator
231.	No derogation
232.	Limitation period

PART XIV GENERAL

POWERS AND DUTIES OF THE TRIBUNAL, THE COMMISSION AND THE CHIEF REGULATOR

233.	Powers of the Tribunal re: decisions
234.	Power of the Commission re: decisions
235.	Powers of the Chief Regulator re: decisions
236.	Delegation of powers, etc., by the Commission
237.	Delegation of powers, etc., by the Chief Regulator
238.	Chief Regulator's power to refer questions to the Commission

INTERJURISDICTIONAL MATTERS

239.	Evidence to be taken in another jurisdiction
240.	Evidence request from another jurisdiction
241.	Execution of warrant issued in another province or territory

RECORDS

242.	Filing of records
243.	Delivery, etc., of records
244.	Certification of records
245.	Linguistic versions of records
246.	Record as amended

DISCLOSURES TO AND BY THE COMMISSION

247.	Duty to keep and provide records, information
248.	Immunity re disclosure
249.	Whistle-blower protection
250.	Collection of personal information
251.	Public consultation of records
252.	Public list of non-compliant persons
253.	Exchange of information
254.	Privileged information

OTHER MATTERS

255.	Admissibility in evidence of certified statements
256.	Publication of notices, etc., by Commission, Chief Regulator
257.	Service of documents by the Chief Regulator or an authorized investigator
258.	Enforcement by court
259.	Duty to comply with undertaking
260.	Contravention by directors, officers, etc.
261.	Contravention re: actions of employees, agents
262.	Immunity for compliance
263.	Limitation period

PART XV REGULATIONS, RULES AND POLICIES

264.	Regulations
265.	Authority in extraordinary circumstances
266.	Rules

267.	Incorporation by reference
268.	Notice of proposed rule
269.	Submission of rules to the Minister
270.	Returned for consideration
271.	Coming into force of rules
272.	Automatic revocation of certain rules
273.	Request by the Minister
274.	Forms
275.	Guidance from the Commission
276.	Periodic review of Act
277.	Public access to rules, etc.
278.	Proof of the rules
279.	No finding of guilt or administrative sanction

[PART XVI](#)
TRANSITIONAL MATTERS

280.	Initial rules
281.	Rules re transitional matters

PART I
INTERPRETATION

Purposes of Act

1. The purposes of this Act are,
 - (a) to provide protection to investors from unfair, improper or fraudulent practices;
 - (b) to foster fair, efficient and competitive capital markets and confidence in capital markets;
 - (c) to foster capital formation; and
 - (d) to contribute to the stability and integrity of the financial system and to the reduction of systemic risk.

Fundamental principles

2. In pursuing the purposes of this Act, the Commission shall have regard to the following fundamental principles:

1. Balancing the importance to be given to each of the purposes of this Act may be required in specific cases.
2. The primary means for achieving the purposes of this Act are,
 - i. requirements for timely, accurate and efficient disclosure of information,
 - ii. restrictions on fraudulent and unfair market practices and procedures, and
 - iii. requirements for the maintenance of high standards of fitness and business conduct to ensure honest and responsible conduct by market participants.

3. Effective and responsive capital markets regulation requires timely, open and efficient administration and enforcement of this Act by the Commission.
4. The Chief Regulator should, subject to an appropriate system of supervision, use the enforcement capability and regulatory expertise of recognized self-regulatory organizations.
5. The integration of capital markets is supported and promoted by the sound and responsible harmonization and co-ordination of capital markets regulation regimes.
6. Business and regulatory costs and other restrictions on the business and investment activities of market participants should be proportionate to the significance of the regulatory objectives sought to be realized.
7. Innovation in Ontario's capital markets should be facilitated.

Definitions

3. In this Act,

“adviser”

“adviser” means,

- (a) a person engaging in, or holding themselves out as engaging in, the business of advising others with respect to investing in, purchasing or selling securities or trading derivatives, or
- (b) a person who is within a class of persons that are prescribed to be advisers;

“associate”

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

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

“benchmark”

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

- (a) determined from time to time by reference to an assessment of one or more underlying interests,
- (b) made available to the public, whether 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 the price at which it may be acquired or traded,
 - (iii) determining the value of a derivative or the price at which it may be acquired or traded,
 - (iv) measuring the performance of a security or derivative, or
 - (v) any other use by an investment fund;

“benchmark administrator”

“benchmark administrator” means a person who administers a benchmark;

“benchmark contributor”

“benchmark contributor” means a person who engages or participates in the provision of information for use by a benchmark administrator for the purpose of determining a benchmark, including a person subject to an order under section 34;

“benchmark user”

“benchmark user” means a person who, in relation to a security, derivative or investment fund, uses a benchmark;

“capital markets law”

“capital markets law” means this Act, the regulations and the rules and, in respect of a person, includes a decision of the Commission, the Chief Regulator or the Capital Markets Tribunal to which the person is subject;

“Capital Markets Tribunal”

“Capital Markets Tribunal” means the Capital Markets Tribunal established under the *Securities Commission Act, 2021*;

“Chief Regulator”

“Chief Regulator” means the Chief Executive Officer of the Commission appointed under the *Securities Commission Act, 2021*;

“clearing agency”

“clearing agency” means,

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

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

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

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

“Commission”

“Commission” means the Ontario Securities Commission continued under the *Securities Commission Act, 2021*;

“company”

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

“control person”

“control person” means,

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

“credit rating”

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

“credit rating organization”

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

“crypto asset”

“crypto asset” means a digital representation of value or contractual rights, which may be transferred and stored electronically, using distributed ledger or similar technology;

“dealer”

“dealer” means a person who,

- (a) engages in, or holds themselves out as engaging in, the business of trading in securities or derivatives as principal or agent,
- (b) acts as an underwriter, or
- (c) a person who is within a class of persons that are prescribed to be dealers;

“debt security”

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

“decision”

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

“derivative”

“derivative” means,

- (a) an option, swap, futures contract, forward contract or other financial or commodity contract or instrument, whose market price, value, delivery obligations, payment obligations or settlement obligations are derived from, referenced to or based on an underlying interest (including a price, rate, index, value, variable, event, probability or thing),
- (b) a security that is designated, or is within a class of securities that are designated, under subsection 127 (2) to be a derivative,
- (c) a security that is within a class of securities that are prescribed to be a derivative,
- (d) a crypto asset — other than one that falls within clauses (a) to (c) — that is designated, or is within a class of crypto assets that are designated, under subsection 127 (2) to be a derivative, or
- (e) a crypto asset – other than one that falls within clauses (a) to (c) – that is within a class of crypto assets that are prescribed to be a derivative,

but does not include a contract or instrument that is designated, or is within a class of contracts or instruments that are designated, under subsection 127 (1) not to be a derivative, or a contract or instrument that is within a class of contracts or instruments that are prescribed not to be a derivative;

“designated benchmark”

“designated benchmark” means a benchmark designated under section 28;

“designated benchmark administrator”

“designated benchmark administrator” means a benchmark administrator designated under section 28 in respect of a designated benchmark;

“designated derivative”

“designated derivative” means a derivative that is,

- (a) designated, or is within a class that is designated, under subsection 127 (2) to be a designated derivative, or
- (b) within a class of derivatives that are prescribed to be designated derivatives,

but does not include a derivative that is designated, or is within a class of derivatives that are designated, under subsection 127 (1) not to be a designated derivative;

“designated entity”

“designated entity” means a person or entity designated under section 19;

“director”

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

“distribution”

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

- (a) a trade in securities of an issuer that have not been previously issued,
- (b) a trade by or on behalf of an issuer in previously issued securities of that issuer that have been redeemed or purchased by or donated to that issuer,
- (c) a trade in previously issued securities of an issuer that are from a control person’s holdings,
- (d) a trade that is designated, or is within a class that is designated, under subsection 127 (2) to be a distribution,
- (e) a trade that is within a class of trades that are prescribed to be distributions, or
- (f) a transaction or series of transactions involving a purchase and sale or a repurchase and resale in the course of or incidental to a distribution referred to in any of clauses (a) to (e),

but does not include a trade that is designated, or is within a class of trades that are designated, under subsection 127 (1) not to be a distribution, or a trade that is within a class of trades that are prescribed not to be distributions;

“form of proxy”

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

“forward-looking information”

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

“individual”

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

“insider”

“insider” means,

- (a) a director or officer of an issuer,
- (b) a director or officer of a person who is itself an insider or subsidiary of an issuer,
- (c) a person who has beneficial ownership of, or control or direction over, directly or indirectly, or a combination of beneficial ownership of and control or direction over, directly or indirectly, securities of an issuer carrying more than 10 per cent of the voting rights attached to all the issuer’s outstanding voting securities, excluding, for the purpose of calculating the percentage held, any securities held by the person as underwriter in the course of a distribution,
- (d) an issuer who has purchased, redeemed or otherwise acquired a security of its own issue, for as long as it continues to hold that security,
- (e) a person who is designated under subsection 127 (2) to be an insider, or
- (f) a person who is within a class of persons who are prescribed to be insiders,

but does not include a person who is designated, or is within a class of persons who are designated, under subsection 127 (1) not to be an insider or who is within a class of persons who are prescribed not to be insiders;

“investment fund”

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

“investment fund manager”

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

“issuer”

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

“issuer bid”

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

“market participant”

“market participant” means,

- (a) a registrant,
- (b) a person exempted from the requirement to be registered under capital markets law,
- (c) a reporting issuer,
- (d) a reporting issuer’s director, officer or promoter,
- (e) a person engaged in promotional activities on behalf of a reporting issuer or security holder of a reporting issuer,
- (f) a custodian of assets, shares or units of an investment fund,
- (g) a general partner of a market participant,
- (h) a trustee of a market participant referred to in clause (c) or (f),
- (i) a marketplace,
- (j) a recognized entity,
- (k) a designated entity,
- (l) a designated benchmark administrator,
- (m) a person that engages or participates in the provision of information for use by a benchmark administrator for the purpose of determining a designated benchmark,

- (n) a person who is exempt from the requirement to be recognized or designated under capital markets law,
- (o) a transfer agent for any issuer,
- (p) a registrar for securities of any issuer,
- (q) an independent review committee of an investment fund,
- (r) a person who is designated under subsection 127 (2) to be a market participant, or
- (s) a prescribed person or a person within a class of persons who are prescribed to be market participants,

but does not include a person who is designated, or is within a class of persons who are designated, under subsection 127 (1) not to be a market participant or who is within a class of persons who are prescribed not to be market participants;

“marketplace”

“marketplace” means,

- (a) an exchange,
- (b) a person who is not an exchange but who,
 - (i) constitutes, maintains or provides a market or facility for bringing together buyers and sellers of securities or for bringing together buyers or sellers of, or counterparties to, derivatives,
 - (ii) brings together the orders for securities of multiple buyers and sellers or the orders for derivatives of multiple buyers, sellers or counterparties, and
 - (iii) uses established non-discretionary methods under which the orders interact with each other and under which the persons entering the orders agree to the terms of a trade,
- (c) a dealer who executes a trade of an exchange-traded security outside a marketplace described in clause (a) or (b),
- (d) any other person who constitutes, maintains or provides a market, facility or system for trading in securities or derivatives and is prescribed to be a marketplace or is within a class of persons prescribed to be marketplaces, or
- (e) any other person who is designated under subsection 127 (2) to be a marketplace,

but does not include a person who is designated, or is within a class of persons who are designated, under subsection 127 (1) not to be a marketplace, or who is within a class of persons who are prescribed not to be marketplaces;

“material change”

“material change” means,

- (a) in relation to an issuer other than an investment fund,
 - (i) a change in the issuer’s business, operations or capital that would reasonably be expected to have a significant effect on the market price or value of a security of the issuer, or
 - (ii) a decision to implement a change referred to in subclause (i) made by the issuer’s directors, or by the issuer’s senior management who believe that confirmation of the decision by the directors is probable; and
- (b) in relation to an issuer that is an investment fund,
 - (i) a change in the issuer’s business, operations or affairs that would be considered important by a reasonable investor in determining whether to purchase or to continue to hold a security of the issuer, or
 - (ii) a decision to implement a change referred to in subclause (i) made,
 - (A) by the issuer’s directors, by the directors of the issuer’s investment fund manager or by another person acting in a similar capacity,
 - (B) by the issuer’s senior management who believes that confirmation of the decision by the issuer’s directors is probable, or
 - (C) by senior management of the issuer’s investment fund manager who believes that confirmation of the decision by the directors of the issuer's investment fund manager is probable;

“material fact”

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

“Minister”

“Minister” means the minister to whom the administration of this Act is assigned under the *Executive Council Act*;

“misrepresentation”

“misrepresentation” means,

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

“mutual fund”

“mutual fund” means,

- (a) an issuer whose primary purpose is to invest money provided by its security holders and whose securities entitle the holder to receive on demand, or within a specified period after the demand, an amount computed by reference to the value of a proportionate interest in the whole or in part of the issuer’s net assets including a separate fund or trust account,
- (b) an issuer who is designated under subsection 127 (2) to be a mutual fund, or
- (c) an issuer who is within a class of issuers that are prescribed to be mutual funds,

but does not include an issuer who is designated, or is within a class of issuers who are designated, under subsection 127 (1) not to be a mutual fund, or who is within a class of issuers who are prescribed not to be mutual funds;

“non-redeemable investment fund”

“non-redeemable investment fund” means,

- (a) an issuer, other than a mutual fund, whose primary purpose is to invest money provided by its security holders and which does not invest,
 - (i) for the purpose of exercising or seeking to exercise control of an issuer, other than an issuer who is an investment fund, or
 - (ii) for the purpose of being actively involved in the management of any issuer in which it invests, other than an issuer who is an investment fund;
- (b) an issuer who is designated under subsection 127 (2) to be a non-redeemable investment fund, or
- (c) an issuer who is within a class of issuers who are prescribed to be non-redeemable investment funds,

but does not include an issuer who is designated, or is within a class of issuers who are designated, under subsection 127 (1) not to be a non-redeemable investment fund, or who is within a class of issuers who are prescribed not to be non-redeemable investment funds;

“offer to acquire”

“offer to acquire” means,

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

“officer”

“officer”, with respect to a person, means,

- (a) the chair or a vice-chair of the person’s board of directors, the chief executive officer, chief operating officer, chief financial officer, president, a vice-president, the secretary, assistant secretary, treasurer, assistant treasurer or general manager,
- (b) an individual who is designated as an officer under a by-law or similar authority of the person, or
- (c) an individual who performs functions similar to those normally performed by an individual referred to in clause (a) or (b);

“person”

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

“prescribed”

“prescribed” means prescribed by a rule or regulation, as the circumstances require;

“promoter”

“promoter” means,

- (a) a person, acting alone or in conjunction with one or more other persons, who, directly or indirectly, takes the initiative in founding, organizing or substantially reorganizing an issuer’s business, or
- (b) a person who, directly or indirectly, receives in consideration of services or property, or both, in connection with the founding, organizing or substantial reorganizing of an issuer’s business, 10 per cent or more of any class of securities of the issuer or 10 per

cent or more of the proceeds from the sale of any class of securities of a particular issue,

but does not include,

- (c) a person who receives securities or proceeds solely as underwriting commissions or in consideration of property transferred to the issuer if that person does not otherwise take part in founding, organizing or substantially reorganizing the issuer's business, or
- (d) a person who is within a class of persons who are prescribed not to be promoters;

“promotional activity”

“promotional activity” means any activity — including, for greater certainty, any oral or written communication – that by itself or together with one or more other activities encourages or reasonably could be expected to encourage a person,

- (a) to purchase, not purchase, trade or not trade a security, or
- (b) to trade or not trade a derivative,

but does not include an activity prescribed for the purpose of this definition;

“proxy”

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

“recognized clearing agency”

“recognized clearing agency” means a clearing agency recognized under section 12;

“recognized entity”

“recognized entity” means a person or entity recognized under section 12;

“recognized exchange”

“recognized exchange” means an exchange recognized under section 12;

“recognized self-regulatory organization”

“recognized self-regulatory organization” means a self-regulatory organization recognized under section 12;

“recognized trade repository”

“recognized trade repository” means a trade repository recognized under section 12;

“record”

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

“registrant”

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

“regulation”

“regulation” means a regulation made by the Lieutenant Governor in Council under this Act;

“related financial instrument”

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

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

“reporting issuer”

“reporting issuer” means an issuer who,

- (a) has filed a prospectus for which the Chief Regulator has issued a receipt,
- (b) has filed a take-over bid circular, in accordance with the rules, in which it offers securities of its own issue as consideration for the acquisition of a reporting issuer’s securities and has taken up and paid for securities subject to the bid in accordance with a circular prepared in respect of the bid,
- (c) has exchanged its securities with another issuer or with the holders of that other issuer’s securities in connection with an amalgamation, merger, reorganization, arrangement or similar business combination if one of the parties to the transaction was a reporting issuer at the time,
- (d) is designated under subsection 127 (2) to be a reporting issuer, or
- (e) is within a class of issuers who are prescribed to be reporting issuers,

but does not include an issuer who is designated, or is within a class of issuers who are designated, under subsection 127 (1) not to be a reporting issuer, or who is within a class of issuers who are prescribed not to be reporting issuers;

“rule”

“rule” means, unless the context requires otherwise, a rule made by the Commission under this Act;

“security”

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

1. Any instrument or unit commonly known as a security.
2. Any title to, or interest in, the capital, assets, property, profits, earnings or royalties of any person.
3. Any interest in an association of legatees or heirs.
4. Any option, subscription to or other interest in a security.
5. A debt security or a share, stock, unit, unit certificate, participation certificate, certificate of share or interest, preorganization certificate or subscription that is not,
 - i. a contract of insurance issued by an insurance company governed by the laws of Canada or of a province or territory,
 - ii. evidence of a deposit issued by a bank listed in Schedule I or II to the *Bank Act* (Canada),
 - iii. evidence of a deposit issued by an association or cooperative credit society to which the *Cooperative Credit Associations Act* (Canada) applies,
 - iv. evidence of a deposit issued by a loan corporation, trust company, trust corporation, insurance company, treasury branch, credit union, financial services cooperative or credit union league, central or federation that is authorized by a statute of Canada or Ontario to carry on business in Canada or Ontario, as the case may be,
 - v. evidence of a deposit issued by the Business Development Bank of Canada, or
 - vi. evidence of a deposit issued by an authorized foreign bank listed in Schedule III to the *Bank Act* (Canada) in respect of its business in Canada.

6. Any agreement under which the interest of the purchaser is valued for purposes of conversion or surrender by reference to the value of a proportionate interest in a specified portfolio of assets, other than a contract issued by an insurance company governed by the laws of Canada or of a province or territory which provides for payment at maturity of an amount not less than three quarters of the premiums paid by the purchaser for a benefit payable at maturity.
7. Any agreement providing that money received will be repaid or treated as a subscription to shares, stock, units or interests at the option of the recipient or of any other person.
8. Any certificate of share or interest in a trust, estate or association.
9. Any profit-sharing agreement or certificate.
10. Any certificate of interest in an oil, natural gas or mining lease, claim or royalty voting trust certificate.
11. Any oil or natural gas royalties or leases or fractional or other interest in such royalties or leases.
12. Any collateral trust certificate.
13. Any income or annuity contract not issued by an insurance company.
14. Any investment contract.
15. Any document constituting evidence of an interest in a scholarship or educational plan or trust.
16. A derivative that is within a class of derivatives that are prescribed to be a security.
17. A derivative that is designated, or is within a class of derivatives designated, under subsection 127 (2) to be a security.
18. A crypto asset – other than one that falls within paragraphs 1 to 17 – that is designated, or is within a class of crypto assets that are designated, under subsection 127 (2) to be a security.
19. A crypto asset – other than one that falls within paragraphs 1 to 17 – that is within a class of crypto assets that are prescribed to be a security,

but does not include a security that is designated, or is within a class of securities that are designated, under subsection 127 (1) not to be a security, or a security that is within a class of securities that are prescribed not to be a security;

“self-regulatory organization”

“self-regulatory organization” means a person that is organized for the purpose of regulating the operations and the standards of practice and business conduct, in capital markets, of its members and their representatives with a view to promoting the protection of investors and the public interest;

“take-over bid”

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

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

“trade”

“trade” includes,

- (a) any sale or other disposition of a security for valuable consideration, whether the terms of payment are on margin, instalment or otherwise, but does not include, except as provided in clause (f), a transfer, pledge or encumbrance of securities for the purpose of giving collateral for a debt or other obligation made in good faith,
- (b) any entering into a derivative, any material amendment to a derivative, any termination or assignment, sale or other acquisition or disposition of a derivative,
- (c) a novation of a derivative, other than a novation with a clearing agency,
- (d) any participation as a trader in any transaction in a security or derivative through the facilities of an exchange,
- (e) any receipt by a registrant of an order to purchase or sell a security or to effect a transaction in a derivative,
- (f) any transfer, pledge or encumbrance of an issuer’s securities that are from a control person’s holdings for the purpose of giving collateral for a debt or other obligation made in good faith, and
- (g) any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of anything referred to in clauses (a) to (f),

but does not include a purchase of a security;

“trade repository”

“trade repository” means a person who collects and maintains reports about derivatives and about trading by other persons in derivatives;

“underwriter”

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

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

“voting security”

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

Affiliation

4. For the purposes of capital markets law, a person is an affiliate of another person,
 - (a) if one of them is the subsidiary of the other;
 - (b) if each of them is controlled by the same person; or
 - (c) in such other circumstances as may be prescribed.

Control

5. For the purposes of capital markets law, a person controls an issuer,
 - (a) if voting securities of the issuer are held, other than by way of security only, by or for the benefit of the person, and the votes carried by those voting securities, if exercised, entitle the person to elect a majority of the issuer’s directors; or
 - (b) in any other prescribed circumstance.

Subsidiary

6. For the purposes of capital markets law, an issuer is a subsidiary of another issuer,

- (a) if it is controlled by,
 - (i) that other issuer,
 - (ii) that other issuer and one or more issuers each of which is controlled by that other issuer, or
 - (iii) two or more issuers each of which is controlled by that other issuer;
- (b) if it is a subsidiary of an issuer that is the other's subsidiary; or
- (c) in such other circumstances as may be prescribed.

Beneficial ownership

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

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

Insiders of a mutual fund

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

1. The investment fund manager of the mutual fund.
2. A person distributing a security under a contract under which a mutual fund grants to a person the right to purchase the securities of the mutual fund for distribution or to distribute the securities of the mutual fund on behalf of the mutual fund.
3. An insider of an adviser or distributor referred to in paragraph 1 or 2.
4. A person who is within a prescribed class of persons.

Special relationships

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

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

Crown bound, exceptions

10. (1) This Act binds the Crown, except as otherwise specified under this section.

Exception, definition of “market participant”

(2) The definition of “market participant” in section 3 does not include the Crown in right of Canada, the Crown in right of any province or territory of Canada or an agent or servant of any of them.

Exceptions, Crown

(3) The following provisions do not apply to the Crown in right of Canada or the Crown in right of any province or territory of Canada:

1. In Part II (Recognized Entities): section 17 (Duty of recognized self-regulatory organizations, recognized exchanges).
2. In Part IV (Registration): section 35 (Requirement to be registered), but only in respect of the trading of derivatives.
3. Part VI (Trades of Derivatives). However, rules relating to the following matters are excluded from this exception:
 - i. Record-keeping and reporting requirements relating to derivatives.
 - ii. Requirements that one or more classes of derivatives not be traded in Ontario.
 - iii. Transparency requirements relating to derivatives but not transparency requirements relating to the public dissemination of, or public access to, transaction-level data.
4. In Part IX (Market Conduct): subsection 88 (2) (Duty re derivatives transactions) and sections 97 (Market manipulation) and 98 (Fraud).
5. In Part X (Orders, Reviews and Appeals): sections 122 (Freeze order) and 134 (Court appointment of receiver, etc.).
6. In Part XI (Administration and Enforcement): subsections 146 (4), (5), (7) and (8) (Investigation) and section 153 (Warrant to enter a place or dwelling-house).
7. In Part XII (Civil Liability): sections 177 (Actions relating to prospectus or prescribed offering document), 178 (Actions relating to prospectus or prescribed offering document – after conversion, etc.), 179 (Actions relating to prospectus or prescribed offering document – prescribed converting securities), 181 (Actions relating to take-over or issuer bid circular) and 183 (Actions relating to prescribed disclosure documents).
8. Part XIII (Civil Liability for Secondary Market Disclosure).

9. In Part XIV (General): section 255 (Admissibility in evidence of certified statements).
10. Such other provisions of the Act, a regulation or a rule as may be prescribed by the Lieutenant Governor in Council.

Same, Ontario Financing Authority

(4) The following provisions do not apply to the Ontario Financing Authority in the circumstances indicated:

1. Section 35 (Requirement to be registered) in respect of any activities relating to trading, advising or acting as an underwriter or an investment fund manager if the activities are carried out in the fulfilment of its duties and responsibilities under the *Capital Investment Plan Act, 1993*.
2. Section 35 in respect of the trading of derivatives, when the Ontario Financing Authority is acting as agent for the Crown in right of Ontario.
3. Part VI (Trades of Derivatives), when the Ontario Financing Authority is acting as agent for the Crown in right of Ontario. However, rules relating to the matters described in subparagraphs 3 i, ii and iii of subsection (3) are excluded from this exception.
4. Subsection 88 (2) (Duty re derivatives transactions), when the Ontario Financing Authority is acting as agent for the Crown in right of Ontario.

Same, Crown agents and servants

(5) The provisions listed in paragraphs 1 and 4 to 9 of subsection (3) do not apply to an agent or servant of the Crown in right of Canada or the Crown in right of any province or territory of Canada if the matter arises from the performance of a duty or the exercise of a power as an agent or servant thereof or from any neglect or default in the performance or exercise of such a duty or power.

Same, prescribed Crown agents and servants

(6) The provisions listed in paragraphs 2 and 3 of subsection (3) do not apply to an agent or servant of the Crown in right of Ontario that is prescribed by a regulation made under this section.

Same

(7) An agent or servant prescribed under subsection (6) shall comply with such conditions, restrictions and requirements relating to the exceptions described in that subsection as may be prescribed.

Regulations

(8) The Lieutenant Governor in Council may make regulations for the purposes of this section.

PART II RECOGNIZED ENTITIES

Requirement to be recognized

As exchange

11. (1) A person shall not carry on business as an exchange unless the person is recognized as an exchange under section 12.

As clearing agency

(2) A person shall not carry on business as a clearing agency unless the person is recognized as a clearing agency under section 12.

Recognition of entities

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

- (a) a self-regulatory organization;
- (b) an exchange;
- (c) a clearing agency;
- (d) a trade repository; or
- (e) a person engaged in a prescribed activity.

Applicants

(2) The application for recognition must be made by a person who proposes to carry on business as the type of entity for which the recognition is sought.

Conditions, etc.

(3) The Chief Regulator may impose conditions, restrictions or requirements on a recognition and may change them at any time if the Chief Regulator considers that it would not be prejudicial to the public interest.

Surrender of recognition

(4) The Chief Regulator may accept the surrender of a recognition if the Chief Regulator considers that it would not be prejudicial to the public interest.

Termination of recognition

(5) The Chief Regulator may terminate a recognition if the Chief Regulator considers that it would not be prejudicial to the public interest.

Opportunity to be heard

(6) The Chief Regulator cannot recognize or refuse to recognize a person, refuse to accept the surrender of a recognition, terminate a recognition or impose or change the conditions, restrictions or requirements to which a recognition is subject without giving the person or recognized entity, as the case may be, an opportunity to be heard.

Prescribed requirements governing recognized entities

13. (1) A recognized entity shall comply with such conditions, restrictions and requirements as may be prescribed.

Same, board of directors

(2) The board of directors of a recognized entity, including committees of the board, members of the board or of a committee, and any other persons performing functions comparable to the board, a committee or a member, shall comply with such conditions, restrictions and requirements as may be prescribed.

Same, officers and certain employees

(3) Officers of a recognized entity and employees of the entity who are within a prescribed class of employees shall comply with such conditions, restrictions and requirements as may be prescribed.

Same, prescribed security holders

(4) Prescribed security holders of a recognized entity shall comply with such conditions, restrictions and requirements as may be prescribed.

Same, prescribed service providers

(5) Prescribed service providers to a recognized entity shall comply with such conditions, restrictions and requirements as may be prescribed.

Restrictions on ownership or control

(6) A recognized entity shall comply with such conditions, restrictions and requirements for the review and approval of the ownership, control and direction of the entity as may be prescribed.

Same, changes to ownership, etc.

(7) Prescribed persons shall comply with such conditions, restrictions and requirements as may be prescribed with respect to changes to the ownership, control or direction of a recognized entity.

Restriction re by-laws, etc., of recognized entities

14. No by-law, rule, regulation, policy, procedure, interpretation or practice of a recognized entity shall contravene Ontario capital markets law, but a recognized entity may impose additional conditions, restrictions and requirements within its jurisdiction.

Prescribed requirements governing entities exempt from recognition

15. An entity that is exempt from recognition shall comply with such conditions, restrictions and requirements as may be prescribed.

Duty to provide information

16. A recognized entity shall, at the time and in a format acceptable to the Chief Regulator, provide the Chief Regulator with any information, record or thing in its possession or under its control that relates to the administration or enforcement of capital markets law or the regulation of the capital markets.

Duty of recognized self-regulatory organizations, recognized exchanges

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

Power to make decisions re recognized entities, recognized exchanges

18. If the Chief Regulator considers that it would be in the public interest, the Chief Regulator may make any decision respecting any of the following:

1. A by-law, regulatory instrument, policy, procedure, interpretation or practice of a recognized entity.
2. The manner in which a recognized entity carries on business.
3. The trading of securities or derivatives on or through a recognized exchange.
4. A security or derivative listed or posted for trading by a recognized exchange.
5. Issuers whose securities are listed or posted for trading by a recognized exchange in order to ensure that the issuers comply with capital markets law.

PART III DESIGNATED ENTITIES AND OTHER MARKETPLACES

Designation of entities

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

- (a) a credit rating organization;
- (b) an investor compensation fund;
- (c) an information processor;
- (d) a marketplace; or
- (e) a person engaged in a prescribed activity.

Applicants

(2) The application for designation must be made by a person who proposes to carry on business as the type of entity for which the designation is sought.

Exception

(3) The Chief Regulator may also designate a credit rating organization on the Chief Regulator's own initiative.

Conditions, etc.

(4) The Chief Regulator may impose conditions, restrictions or requirements on a designation and may change them at any time if the Chief Regulator considers that it would not be prejudicial to the public interest.

Surrender of designation

(5) The Chief Regulator may accept the surrender of a designation if the Chief Regulator considers that it would not be prejudicial to the public interest.

Termination of designation

(6) The Chief Regulator may terminate a designation if the Chief Regulator considers that it would not be prejudicial to the public interest.

Opportunity to be heard

(7) The Chief Regulator cannot make or refuse to make a designation, refuse to accept the surrender of a designation, terminate a designation or impose or change the conditions, restrictions or requirements to which a designation is subject without giving the applicant or designated entity, as the case may be, an opportunity to be heard.

Prescribed requirements governing designated entities

20. (1) A designated entity shall comply with such conditions, restrictions and requirements as may be prescribed.

Same, board of directors

(2) The board of directors of a designated entity, including committees of the board, members of the board or of a committee, and any other persons performing functions

comparable to the board, a committee or a member, shall comply with such conditions, restrictions and requirements as may be prescribed.

Same, officers and certain employees

(3) Officers of a designated entity and employees of the entity who are within a prescribed class of employees shall comply with such conditions, restrictions and requirements as may be prescribed.

Same, prescribed security holders

(4) Prescribed security holders of a designated entity shall comply with such conditions, restrictions and requirements as may be prescribed.

Same, prescribed service providers

(5) Prescribed service providers to a designated entity shall comply with such conditions, restrictions and requirements as may be prescribed.

Restrictions on ownership or control

(6) A designated entity shall comply with such conditions, restrictions and requirements for the review and approval of the ownership, control and direction of the entity as may be prescribed.

Same, changes to ownership, etc.

(7) Prescribed persons shall comply with such conditions, restrictions and requirements as may be prescribed with respect to changes to the ownership, control or direction of a designated entity.

Restriction re by-laws, etc., of designated entities

21. No by-law, rule, regulation, policy, procedure, interpretation or practice of a designated entity shall contravene Ontario capital markets law, but a designated entity may impose additional conditions, restrictions and requirements within its jurisdiction.

Prescribed requirements governing entities exempt from designation

22. An entity that is exempt from designation shall comply with such conditions, restrictions and requirements as may be prescribed.

Prescribed requirements governing other marketplaces

23. (1) A marketplace that is not a recognized exchange or designated marketplace shall comply with such conditions, restrictions and requirements as may be prescribed.

Same, board of directors

(2) The board of directors of a marketplace that is not a recognized exchange or designated marketplace, including committees of the board, members of the board or of a committee, and any other person performing functions comparable to the board, a committee or a member, shall comply with such conditions, restrictions and requirements as may be prescribed.

Restrictions on ownership or control

(3) A marketplace that is not a recognized exchange or designated marketplace shall comply with such conditions, restrictions and requirements for the review and approval of the ownership, control and direction of the marketplace as may be prescribed.

Duty to provide information

24. A designated entity shall, at the time and in a format acceptable to the Chief Regulator, provide the Chief Regulator with any information, record or thing in the designated entity's possession or under its control that relates to the administration or enforcement of capital markets law or the regulation of the capital markets.

Restriction re credit ratings, methodologies, etc.

25. Nothing in this Act permits the Commission to regulate the content of credit ratings or the content of the methodologies for determining credit ratings.

Authority to make decisions re designated entities

26. If the Chief Regulator considers that it would be in the public interest, the Chief Regulator may make any decision respecting any of the following:

1. A by-law, regulatory instrument, policy, procedure, interpretation or practice of a designated entity.
2. The manner in which a designated entity carries on business.
3. The trading of securities or derivatives on or through a designated marketplace.

Authority to make decisions re other marketplaces

27. (1) This section applies with respect to a marketplace that is neither a recognized exchange nor a designated marketplace.

Same

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

1. A by-law, regulatory instrument, policy, procedure, interpretation or practice of the marketplace.
2. The manner in which the marketplace carries on business.
3. The trading of securities or derivatives on or through the marketplace.

Designation of benchmarks and benchmark administrators

Benchmarks

28. (1) If the Chief Regulator considers that it would be in the public interest, the Chief Regulator may designate a benchmark as a designated benchmark and may assign the designated benchmark to one or more prescribed categories of benchmarks.

Benchmark administrators

(2) If the Chief Regulator considers that it would be in the public interest, the Chief Regulator may designate a benchmark administrator as the designated benchmark administrator of a designated benchmark.

Applicant

(3) The designation of a benchmark or a benchmark administrator may be made on application by a benchmark administrator or on the Chief Regulator's own initiative.

Conditions, etc.

(4) The Chief Regulator may impose conditions, restrictions or requirements on a designation and may change them at any time if the Chief Regulator considers that it would be in the public interest.

Surrender of designation

(5) The Chief Regulator may accept the surrender of the designation of the benchmark or the benchmark administrator if the Chief Regulator considers that it would not be prejudicial to the public interest.

Termination of designation

(6) The Chief Regulator may terminate the designation of the benchmark or the benchmark administrator if the Chief Regulator considers that it would be in the public interest.

Opportunity to be heard

(7) The Chief Regulator cannot make or refuse to make a designation, impose or change the conditions, restrictions or requirements to which a designation is subject, refuse to accept the surrender of a designation or terminate a designation without giving the benchmark administrator an opportunity to be heard.

Duties of designated benchmark administrators

29. A designated benchmark administrator shall comply with such conditions, restrictions and requirements as may be prescribed, including those relating to,

- (a) designated benchmarks and their use;
- (b) the quality, integrity and sufficiency of the data and the methodology used by a benchmark administrator to determine a benchmark, including requirements for a

benchmark administrator to monitor benchmark contributors and data provided by benchmark contributors;

- (c) designated benchmark administrators, benchmark contributors and benchmark users, including requirements relating to governance, compliance, accountability, oversight, audit, internal controls, policies and procedures in respect of a benchmark;
- (d) restrictions on the ownership of a designated benchmark or designated benchmark administrator;
- (e) conflicts of interest, including requirements for the separation of roles, functions and activities;
- (f) the establishment, publication and enforcement of a code of conduct;
- (g) its contractual arrangements with respect to a designated benchmark and the minimum requirements to be included in its contractual relationships, including requirements in the event that a benchmark changes or ceases to be provided or is subject to data failures or business continuity issues;
- (h) its use of service providers;
- (i) compliance officers; and
- (j) fees and other compensation that may be payable by or to the designated benchmark administrator.

Duties of benchmark contributors

30. A benchmark contributor shall comply with such conditions, restrictions and requirements as may be prescribed, including those relating to,

- (a) designated benchmarks and their use;
- (b) data provided by benchmark contributors;
- (c) designated benchmark administrators, benchmark contributors and benchmark users, including requirements relating to governance, compliance, accountability, oversight, audit, internal controls, policies and procedures in respect of a benchmark;
- (d) conflicts of interest, including requirements for the separation of roles, functions and activities;
- (e) its contractual arrangements related to a designated benchmark and the minimum requirements to be included in the contractual relationship, including requirements in

the event that a benchmark changes or ceases to be provided or is subject to data failures or business continuity issues;

- (f) its use of service providers;
- (g) compliance officers; and
- (h) fees and other compensation that may be payable by or to the benchmark contributor.

Duties of certain service providers, security holders, others

31. (1) This section applies to designated benchmark administrators, benchmark contributors, their respective directors, officers and employees and any of their respective service providers and security holders that are in a prescribed class.

Same

(2) A designated benchmark administrator, benchmark contributor, director, officer, employee, service provider or security holder shall comply with,

- (a) any code of conduct established by the designated benchmark administrator in accordance with the rules;
- (b) conditions, restrictions and requirements established by the rules relating to the prohibitions against and procedures regarding conflicts of interest involving a designated benchmark and designated benchmark administrators and benchmark contributors, their respective directors, officers and employees and any of their respective service providers or security holders that are in a prescribed class, including requirements for the separation of roles, functions and activities; and
- (c) conditions, restrictions and requirements established by the rules relating to the prohibition or restriction of any matter or conduct involving a designated benchmark.

Duties of benchmark users

32. A benchmark user shall comply with such conditions, restrictions and requirements as may be prescribed, including those relating to,

- (a) designated benchmarks and their use;
- (b) designated benchmark administrators, benchmark contributors and benchmark users, including requirements relating to governance, compliance, accountability, oversight, audit, internal controls, policies and procedures in respect of a benchmark; and
- (c) prohibitions against the use of a benchmark that is not a designated benchmark.

Duty to provide information re designated benchmark

33. (1) A designated benchmark administrator, benchmark contributor or benchmark user shall provide prescribed information relating to a designated benchmark to the Chief Regulator or to another person or class of persons in accordance with the rules.

Same, to designated benchmark administrator

(2) A person in a prescribed class shall provide such information relating to a designated benchmark as may be prescribed to a designated benchmark administrator.

Disclosure of information to the public

(3) A designated benchmark administrator, benchmark contributor or benchmark user shall disclose prescribed information relating to a designated benchmark to the public in accordance with the rules.

Order to provide information to designated benchmark administrator

34. (1) If the Chief Regulator considers that it would be in the public interest, the Chief Regulator may order a person to provide information to a designated benchmark administrator in relation to the designated benchmark.

Conditions, etc.

(2) The Chief Regulator may impose conditions, restrictions or requirements in its order and may change them at any time if the Chief Regulator considers that it would be in the public interest.

Revocation

(3) The Chief Regulator may revoke an order if the Chief Regulator considers that it would be in the public interest.

Opportunity to be heard

(4) The Chief Regulator cannot make an order, impose or change the conditions, restrictions or requirements imposed in an order or revoke an order without giving the person who is or would be subject to the order an opportunity to be heard.

PART IV REGISTRATION

Requirement to be registered

35. (1) A person shall not act as a dealer, adviser or investment fund manager unless the person is registered under this Act in accordance with the rules and in the category prescribed for the purposes of the activity.

Same

(2) An individual shall not,

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

Exemptions for certain financial institutions

36. (1) Each of the following financial institutions is exempt from the requirement to be registered under this Act to act as a dealer, adviser or investment fund manager if the financial institution, in so acting, limits its activities to only those activities not prohibited by its governing legislation:

1. A bank listed in Schedule I, II or III to the *Bank Act* (Canada).
2. An association or central cooperative credit society to which the *Cooperative Credit Associations Act* (Canada) applies.
3. A loan corporation, trust company, trust corporation, insurance company, treasury branch, credit union, financial services cooperative or credit union league, central or federation that is authorized by a statute of Canada or Ontario to carry on business in Canada or Ontario, as the case may be.
4. Business Development Bank of Canada.

Same

(2) An exemption under subsection (1) is subject to such conditions, restrictions and requirements as may be prescribed by a regulation made by the Lieutenant Governor in Council.

Exemptions for prescribed financial institutions

(3) Such other financial institutions as may be prescribed by a rule are exempt from the requirement to be registered under this Act to act as a dealer, underwriter, adviser or investment fund manager.

Same

(4) An exemption under subsection (3) is subject to such conditions, restrictions and requirements as may be prescribed by a rule.

Regulations

(5) The Lieutenant Governor in Council may make regulations for the purposes of subsection (2).

Registration

37. (1) On receipt of an application and all information, material and fees required by the rules or by the Chief Regulator, the Chief Regulator shall grant registration, reinstatement of registration or amendment of registration to an applicant unless the Chief Regulator considers that,

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

Matters to be considered

(2) In considering whether an applicant is not suitable for the registration, reinstatement or amendment applied for, the Chief Regulator shall consider,

- (a) whether the applicant has satisfied the prescribed requirements relating to proficiency, solvency and integrity;
- (b) whether the applicant has satisfied such other requirements for registration, reinstatement or an amendment to a registration, as the case may be, as may be prescribed; and
- (c) such other factors as the Chief Regulator considers relevant.

Conditions, etc., of registration

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

Prescribed requirements governing registrants

38. (1) A registrant shall comply with such conditions, restrictions and requirements as may be prescribed.

Same, board of directors

(2) The board of directors of a registrant, including committees of the board, members of the board or of a committee, and any other persons performing functions comparable to the board, a committee or a member, shall comply with such conditions, restrictions and requirements as may be prescribed.

Same, officers etc.

(3) Officers of a registrant and persons that a registrant is required to appoint or designate shall comply with such conditions, restrictions and requirements as may be prescribed.

Restrictions on ownership or control

(4) A registrant shall comply with such conditions, restrictions and requirements for the review and approval of the ownership, control and direction of the registrant as may be prescribed.

Duty to submit further information, etc.

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

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

Audit or financial review

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

Duties re financial accounting, etc.

40. A registrant, the auditor of a registrant and such other persons as may be prescribed shall comply with such conditions, restrictions and requirements as may be prescribed with respect to financial accounting, reporting, auditing, internal controls and disclosure controls for the purposes of this Act.

Revocation or suspension of registration

Automatic suspension, reinstatement

41. (1) A registration is suspended in the prescribed circumstances and is reinstated in the prescribed circumstances.

Revocation after automatic suspension

(2) The registration of a person that is suspended under subsection (1) and is not reinstated is revoked in the prescribed circumstances.

Discretionary revocation or suspension

(3) The Chief Regulator may, after giving the registrant an opportunity to be heard, revoke or suspend a registration if the Chief Regulator considers that,

- (a) the registrant has not complied with capital markets law;
- (b) the registrant is not suitable for registration; or
- (c) the registration is objectionable.

Temporary suspension

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

Surrender of registration

42. (1) On application by a registrant, the Chief Regulator may accept the surrender of the registration if the Chief Regulator is satisfied that,

- (a) all financial obligations of the registrant to the registrant's clients have been discharged;
- (b) all of the prescribed requirements, if any, for the surrender of a registration have been fulfilled or the Chief Regulator is satisfied that they will be fulfilled in the appropriate manner; and
- (c) the surrender is not prejudicial to the public interest.

Suspension or conditions

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

Temporary suspension or conditions, etc.

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

PART V DISTRIBUTION OF SECURITIES

Activities of issuers, registrants in connection with a distribution

43. (1) An issuer or a registrant shall comply with such conditions, restrictions and requirements as may be prescribed respecting their activities in connection with a distribution.

Activities of directors, etc.

(2) A director, officer or employee of an issuer or a registrant shall comply with such conditions, restrictions and requirements as maybe prescribed in respect of their activities in connection with a distribution.

Prescribed other persons

(3) A prescribed person shall comply with such conditions, restrictions and requirements as may be prescribed in respect of the person's activities in connection with a distribution.

Activities of purchasers

44. A person shall comply with such conditions, restrictions and requirements as may be prescribed respecting the purchase of securities offered in a distribution.

Requirement to file prospectus, etc.

45. (1) A person shall not distribute a security unless,

- (a) a preliminary prospectus and a prospectus have been filed with the Chief Regulator, the Chief Regulator has issued a receipt for each of them and the prescribed period for the distribution has not expired; or
- (b) a prescribed offering document has been filed with the Chief Regulator and, if a receipt is required by the rules, a receipt for it has been issued by the Chief Regulator and the prescribed period, if any, for the distribution has not expired.

Voluntary filing

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

Automatic receipts

(3) In such circumstances as may be prescribed, the rules may provide for the automatic issuance of a receipt for a preliminary prospectus, a prospectus or a prescribed offering document. Such a receipt is deemed to have been issued by the Chief Regulator.

Exemption for debt securities of governments in Canada

46. Subsection 45 (1) does not apply to a distribution of any of the following debt securities:

1. Debt securities issued or guaranteed by the Government of Canada or the government of a province or territory of Canada.
2. Debt securities that are,
 - i. issued by a municipal corporation in Canada for elementary, secondary or vocational school purposes,
 - ii. issued or guaranteed by a municipal corporation in Canada, or
 - iii. secured by or payable out of rates or taxes levied under the law of a province or territory of Canada on property in the province or territory and collectible by or through the municipality in which the property is situated.
3. Debt securities that are issued by a corporation established under regulations made under subsection 248 (1) of the *Education Act*.

Exemptions for securities of certain financial institutions

Exemption for debt securities

47. (1) Subsection 45 (1) does not apply to a distribution of a debt security that is issued or guaranteed by any of the following financial institutions:

1. A bank listed in Schedule I, II or III to the *Bank Act* (Canada).
2. An association or central cooperative credit society to which the *Cooperative Credit Associations Act* (Canada) applies.
3. A loan corporation, trust company, trust corporation, insurance company, treasury branch, credit union, financial services cooperative or credit union league, central or federation that is authorized by a statute of Canada or Ontario to carry on business in Canada or Ontario, as the case may be.
4. Such other financial institutions as may be prescribed by a rule.

Exclusion of subordinated debt securities

(2) The exemption under subsection (1) does not apply to debt securities issued or guaranteed by a financial institution described in paragraph 1, 2 or 3 of subsection (1) that are subordinate in right of payment to deposits held by the issuer or guarantor of those debt securities.

Prescribed conditions, etc.

(3) An exemption under subsection (1) with respect to a financial institution described in paragraph 1, 2 or 3 of subsection (1) is subject to such conditions, restrictions and requirements as may be prescribed by a regulation made by the Lieutenant Governor in Council.

Same

(4) An exemption under subsection (1) with respect to a financial institution described in paragraph 4 of subsection (1) is subject to such conditions, restrictions and requirements as may be prescribed by a rule.

Exemption for certain other securities

(5) Subsection 45 (1) does not apply to a distribution of any of the following securities:

1. Securities issued by a corporation to which the *Co-operative Corporations Act* applies.
2. Membership shares and patronage shares, within the meaning of the *Credit Unions and Caisses Populaires Act, 1994* or the *Credit Unions and Caisses Populaires Act, 2020*, of a credit union.
3. Securities issued to its members by a credit union to which the *Credit Unions and Caisses Populaires Act, 1994* or the *Credit Unions and Caisses Populaires Act, 2020* applies and for which an offering statement is sought under the 1994 or 2020 Act, as applicable.
4. Securities issued to its members or to the members of its member credit unions by a league to which the *Credit Unions and Caisses Populaires Act, 1994* applies or a central to which the *Credit Unions and Caisses Populaires Act, 2020* applies and for which an offering statement is sought under the 1994 or 2020 Act, as applicable.

Regulations

(6) The Lieutenant Governor in Council may make regulations for the purposes of subsection (3) prescribing conditions, restrictions and requirements relating to the exemption referred to in that subsection.

Exemption for government incentive securities

48. (1) Subsection 45 (1) does not apply to a distribution of a government incentive security.

Same

(2) An exemption under subsection (1) is subject to such conditions, restrictions and requirements as may be prescribed.

Definition

(3) For the purposes of this section,

“government incentive security” means a security that enables the holder to receive a grant or other monetary or tax benefit pursuant to a provision of an Act or regulation of Canada or another province or territory of Canada and that is prescribed as a government incentive security.

Restriction on distribution of records

49. A person distributing a security shall not distribute any record respecting the security that is prohibited by the rules.

Preliminary prospectus requirements

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

Permitted exclusions

(2) Despite subsection (1), a preliminary prospectus may exclude,

- (a) the report or reports of the auditor or accountant required by the rules; and
- (b) information with respect to the price of the securities to the underwriter, the offering price of any securities and other matters dependent on or relating to such prices.

Receipt for preliminary prospectus

(3) Subject to section 53, the Chief Regulator shall issue a receipt for a preliminary prospectus promptly after it has been filed.

Prospectus requirements

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

Receipt for prospectus

(2) Subject to section 53, the Chief Regulator shall issue a receipt for a filed prospectus unless the Chief Regulator considers that it would not be in the public interest or the rules prevent the Chief Regulator from issuing the receipt in the circumstances.

Opportunity to be heard

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

No changes to rights offering

(4) An amendment to a prospectus cannot change the terms of a rights offering except in such circumstances as may be prescribed.

Prescribed offering document requirements

52. (1) A prescribed offering document must comply with the prescribed requirements.

Receipt for prescribed offering document

(2) Subject to section 53, the Chief Regulator shall issue a receipt for a prescribed offering document if a receipt is required by the rules, unless the Chief Regulator considers that it would not be in the public interest or the rules prevent the Chief Regulator from issuing the receipt in the circumstances.

Opportunity to be heard

(3) If a receipt for a prescribed offering document is required by the rules, the Chief Regulator shall not refuse to issue a receipt for the prescribed offering document without giving the person who filed the prescribed offering document an opportunity to be heard.

Requirement to provide further information, etc.

53. Before issuing a receipt for a preliminary prospectus, a prospectus or, if a receipt is required by the rules, a prescribed offering document, the Chief Regulator may impose additional restrictions, conditions and filing requirements if the Chief Regulator considers that it is in the public interest.

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

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

Permitted activities under preliminary prospectus

55. Despite clause 45 (1) (a), during the period between the issuance of a receipt for a preliminary prospectus and the issuance of a receipt for a prospectus, a person may undertake the trading activities relating to the proposed distribution that are permitted by the rules.

Exception: defective preliminary prospectus

56. (1) If the Chief Regulator considers that a preliminary prospectus does not comply with the requirements under capital markets law with respect to its form and content, the Chief Regulator may, without giving an opportunity to be heard, order that the trading activities permitted under section 55 cease.

Duration of order

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

Order to cease trading

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

Temporary order

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

Notice

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

Duty to comply

(4) When the order is received by the issuer or person distributing securities, the person named in the order shall cease distribution of the securities under the prospectus or the prescribed offering document, and any receipt issued by the Chief Regulator for the prospectus or prescribed offering document is revoked or, in the case of a temporary order, that receipt is suspended for the period of the order.

Obligation to send prospectus, etc.

58. A person who trades in securities, other than a person acting as a purchaser's agent, and who receives a purchase order or subscription for a security offered in a distribution to which subsection 45 (1) applies shall, subject to the rules, send the following documents to a purchaser of the security:

1. The latest prospectus that is filed or required to be filed, if the distribution is made under clause 45 (1) (a).
2. The latest prescribed offering document that is filed or required to be filed, if the distribution is made under clause 45 (1) (b).

3. Any other prescribed disclosure document that the purchaser is entitled to receive under this Act.
4. Any amendment to the prospectus or prescribed offering document referred to in paragraph 1 or 2 or the prescribed disclosure document referred to in paragraph 3.

Escrow of securities

59. The rules may establish requirements for the escrow of securities in connection with a distribution.

PART VI TRADES OF DERIVATIVES

Trades of derivatives

60. (1) Every dealer, adviser or counterparty to a trade of a derivative and such other persons as may be prescribed shall comply with such conditions, restrictions and requirements as may be prescribed relating to derivatives transactions and the participants in those transactions.

Marketplaces

(2) Without limiting the generality of subsection (1), the rules may require prescribed classes of derivatives to be traded in a marketplace.

Prescribed disclosure document for designated derivatives

- 61.** (1) A person shall not trade in a designated derivative unless,
- (a) the prescribed disclosure document for the designated derivative has been completed and filed in accordance with capital markets law and, if a receipt is required by the rules, a receipt for it has been issued by the Chief Regulator;
 - (b) the effective period of the prescribed disclosure document has not expired; and
 - (c) the prescribed disclosure document has been sent in accordance with the rules.

Receipt

(2) The Chief Regulator shall issue a receipt for a prescribed disclosure document if a receipt is required by the rules, unless the Chief Regulator considers that it would not be in the public interest or the rules prevent the Chief Regulator from issuing the receipt in the circumstances.

Opportunity to be heard

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

Prescribed disclosure document requirements

(4) A document that is prescribed to be a prescribed disclosure document for the purpose of this section must comply with the prescribed requirements.

Duty to provide information

62. (1) Every person who trades in or provides a marketplace for trading in derivatives, every trade repository and such other persons as may be prescribed shall, in accordance with the rules, provide prescribed information relating to derivatives transactions to the Chief Regulator and to such other persons as may be prescribed.

Public disclosure

(2) Every person who trades in or provides a marketplace for trading in derivatives, every trade repository and such other persons as may be prescribed shall, in accordance with the rules, disclose prescribed information relating to derivatives transactions to such persons as may be prescribed.

Effect of failure to comply

63. Unless the terms of the derivative provide otherwise, a trade of a derivative is not void, voidable or unenforceable, and a counterparty to the trade is not entitled to rescind the trade, solely by reason that the trade failed to comply with capital markets law.

Derivatives that are securities for prescribed purposes

64. Prescribed derivatives, other than derivatives within a class of derivatives referred to in paragraph 16 of the definition of “security” in section 3, are securities for the purposes of any prescribed provisions of this Act and the rules.

PART VII REPORTING ISSUERS AND PRESCRIBED OTHERS – DISCLOSURE AND GOVERNANCE OBLIGATIONS

DISCLOSURE AND REPORTING

Disclosure requirements, reporting issuers and others

65. A reporting issuer or any other issuer within a prescribed class shall, in accordance with the rules, provide,

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

Disclosure requirements, insiders

66. (1) An insider of a reporting issuer shall, in accordance with the rules,

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

Exemption, mutual funds

(2) Subsection (1) does not apply if the reporting issuer is a mutual fund.

Information from directors, etc.

67. The Chief Regulator may require a director, officer, promoter or control person of an issuer to provide any information or record at the time and in a format acceptable to the Chief Regulator.

Limit on amount charged for compiling, etc., records

68. (1) A person shall not charge an amount that exceeds the prescribed limit for compiling or distributing records relating to an issuer.

Exception

(2) Subsection (1) does not apply with respect to the Commission.

GOVERNANCE AND CONFLICTS OF INTEREST

Governance of reporting issuers, etc.

69. A reporting issuer and any other issuer within a prescribed class shall comply with such conditions, restrictions and requirements as may be prescribed with respect to governance including conditions, restrictions and requirements relating to,

- (a) the composition of its board of directors and qualifications for membership on the board, including matters respecting the independence of directors and the diversity of directors and officers;
- (b) the establishment of specified types of committees of the board of directors, the mandate, functioning and responsibilities of each committee, the composition of each committee and the qualifications for membership on the committee, including matters respecting the independence of members;
- (c) the establishment and enforcement of a code of business conduct and ethics applicable to its directors, officers, employees and service providers and applicable to persons that are in a special relationship with the issuer, including the minimum requirements for such a code; and

- (d) procedures to regulate conflicts of interest between the interests of the issuer and those of a director or officer of the issuer or any other person.

Governance and oversight of investment funds

70. (1) An issuer that is an investment fund and such other persons as may be prescribed shall comply with such conditions, restrictions and requirements as may be prescribed with respect to the organization and governance of the fund, including conditions, restrictions and requirements relating to,

- (a) minimum initial capital requirements and the reimbursement of costs in connection with the organization of a fund;
- (b) the establishment and enforcement of a code of business conduct and ethics; and
- (c) procedures to regulate conflicts of interest.

Independent review committee

(2) In such circumstances as may be prescribed, an issuer that is an investment fund shall establish and maintain a body for the purposes of overseeing the activities of the investment fund and the investment fund manager, reviewing or approving prescribed matters affecting the investment fund and disclosing information to security holders of the fund, to the investment fund manager and to the Chief Regulator.

Same, composition

(3) An issuer that is an investment fund shall comply with such conditions, restrictions and requirements as may be prescribed relating to the composition of the body and the qualifications for membership on the body, including matters respecting the independence of members and the process for selecting the members.

Same, powers and duties

(4) The body has such powers and duties as may be prescribed.

Same, standard of care

(5) The members of the body shall comply with the prescribed standard of care when exercising their powers, performing their duties and carrying out their responsibilities.

Business conduct of investment funds

71. An issuer that is an investment fund and such other persons as may be prescribed shall comply with such conditions, restrictions and requirements as may be prescribed with respect to the distribution and trading of its securities and the conduct of its operations including conditions, restrictions and requirements relating to,

- (a) investment practices and investments;

- (b) calculation of the value of the assets of investment funds;
- (c) custody of the assets of investment funds;
- (d) the content and use of sales literature, sales communications or advertising relating to investment funds or the securities of investment funds;
- (e) sales and redemption of investment funds or the securities of investment funds, including payments for sales and redemptions; and
- (f) payments related to sales charges, commissions or sales incentives, or related to advising, administrative or management services provided to investment funds.

Duties re financial accounting, etc.

72. An issuer, the auditor of an issuer and such other persons as may be prescribed shall comply with such conditions, restrictions and requirements as may be prescribed with respect to financial accounting, reporting, auditing, internal controls and disclosure controls for the purposes of this Act.

Role of security holders in certain decisions

Decisions requiring approval, input

73. (1) In such circumstances as may be prescribed, the board of directors of an issuer shall obtain the approval or solicit the input of prescribed classes of security holders for decisions concerning prescribed matters.

Same, investment funds

(2) In such circumstances as may be prescribed, the investment fund manager of an investment fund shall obtain the approval or solicit the input of prescribed classes of security holders for decisions concerning prescribed matters.

Decisions requiring prior approval of Chief Regulator

(3) In such circumstances as may be prescribed, the board of directors of an issuer or the investment fund manager of an investment fund, as the case may be, shall obtain the approval or solicit the input of the Chief Regulator before proceeding with a prescribed transaction.

Issuer's meetings with security holders

74. (1) An issuer shall comply with such requirements as may be prescribed for meetings of issuers with security holders.

Communications

(2) For meetings of issuers with security holders, a person shall comply with such requirements as may be prescribed for communication with registered owners and beneficial

owners of securities, including requirements relating to persons that hold securities on behalf of beneficial owners.

Voting by proxy or otherwise

(3) The board of directors or the investment fund manager, as the case may be, shall comply with such requirements as may be prescribed with respect to security holders' voting by proxy or otherwise, including requirements relating to the solicitation, submission and tabulation of proxy votes and relating to voting instructions.

Activities re: voting by proxy

(4) A person engaged in activities relating to the solicitation, submission or tabulation of proxy votes shall comply with such requirements respecting those activities as may be prescribed.

Requirement to solicit proxies

75. (1) Subject to section 76, if the management of a reporting issuer gives registered holders of its voting securities notice of a meeting, the management shall, in accordance with the rules, send each of them a form of proxy in the prescribed form.

Same, investment funds

(2) Subject to section 76, if the investment fund manager gives registered holders of voting securities of the investment fund notice of a meeting, the investment fund manager shall, in accordance with the rules, send each of them a form of proxy in the prescribed form.

Information circular re proxy solicitation

76. (1) Subject to the rules, a person shall not solicit proxies from a holder of a reporting issuer's voting securities or the holder of voting securities in an investment fund unless the person sends to the holder a prescribed information circular in accordance with the rules.

Prescribed information circular requirements

(2) A prescribed information circular must comply with the prescribed requirements.

PART VIII

TAKE-OVER BIDS, ISSUER BIDS AND CERTAIN OTHER TRANSACTIONS

Definition of "interested person"

77. In this Part,

"interested person" means,

- (a) an offeree issuer,
- (b) a security holder, director or officer of an offeree issuer,

- (c) an offeror,
- (d) the Chief Regulator, and
- (e) any person not referred to in clauses (a) to (d) who, in the opinion of the Capital Markets Tribunal or the Superior Court of Justice, as the case may be, is a proper person to make an application under section 85 or 86.

Early warning

78. In such circumstances as may be prescribed, a person shall comply with such conditions, restrictions and requirements as may be prescribed in respect of early warning of acquisitions or dispositions of the beneficial ownership of, or control or direction over, securities of a reporting issuer.

Requirement re take-over bid, issuer bid

79. (1) A person shall not make a take-over bid or an issuer bid, whether acting alone or acting jointly or in concert with one or more persons, except in accordance with the rules.

Conduct of issuer's affairs

(2) An issuer whose securities are the subject of a take-over bid or an issuer bid shall comply with such conditions, restrictions and requirements as may be prescribed with respect to the conduct or management of the issuer's affairs in anticipation of such a bid and with respect to the conduct or management of the issuer's affairs during such a bid.

Directors' and officers' conduct

(3) A director or officer of an issuer whose securities are the subject of a take-over bid or an issuer bid shall comply with such conditions, restrictions and requirements as may be prescribed with respect to the director's or officer's conduct in anticipation of such a bid and the director's or officer's conduct during such a bid.

Certain other bids, transactions and combinations

80. (1) A person shall comply with such conditions, restrictions and requirements as may be prescribed with respect to an insider bid, a going-private transaction, a related party transaction or a business combination or other similar transaction.

Directors' and officers' conduct

(2) A director or officer of an issuer shall comply with such conditions, restrictions and requirements as may be prescribed with respect to the director's or officer's conduct in anticipation of a bid, transaction or combination described in subsection (1) and with respect to the director's or officer's conduct during such a bid, transaction or combination.

Requirement re recommendation

81. (1) If a take-over bid has been made, the board of directors of the issuer whose securities are the subject of the bid shall, in accordance with the rules,

- (a) determine whether to recommend acceptance or rejection of the bid or determine not to make a recommendation; and
- (b) prepare and send a circular that sets out the recommendation and the reasons for it, or states that the board is not making a recommendation and the reasons for not doing so.

Individual recommendation

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

Conflicts of interest — offeror, etc.

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

Prohibitions on acquiring, trading

83. (1) A prescribed person shall not acquire or trade in a security before, during or after an offer to acquire, acquisition, redemption, related party transaction or business combination or other similar transaction in respect of the security.

Compliance with conditions, etc.

(2) A prescribed person shall comply with such conditions, restrictions and requirements as may be prescribed with respect to acquiring or trading in a security before, during or after an offer to acquire, acquisition, redemption, related party transaction or business combination or other similar transaction in respect of the security.

Same, related financial instruments

(3) If a person acquires an interest or right in or to, or a right or obligation associated with, a related financial instrument of a security referred to in this Part, the person shall comply with such conditions, restrictions and requirements as may be prescribed.

Order varying a prescribed period

84. On application by an interested person, the Chief Regulator may, if the Chief Regulator considers that it would not be prejudicial to the public interest, make an order in respect of a particular case varying any period set out in the rules related to this Part.

Application to the Tribunal – orders re public interest, etc.

85. (1) On application by an interested person, the Capital Markets Tribunal may make one or more of the following orders after a hearing if the Tribunal considers that a person has acted or is acting contrary to the public interest or has not complied with or is not complying with this Part or the rules relating to it:

1. An order requiring the distribution of any record relating to a take-over bid, issuer bid, going-private transaction, related party transaction, business combination or similar transaction that the Tribunal considers must be distributed.
2. An order restraining the distribution of a record used or issued in connection with a take-over bid, issuer bid, going-private transaction, related party transaction, business combination or similar transaction.
3. An order requiring an amendment of a record used or issued in connection with a take-over bid, issuer bid, going-private transaction, related party transaction, business combination or similar transaction and requiring the distribution of the amendments to the record.
4. An order directing a person to comply with this Part or the rules related to it.
5. An order restraining a person from contravening this Part or the rules related to it.
6. An order varying any period set out in the rules related to this Part.
7. An order exempting a person from any of the conditions, restrictions or requirements of this Part or the rules related to it.
8. An order directing the person's directors and officers to cause the person to comply with or to cease contravening this Part or the rules related to it.
9. An order rescinding a transaction with any interested person, including the issue of a security or an acquisition and sale of a security.
10. An order requiring any person to dispose of any securities acquired in connection with a take-over bid, issuer bid, going-private transaction, related party transaction, business combination or similar transaction.
11. An order prohibiting any person from exercising a voting right attaching to a security at a meeting specified in the order.
12. An order prohibiting any person from exercising a right attaching to a derivative.
13. An order requiring that any of the following persons cease trading in, or is prohibited from purchasing, any securities or derivatives relating to a take-over bid, issuer bid, going-private transaction, related party transaction, business combination or similar transaction:

- i. all persons,

- ii. the persons named in the order,
- iii. one or more classes of persons.

Notice to Chief Regulator

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

Application to court — orders re non-compliance

86. (1) On application by an interested person, if the Superior Court of Justice is satisfied that a person has not complied with this Part or the rules related to it, the court may make any interim or final order that it considers appropriate, including an order,

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

Notice to Chief Regulator

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

PART IX MARKET CONDUCT

Requirement to keep records

87. (1) A market participant and such other persons as may be prescribed shall keep,

- (a) the records that are necessary for the proper recording of the person's business transactions and financial affairs and of the transactions that the person executes on behalf of others; and
- (b) any other records that are reasonably required to demonstrate compliance with capital markets law.

Required records

(2) Without limiting the generality of subsection (1), a rule may prescribe records that must be kept by a person referred to in subsection (1).

Duration

(3) A person referred to in subsection (1) shall keep the records described in subsection (1) until the expiry of seven years after the end of the year to which they relate or for such other period as may be prescribed.

Duty to provide records

(4) The Chief Regulator may require a person referred to in subsection (1) to provide, within the time and in a format and form acceptable to the Chief Regulator,

- (a) any of the records described in subsection (1); and
- (b) except where prohibited by law, any filings, reports or other communications made to any other regulatory agency whether within or outside Ontario.

Duty of good faith

Registrant's duty to clients

88. (1) A registrant shall deal fairly, honestly and in good faith with the registrant's clients and shall meet such other standards as may be prescribed.

Duty re derivatives transactions

(2) With respect to a derivatives transaction, a registrant and such other persons as may be prescribed shall deal fairly, honestly and in good faith with buyers, sellers, counterparties and such other persons as may be prescribed and shall meet such other standards as may be prescribed.

Duty to investment fund

89. An investment fund manager shall,

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

Duties re conflicts of interest

90. A registrant and an investment fund shall, in accordance with the rules, identify, disclose and manage conflicts of interest.

Duties re trading, clearing and settlement

91. The following persons shall comply with such conditions, restrictions and requirements as may be prescribed relating to trading in securities or derivatives, including conditions, restrictions and requirements relating to clearing or settlement of trades in securities or derivatives:

1. A recognized entity, a designated entity, a marketplace that is not a recognized exchange or designated marketplace, a dealer or an adviser.
2. A buyer or seller of a security.
3. A buyer or seller of, or counterparty to, a trade of a derivative.
4. Such other persons as may be prescribed.

Duties re promotional activities

92. A person engaging in promotional activities shall comply with such conditions, restrictions and requirements as may be prescribed.

False or misleading statements – general

93. (1) A person shall not make a statement that the person knows or reasonably ought to know,

- (a) in a material respect and at the time and in the circumstances in which it is made, is false or misleading or omits information that is necessary to prevent it from being false or misleading; and
- (b) would reasonably be expected to have a significant effect on the market price or value of a security, a derivative or the underlying interest of a derivative.

Remedy

(2) A breach of subsection (1) does not give rise to a statutory right of action for damages otherwise than under Part XII (Civil Liability) or Part XIII (Civil Liability for Secondary Market Disclosure).

False or misleading statements, information about reporting issuers, etc.

94. (1) A person engaged in a promotional activity shall not make a statement or provide information about a reporting issuer or an issuer whose securities are publicly traded that the person knows or reasonably ought to know,

- (a) at the time and in the circumstances in which it is made or provided, is false or misleading or omits information that is necessary to prevent it from being false or misleading; and

- (b) would be considered to be important by a reasonable investor in determining whether to purchase, not purchase, trade or not trade a security of the issuer or a related financial instrument.

Attempt

(2) A person that engages in promotional activities shall not, directly or indirectly, attempt to engage in or participate in any act, practice or course of conduct that is contrary to subsection (1).

Exceptions

(3) Subsections (1) and (2) do not apply with respect to an activity or communication that is prescribed.

Prohibited representations — securities

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

Exceptions

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

Future value or price

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

Listing on an exchange

(4) A person shall not make a representation, in relation to a trade in a security, that,

- (a) the security will be listed on an exchange, unless the exchange has approved, with or without conditions, the listing of the security or has consented to the representation;
- (b) an application has been made to list the security on an exchange, unless,
 - (i) an application has been made to list the security on the exchange and securities of the same issuer are currently listed on the exchange, or
 - (ii) the exchange has approved, with or without conditions, the listing of the security or has consented to the representation; or
- (c) an application will be made to list the security on an exchange, unless the exchange has consented to the representation.

Exceptions

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

Prohibited representations – derivatives

96. (1) A person shall not make a representation, in relation to a trade in a derivative, that,

- (a) the person or any other person will refund any amount paid in respect of the derivative, unless the terms of the derivative provide for a refund or a right to a party to require a refund; or
- (b) the person or any other person will assume all or part of the obligations under the derivative, unless the terms of the derivative provide for an assumption of all or part of the obligations under the derivative, or a right to a party to require the assumption of all or part of the obligations under the derivative.

Future value or price

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

Trading on a marketplace

(3) A person shall not make a representation, in relation to a trade in a derivative, that the derivative will be traded on a marketplace, unless the marketplace has approved, with or without conditions, the trading of the derivative or has consented to the representation.

Exceptions

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

Market manipulation

97. (1) A person shall not, directly or indirectly, engage in or participate in any act, practice or course of conduct relating to a security, derivative or underlying interest of a derivative that results in or contributes to,

- (a) a false or misleading appearance of trading activity in a security or derivative; or
- (b) an artificial price or value for a security or derivative.

Attempt

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

Fraud

98. (1) A person shall not, directly or indirectly, engage in or participate in any act, practice or course of conduct relating to securities or derivatives that the person knows or reasonably ought to know perpetrates a fraud on any person.

Same

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

Attempt

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

Benchmark – false or misleading information

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

Attempt

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

Benchmark manipulation

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

Attempt

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

Interpretation: entering into a transaction

101. For the purposes of sections 102 to 105,

“entering into a transaction”

“entering into a transaction” includes terminating or materially amending an existing obligation with respect to a derivative or a related financial instrument;

“investor”

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

“material order information”

“material order information” means information that relates to an unexecuted order or to the intention of an investor to purchase or trade a security or derivative or to enter into a

transaction with respect to an underlying interest of a derivative, if the execution of the order, the placement of an order to carry out the intention or the disclosure of any of the information would reasonably be expected to affect the market price or value of,

- (a) the security,
- (b) the derivative, or
- (c) the underlying interest of a derivative;

“order”

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

Insider trading

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

Tipping

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

Tipping — take-over or other action

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

1. Making a take-over bid for securities of the issuer.
2. Becoming a party to a reorganization, amalgamation, merger, arrangement or similar business combination with the issuer.
3. Acquiring a substantial portion of the issuer’s property.

Recommending

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

Exception re related financial instrument

(5) For the purposes of subsections (1) and (4), a related financial instrument does not include a security or a derivative or other contract or instrument whose market price, value, delivery obligations, payment obligations or settlement obligations are not, in a material way, derived from, referenced to, or based on the market price, value, delivery obligations, payment obligations or settlement obligations of the security to which it relates.

Whether material change, fact, generally disclosed

(6) The rules may establish standards and criteria for determining whether and when a material change or material fact has been generally disclosed.

Front-running

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

- (a) is an insider, affiliate or associate of the investor;
- (b) is an investment fund manager of the investor, in the case where the investor is an investment fund;
- (c) is engaging in, is considering or evaluating whether to engage in, or proposes to engage in a trading or advising relationship with or on behalf of the investor or a person referred to in clause (a) or (b);
- (d) is a director, officer or employee of the investor or of a person referred to in any of clauses (a) to (c);
- (e) knows of material order information relating to the investor, having acquired that knowledge while in a relationship described in any of clauses (a) to (d); or
- (f) knows of material order information relating to the investor, having acquired that knowledge from another person at a time when,
 - (i) that other person was connected to the investor, whether under this clause or any of clauses (a) to (e), and

- (ii) the person that acquired knowledge of the material order information from that other person knew or reasonably ought to have known of the connection referred to in subclause (i).

Trading

(2) A person who is connected to an investor and who knows of material order information relating to the investor shall not,

- (a) purchase or trade a security that is the subject of that information or enter into a transaction involving a related financial instrument;
- (b) trade a derivative that is the subject of that information; or
- (c) trade a derivative that has an underlying interest that is the subject of that information.

Tipping

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

Recommending

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

- (a) to purchase or trade a security that is the subject of that information or to enter into a transaction involving a related financial instrument;
- (b) to trade a derivative that is the subject of that information; or
- (c) to trade a derivative that has an underlying interest that is the subject of that information.

Defences

Defence to trading, tipping or recommending

104. (1) A person does not contravene any of subsections 102 (1) to (4) if, at the time the person took an action referred to in the applicable subsection, the person reasonably believed that the material change or the material fact, as the case may be, had been generally disclosed.

Defence to trading — other person's knowledge

(2) A person does not contravene subsection 102 (1) if, at the time the person purchased or sold the security or entered into the transaction, the person reasonably believed that the other party to the purchase, sale or transaction knew of the material change or material fact and if the purchase, sale or transaction does not come within a prescribed class of purchases, sales or transactions in respect of which this defence is not available.

Defence to trading — automatic plan or legal obligation

(3) A person does not contravene subsection 102 (1) or 103 (2) if the person purchased or traded the security, entered into the transaction involving the related financial instrument or traded the derivative, as the case may be,

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

Defence to trading — agent or trustee

(4) A person does not contravene subsection 102 (1) or 103 (2) if the person purchased or traded the security, entered into the transaction involving the related financial instrument or traded the derivative, as the case may be,

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

Defence to trading or recommending

(5) A person who is not an individual does not contravene subsection 102 (1) or (4) or 103 (2) or (4) if no individual involved in making the decision to purchase or trade the security, to enter into the transaction involving the related financial instrument, to trade the derivative or to make the recommendation on the person's behalf,

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

Defence to tipping

(6) A person does not contravene subsection 102 (2) or (3) if, at the time the person informed the other person of a material change or material fact, the person reasonably believed that the other person knew of it.

Defence to front-running

(7) A person does not contravene subsection 103 (2) if, at the time that the person purchased or traded the security, entered into the transaction involving the related financial instrument or traded the derivative, as the case may be, the person reasonably believed that,

- (a) the investor had consented to the purchase, trade or transaction, as the case may be; and
- (b) the other party to the purchase, trade or transaction, as the case may be, knew of the material order information,

but this subsection does not apply with respect to such classes of purchases, sales or transactions as may be prescribed.

Same

(8) A person does not contravene subsection 103 (2) if the person purchased or traded the security, entered into the transaction involving the related financial instrument or traded the derivative, as the case may be,

- (a) for the benefit of the investor for whose account the material order information concerns; or
- (b) to facilitate the execution of the investor's order.

Same

(9) A person does not contravene subsection 103 (2) if the person purchased or traded the security, entered into the transaction involving the related financial instrument or traded the derivative, as the case may be, to hedge a position that the person had assumed or agreed to assume before having knowledge of the material order information, provided that the hedge is commensurate with the risk assumed by the person and is entered into in accordance with the person's ordinary practice.

Same

(10) A person does not contravene subsection 103 (2) if the person purchased or traded the security, entered into the transaction involving the related financial instrument or traded the derivative, as the case may be, to fulfil a legally binding obligation entered into by the person before having knowledge of the material order information.

Defence to tipping material order information

(11) A person does not contravene subsection 103 (3) if, at the time that the person informed the other person of the material order information,

- (a) the person reasonably believed that the investor had consented to the person informing the other person; and
- (b) the person informed the other person that both the person and the other person are connected to the investor for the purposes of section 103.

Defence to recommending

(12) A person does not contravene subsection 103 (4) if, at the time the person recommended or encouraged the other person,

- (a) the person reasonably believed that the investor had consented to the person recommending or encouraging the other person; and
- (b) the person informed the other person,
 - (i) of the material order information, and
 - (ii) that both the person and the other person are connected to the investor for the purposes of section 103.

Onus

(13) In any proceeding, the onus of proving that a defence described in this section or that a prescribed defence applies is on the person seeking to rely on the defence.

Unfair practice

105. A person shall not, in respect of the purchasing, holding or selling of a security or the trading in or holding of a derivative, engage in an unfair practice including,

- (a) putting unreasonable pressure on another person;
- (b) taking advantage of another person's inability or incapacity to reasonably protect the person's own interest because of physical or mental disability, ignorance, illiteracy, age or other inability; and
- (c) engaging in any other prescribed practice that is fraudulent, manipulative, deceptive or unfairly detrimental to investors.

Using name of another registrant

106. A registrant shall not represent themselves using the name of another registrant unless the registrant is a partner, officer or agent of the other registrant or is authorized in writing by the other registrant.

Representation of registration

107. (1) A person shall not represent that the person is registered under this Act unless the representation is true and the person specifies, in making the representation, the person's category of registration.

False or misleading statements

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

Representation re approval by Commission, Chief Regulator

108. A person shall not represent that the Commission or the Chief Regulator has in any manner approved or passed on the merits of,

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

Declaration of short position

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

Placement through agent

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

Obstruction

110. A person shall not, and shall not attempt to, destroy or conceal any information, record or thing that is reasonably required for a hearing, an opportunity to be heard, a review or an investigation under capital markets law if the person knows or reasonably ought to know that a

hearing, an opportunity to be heard, a review or an investigation is being, or is likely to be, conducted.

No reprisal

111. (1) A person – or a person acting on their behalf – shall not take a reprisal measure against an employee of the person because the employee has,

- (a) sought advice about providing information, expressed an intention to provide information, or provided information to the person or to a person acting on their behalf, to the Commission, to the Chief Regulator, to a recognized self-regulatory organization or to a law enforcement agency about an act of the person or of a person acting on their behalf that has occurred, is ongoing or is about to occur, and that the employee reasonably believes is contrary to capital markets law or a by-law or other regulatory instrument of a recognized self-regulatory organization; or
- (b) in relation to information provided under clause (a), cooperated, testified or otherwise assisted, or expressed an intention to cooperate, testify or otherwise assist in,
 - (i) a review, investigation, examination or inspection authorized by the Chief Regulator, by a recognized self-regulatory organization or by a law enforcement agency,
 - (ii) a proceeding under capital markets law, or
 - (iii) a judicial proceeding.

Reprisal measures

(2) For the purposes of subsection (1), a reprisal is any measure taken against an employee that adversely affects their employment and includes but is not limited to,

- (a) ending or threatening to end the employee's employment;
- (b) demoting, disciplining or suspending, or threatening to demote, discipline or suspend an employee;
- (c) imposing or threatening to impose a penalty or withhold a benefit related to the employment of the employee; and
- (d) intimidating or coercing an employee in relation to their employment.

Prohibition re agreements

(3) A provision in an agreement, including a confidentiality agreement, between a person and an employee of the person is void to the extent that it precludes or purports to preclude the employee from,

- (a) providing information described in clause (1) (a) to the Commission, the Chief Regulator, a recognized self-regulatory organization or a law enforcement agency; or
- (b) in relation to information provided under clause (1) (a), cooperating, testifying or otherwise assisting, or expressing an intention to cooperate, testify or otherwise assist in a review, investigation, examination, inspection or proceeding described in clause (1) (b).

Actions relating to reprisal

(4) If a person, or a person acting on behalf of a person, has taken a reprisal against an employee in contravention of subsection (1), without limiting the actions that an employee may otherwise take, the employee may either,

- (a) make a complaint to be dealt with by final and binding settlement by arbitration under a collective agreement; or
- (b) if final and binding settlement by arbitration under a collective agreement is not available, bring an action in the Superior Court of Justice.

Burden of proof

(5) In an arbitration or action under subsection (4), the burden of proof that the person did not take a reprisal against an employee in contravention of subsection (1) lies on that person.

Remedies

(6) An arbitrator or the court hearing a complaint or action under subsection (4) may order one or both of the following remedies:

1. The employee's reinstatement, with the same seniority status that the employee would have had if the contravention had not occurred.
2. Payment to the employee of two times the amount of remuneration the employee would have been paid by the employer between the date of the contravention and the date of the order if the contravention had not taken place, with interest.

Definition

(7) In subsection (6),

“remuneration” includes all payments, benefits and allowances received or deemed to be received by an individual that, by reason of section 5, 6 or 7 of the *Income Tax Act* (Canada), are required to be included in the income of the individual for the purposes of that Act and, without limiting the generality of the foregoing, includes salaries and wages, bonuses, taxable allowances and commissions and other similar amounts fixed by reference to the volume of sales made or contracts negotiated.

Breach of trust

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

False or misleading statements to the Chief Regulator, etc.

113. (1) A person shall not,

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

Exception

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

Onus

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

Aiding and abetting, counselling

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

Conspiracy

115. A person shall not conspire with any other person to contravene capital markets law.

PART X
ORDERS, REVIEWS AND APPEALS

POWERS OF THE TRIBUNAL AND THE CHIEF REGULATOR

Orders of the Tribunal — general

116. (1) If the Capital Markets Tribunal considers that it is in the public interest, the Tribunal may make one or more of the following orders after a hearing:

1. An order that a person comply with capital markets law, with a decision as defined in subsection 138 (1), or with a regulatory instrument of a recognized entity.
2. An order that trading or acquisition cease in respect of any security or derivative or class of securities or derivatives specified in the order.
3. An order that a person or a class of persons cease trading in or acquiring all securities or all derivatives, the securities or the derivatives or the classes of securities or the classes of derivatives, specified in the order.
4. An order that the registration, recognition or designation of a person under this Act be terminated or be suspended or restricted for the period, if any, that is specified in the order, or that conditions, restrictions or requirements be imposed on the registration, recognition or designation.
5. An order that a person is reprimanded.
6. An order that any or all of the exemptions under capital markets law do not apply to a person.
7. An order that a person resign from one or more positions that the person holds as a director or officer of an issuer, registrant, recognized entity or designated entity.
8. An order that a person is prohibited from becoming or acting as a director or officer of an issuer, registrant, recognized entity or designated entity.
9. An order that a person is prohibited from becoming or acting as a registrant or promoter.
10. An order that a person is prohibited from engaging in promotional activities
 - i. by or on behalf of an issuer, security holder or party to a derivative,
 - ii. by or on behalf of another person that is reasonably expected to benefit from the promotional activity, or

- iii. on the person's own behalf in respect of circumstances that would reasonably be expected to benefit the person.
11. An order that a person is prohibited from advising in connection with activities in capital markets.
 12. An order that a person is prohibited from acting in a management or consultative capacity in connection with activities in capital markets.
 13. An order that any of the following persons submit to an audit or to a review of the person's practices and procedures:
 - i. a market participant.
 - ii. a control person of a reporting issuer,
 - iii. a person providing record-keeping services to a registrant,
 - iv. a person distributing or purporting to distribute securities in reliance on an exemption from section 45 (Requirement to file prospectus, etc.),
 - v. a person who is a director, officer, control person or promoter of a person described in subparagraph iv,
 - vi. a general partner of a person described in subparagraphs ii to v.
 14. An order that a person described in paragraph 13 make changes to the person's practices and procedures.
 15. An order that a person is prohibited from disseminating to the public, or authorizing the dissemination to the public of, any information or record that is described in the order.
 16. An order that a person disseminate to the public, by the method that may be described in the order, the information or record relating to the affairs of a registrant or issuer that the Tribunal considers must be disseminated.
 17. An order that a person amend, in the manner specified in the order, any information or record disseminated to the public as described in the order.
 18. An order that a person is prohibited from voting or exercising any other right attaching to a security at a meeting specified in the order.

Order on consent

(2) The Chief Regulator may make any order described in subsection (1) without a hearing if the Chief Regulator has the consent of the person who is subject to the order.

No hearing if prior conviction, etc.

(3) If any of the following circumstances exist, the Tribunal may make an order described in subsection (1) without giving the person who is subject to the order an opportunity to be heard:

1. The person has been found by a court in any jurisdiction to have contravened the laws of the jurisdiction respecting securities or derivatives.
2. The person has been convicted in any jurisdiction of an offence under laws respecting securities or derivatives.
3. The person has been convicted in any jurisdiction of an offence arising from a transaction, business or course of conduct related to securities or derivatives.

No hearing if prior order of certain regulators

(4) If any of the following circumstances exist, the Tribunal may make an order described in subsection (1) without giving the person who is subject to the order an opportunity to be heard:

1. The person is subject to an order made by a capital markets regulator outside Canada, as defined in subsection (10), imposing sanctions, conditions, restrictions or requirements.
2. The person is subject to an order made by a capital markets regulator of another province or territory in Canada, as defined in subsection (10), imposing sanctions, conditions, restrictions or requirements.
3. The person is subject to an order made by a recognized self-regulatory organization in Canada imposing sanctions, conditions, restrictions or requirements.
4. The person is subject to an order made by an exchange in Canada imposing sanctions, conditions, restrictions or requirements.

No hearing if prior settlement agreement with certain regulators

(5) If any of the following circumstances exist, the Tribunal may make an order described in subsection (1) without giving the person who is subject to the order an opportunity to be heard:

1. The person has agreed with a capital markets regulator outside Canada, as defined in subsection (10), to be subject to sanctions, conditions, restrictions or requirements.

2. The person has agreed with a capital markets regulator of another province or territory in Canada, as defined in subsection (10), to be subject to sanctions, conditions, restrictions or requirements.
3. The person has agreed with a recognized self-regulatory organization in Canada to be subject to sanctions, conditions, restrictions or requirements.
4. The person has agreed with an exchange in Canada to be subject to sanctions, conditions, restrictions or requirements.

Order without delay

(6) The Chief Regulator may make an order described in subsection (1), other than an order described in paragraph 5, 7, 14, 16 or 18 of subsection (1), without giving an opportunity to be heard, if the Chief Regulator considers that a delay in the making of the order could be prejudicial to the public interest.

Duration

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

Notice

(8) The Chief Regulator must send notice of an order made under subsection (6) to every person directly affected by the order.

Extension by the Tribunal

(9) If the Tribunal considers it in the public interest, it may, on application by the Chief Regulator and after a hearing, make an order extending an order under subsection (4).

Definitions

(10) In subsections (4) and (5) and in sections 117 and 118,

“capital markets regulator of another province or territory in Canada” means a securities commission or another person or body empowered by law to regulate trading in securities or derivatives in, or to administer or enforce the capital markets laws of, another province or territory in Canada, or any other person or body prescribed by a rule, but does not include a self-regulatory organization, exchange, clearing agency, trade repository, quotation and trade reporting system, auditor oversight body or credit rating organization;

“capital markets regulator outside Canada” means a securities commission, self-regulatory organization, exchange or other person or body empowered by law to regulate trading in securities or derivatives in, or to administer and enforce the capital markets laws of, a jurisdiction outside Canada.

Automatic effect of certain orders of other provinces and territories

117. (1) This section applies with respect to an order made by a capital markets regulator of another province or territory in Canada, as defined in subsection 116 (10),

- (a) if the order imposes sanctions, conditions, restrictions or requirements on a person; and
- (b) if the order arose as a result of a finding or an admission of a contravention by the person of the laws of that province or territory respecting securities or derivatives, or a finding or an admission of conduct contrary to the public interest.

Automatic effect in Ontario

(2) Subject to subsection (3), an order made by the capital markets regulator of the other province or territory has the same effect in Ontario, with such modifications as the circumstances require, as if it were an order made by the Capital Markets Tribunal under this Act.

Restriction

(3) The order does not have effect in Ontario under subsection (2) unless the Tribunal has the power under section 116 of this Act to make a similar order.

No notice or hearing

(4) The order has effect in Ontario under subsection (2) without notice to any person who is subject to sanctions, conditions, restrictions or requirements imposed in the order and without a hearing or an opportunity to be heard.

Public notice

(5) The Commission must promptly make accessible to the public notice of an order that has effect in Ontario under subsection (2) indicating any modifications made under that subsection to the order.

Application for clarification

(6) The Chief Regulator or a person directly affected by a sanction, condition, restriction or requirement in an order that has effect in Ontario under subsection (2) may apply to the Tribunal for clarification of the application of subsection (2).

Decision

(7) After giving the Chief Regulator and the person an opportunity to be heard, the Tribunal may make an order concerning the application of subsection (2), and that order is binding on the person and on the Commission.

Duty to comply

(8) A person who is subject to sanctions, conditions, restrictions or requirements imposed in an order that has effect in Ontario under subsection (2) must comply with the order and with any related order made under subsection (7).

Defence

(9) No person contravenes subsection (8) if the person did not know, and in the exercise of reasonable diligence would not have known, that the act or course of conduct in which the person engaged caused that person to contravene subsection (8).

Payment obligations excluded

(10) A person is not liable, as a result of the operation of subsection (2), to pay to the Commission or to another person any amount that the person is liable to pay under the order made by the capital markets regulator of the other province or territory.

Amendment, variation of original order

(11) If the order made by the capital markets regulator of the other province or territory is amended or varied under the laws of that province or territory, the order as amended or varied has effect in Ontario under subsection (2), and the Commission must promptly make accessible to the public notice of the order as amended or varied, indicating any modifications made under subsection (2) to the amended or varied order.

Revocation, etc., of original order

(12) If the order made by the capital markets regulator of the other province or territory is overturned, vacated, revoked or otherwise held to be of no effect pursuant to the laws of that province or territory, the order does not have effect in Ontario under subsection (2) and the Commission must promptly make accessible to the public notice of the change.

No appeal

(13) Orders that have effect in Ontario under subsection (2) and orders made by the Tribunal under subsection (7) are not subject to appeal under this Act.

Automatic effect of certain settlement agreements of other provinces and territories

118. (1) This section applies with respect to an agreement entered into between a person and a capital markets regulator of another province or territory in Canada, as defined in subsection 116 (10), relating to,

- (a) a finding or an admission of a contravention by the person of the laws of that province or territory respecting securities or derivatives; or
- (b) a finding or an admission of conduct contrary to the public interest by the person.

Automatic effect in Ontario

(2) Subject to subsection (3), the sanctions, conditions, restrictions or requirements imposed on the person under the agreement have the same effect in Ontario, with such modifications as the circumstances require, as if the Chief Regulator had entered into the agreement under this Act with the person to impose them.

Restriction

(3) The sanctions, conditions, restrictions or requirements imposed under the agreement do not have effect in Ontario under subsection (2) unless,

- (a) the requirement that was contravened by the person under the laws of the other province or territory is substantially similar to a requirement imposed under this Act; or
- (b) the conduct that was contrary to the public interest under the laws of the other province or territory would, under this Act, be contrary to the public interest.

No notice or hearing

(4) The sanctions, conditions, restrictions or requirements that have effect in Ontario under subsection (2) do so without notice to the person that is subject to them under the agreement, and they have effect without a hearing or an opportunity to be heard.

Public notice

(5) The Commission must promptly make accessible to the public notice of the sanctions, conditions, restrictions or requirements that have effect in Ontario under subsection (2).

Application for clarification

(6) The Chief Regulator or a person who is subject to the sanctions, conditions, restrictions or requirements that have effect in Ontario under subsection (2) may apply to the Capital Markets Tribunal for clarification of the application of subsection (2).

Decision

(7) After giving the Chief Regulator and the person an opportunity to be heard, the Tribunal may make an order concerning the application of subsection (2), and that order is binding on the person and on the Commission.

Duty to comply

(8) A person who is subject to sanctions, conditions, restrictions or requirements that have effect in Ontario under subsection (2) must comply with them and with any related order made under subsection (7).

Defence

(9) No person contravenes subsection (8) if the person did not know, and in the exercise of reasonable diligence would not have known, that the act or course of conduct in which the person engaged caused that person to contravene subsection (8).

Payment obligations excluded

(10) A person is not liable, as a result of the operation of subsection (2), to pay to the Commission or to another person any amount that the person is liable to pay under the agreement.

Amendment, variation of agreement

(11) If the agreement is amended or varied under the laws of the other province or territory, the sanctions, conditions, restrictions or requirements imposed under the agreement as amended or varied have effect in Ontario under subsection (2), and the Commission must promptly make accessible to the public notice of any changes to the sanctions, conditions, restrictions or requirements that have effect under subsection (2) in Ontario.

Revocation, etc., of agreement

(12) If the agreement is set aside, revoked or otherwise held to be of no effect pursuant to the laws of the other province or territory, the sanctions, conditions, restrictions or requirements that were imposed under it do not have effect in Ontario under subsection (2), and the Commission must promptly make accessible to the public notice of the change.

No appeal

(13) Sanctions, conditions, restrictions or requirements that have effect in Ontario under subsection (2) and orders made by the Tribunal under subsection (7) are not subject to appeal under this Act.

Order to pay administrative monetary penalty

119. (1) The Capital Markets Tribunal may order a person to pay an administrative monetary penalty to the Commission if the Tribunal determines, after a hearing, that the person has contravened capital markets law and if the Tribunal considers the order to be in the public interest.

Maximum amount

(2) An administrative monetary penalty cannot exceed \$5 million for each contravention.

Effect of paying penalty

(3) If the person pays the administrative monetary penalty in accordance with the terms of the order, the person cannot be convicted of an offence under this Act in respect of the same contravention.

Disgorgement order and compensation payments

120. (1) If the Capital Markets Tribunal determines, after a hearing, that a person has contravened capital markets law, the Tribunal may order the person to disgorge any amount obtained, or the amount of any payment or loss avoided, directly or indirectly as a result of the contravention if the Tribunal considers the order to be in the public interest.

Payee

(2) The amount disgorged is payable to the Commission.

Distribution of disgorged amount

(3) Unless the rules specify otherwise, the disgorged amount received by the Commission shall be distributed in accordance with this section and the rules to persons who,

- (a) incurred direct financial losses as a result of the contravention giving rise to the payment; and
- (b) satisfy such conditions, restrictions and requirements as may be prescribed.

Court appointment of administrator

(4) On application by the Chief Regulator, the Superior Court of Justice may make an order appointing one or more persons – including the Commission – to administer and distribute all or any part of the disgorged amount if the court is satisfied that the appointment is appropriate for the due administration of capital markets law.

Powers and duties, etc.

(5) The court order shall specify the administrator's powers and duties and the process for distributing the disgorged amount and may include such terms as the court considers just and expedient in the circumstances.

Variation or revocation of order

(6) The court order may be varied or revoked by the court on application by the Chief Regulator or by the court-appointed administrator.

If no appointment by the court

(7) If there is no court-appointed administrator for all or a part of the disgorged amount, the Commission shall administer and distribute the disgorged amount or the part, as the case may be, in accordance with the rules.

Application for compensation payment

(8) Persons described in subsection (3) may apply for a payment from the disgorged amount and shall do so in accordance with the court order or the rules, as the case may be.

Payment

(9) The court-appointed administrator may, in accordance with the court order, make a payment to an applicant from the disgorged amount administered under the court order. The Commission may, in accordance with the rules, make a payment to an applicant from the disgorged amount administered by the Commission.

Administrative costs

(10) The reasonable costs of administering the applications and payments are payable from the disgorged amount.

Residual amount

(11) Any disgorged amount remaining after the payments under subsections (9) and (10) belongs to the Commission.

Limitation

(12) A person is not entitled to participate in a proceeding in which an order may be made under this section solely on the basis that the person may be eligible to receive a payment under subsection (9).

Settlement order

121. (1) This section applies if a person enters into an agreement with the Chief Regulator providing for the settlement of a proceeding or potential proceeding under capital markets law.

Where admission of a contravention

(2) The Capital Markets Tribunal may, with or without a hearing, make an order under subsection 116 (1) and sections 119 and 120, or any of them, if, in the agreement, the person to whom the order is directed admits to contravening capital markets law and consents to the terms of the order.

Where admission of conduct contrary to the public interest

(3) The Tribunal may, with or without a hearing, make an order under subsection 116 (1) if, in the agreement, the person to whom the order is directed admits to engaging in conduct that is contrary to the public interest and consents to the terms of the order.

Where “no contest” agreement

(4) In any other case, the Tribunal may, with or without a hearing, make an order in respect of any matter described subsection 116 (1) if, in the agreement, the person to whom the order is directed consents to the terms of the order.

Voluntary payments

(5) The Tribunal may, with or without a hearing, order a person to make one or more payments to the Commission or to other persons in settlement of a proceeding or potential proceeding under capital markets law if, in the agreement, the person to whom the order is directed consents to the terms of the order.

Same

(6) The Tribunal may make an order under subsection (5) whether or not an order described in subsection (2), (3) or (4) is also made.

Freeze order

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

1. Retain any funds, securities, derivatives or other property of another person that the person has on deposit, under the person's control or for safekeeping and hold those funds, securities, derivatives or property.
2. Refrain from withdrawing any funds, securities, derivatives or other property from another person who has them on deposit, under control or for safekeeping.
3. Maintain funds, securities, derivatives or other property, and refrain from disposing of, transferring, dissipating or otherwise dealing with or diminishing the value of the funds, securities, derivatives or other property.
4. If the person has control of another person's derivatives, trade those derivatives and retain the proceeds of the trade.

Duration

(2) The order applies until the Tribunal revokes it or consents to release funds, securities or other property from the order or until the Superior Court of Justice orders otherwise.

Non-application

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

Registration of order

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

Effect of registration

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

Notice of order

(6) The Chief Regulator must promptly send notice of the order to each of the persons named in it.

Review by court

(7) Promptly but not later than 10 days after the order is made, the Chief Regulator shall serve and file a notice of application in the Superior Court of Justice to continue the order or for such other order as the court considers appropriate.

Same

(8) An order may be made under subsection (7) if the court is satisfied that the order would be reasonable and expedient in the circumstances having due regard to the public interest and,

- (a) the administration or enforcement of Ontario capital markets law or securities or derivatives law of another jurisdiction; or
- (b) the regulation of the capital markets in Ontario or in another jurisdiction.

Cease-trade order — extraordinary circumstances

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

1. A major market disturbance characterized by or constituting sudden fluctuations of the market price or value of securities, derivatives or underlying interests of derivatives if the fluctuations threaten fair or orderly capital markets.
2. A major market disturbance characterized by or constituting a substantial disruption in the system for clearance and settlement of transactions.
3. A major disruption in the functioning of capital markets or of a significant segment of the markets, including a major disruption in the availability of capital to a market participant.
4. A major disruption in the transmission, execution or processing of transactions in securities, derivatives or underlying interests of derivatives.
5. A substantial threat of a major market disturbance or major disruption described in any of paragraphs 1 to 4.

Notice to Minister

(2) The Chief Regulator shall notify the Minister if, in the Chief Regulator's opinion, there are extraordinary circumstances that may require immediate action to be taken under this section or section 265 (Authority in extraordinary circumstances) in the public interest.

Order

(3) The Chief Regulator may make an order under this subsection, without notice, to cease trading in a security or derivative, or to cease all trading on a recognized exchange or otherwise, if in the Chief Regulator's opinion,

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

Confirmation of the order

(4) The Chief Regulator shall promptly submit the order to the Commission for confirmation.

Same

(5) The Commission may, without notice, confirm the order with or without changes.

Duration

(6) An order under subsection (3) has effect immediately on being made by the Chief Regulator and it expires on the earliest of the following days:

1. The day specified in the order.
2. Three days after the day on which the order is made, if the order is not confirmed by the Commission on or before that day.
3. Ten days after the day on which the order is made.

Revocation or variation of order

(7) The Chief Regulator may make an order revoking or varying an order under this section or exempting a person or class of persons from the order, but cannot vary it to provide for an expiry after the period specified in subsection (6).

Confirmation of revocation or variation

(8) The Chief Regulator shall promptly forward the order under subsection (7) to the Commission for confirmation.

Same

(9) The Commission may, without notice, confirm the order under subsection (7) with or without changes.

Opportunity to be heard

(10) Promptly after making an order under this section, the Chief Regulator must give the persons who are directly affected by the order an opportunity to be heard.

Public notice

(11) The Chief Regulator must promptly issue a news release describing the details of any order made under this section and must publish the order.

Cease-trade order — failure to file, to complete filing Securities

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

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

Derivatives

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

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

Revocation of order

(3) The Chief Regulator shall revoke an order made under subsection (1) or (2) promptly after,

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

Order to be sent

(4) The Chief Regulator must promptly send notice of an order under subsection (1) or (2), and a notice of any variation or revocation of the order, to each person named in the order.

Various orders — non-compliance

125. (1) If the Chief Regulator is satisfied that an issuer has not complied with capital markets law, the Chief Regulator may make one or more of the following orders:

1. An order that trading or acquisition cease in respect of any of the issuer's securities or classes of securities specified in the order.
2. An order that an insider of the issuer or a prescribed person or a prescribed class of persons cease trading in or acquiring all of the issuer's securities or the classes of securities specified in the order.
3. An order that any or all of the exemptions under capital markets law do not apply to the issuer, to an insider of the issuer or to a prescribed person.
4. An order that the issuer or an insider of the issuer is prohibited from disseminating to the public, or authorizing the dissemination to the public of, any information or record relating to the affairs of the issuer or insider that is described in the order.
5. An order that the issuer or an insider of the issuer disseminate to the public, by the method that may be described in the order, the information or record relating to the affairs of an issuer that the Chief Regulator considers must be disseminated.
6. An order that the issuer or an insider of the issuer amend, in the manner specified in the order, any information or record disseminated to the public as described in the order.
7. An order that a fee required by capital markets law be paid by the issuer or an insider of the issuer.

Same

(2) The Chief Regulator shall not make an order under paragraph 1 of subsection (1) without giving the issuer an opportunity to be heard.

Same

(3) The Chief Regulator shall not make an order under paragraphs 2 to 7 of subsection (1) without giving the issuer and any persons named in the order an opportunity to be heard.

Exemption orders

126. (1) If the Chief Regulator considers that it would not be prejudicial to the public interest, the Chief Regulator may, on application by an interested person or on the Chief Regulator's own initiative, make an order exempting the applicant or a person, trade, intended trade, distribution, security or derivative or a class of persons, trades, intended trades, distributions, securities or derivatives from any provision of Parts II to IX or the rules.

Same

(2) The Chief Regulator may impose conditions, restrictions or requirements in an order under this section.

Designation orders

127. (1) If the Chief Regulator considers that it would not be prejudicial to the public interest, the Chief Regulator may, on application or on the Chief Regulator's own initiative, make an order designating,

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

Same

(2) If the Chief Regulator considers that it would be in the public interest, the Chief Regulator may, on application or on the Chief Regulator's own initiative, make an order designating,

- (a) an issuer to be a reporting issuer;
- (b) an issuer to be a mutual fund;
- (c) an issuer to be a non-redeemable investment fund;
- (d) a person to be an insider;

- (e) a person to be a marketplace;
- (f) a person to be a market participant;
- (g) a person to be a promoter;
- (h) a trade to be a distribution;
- (i) a crypto asset to be a security;
- (j) a crypto asset to be a derivative;
- (k) a derivative, or class of derivatives, to be a security;
- (l) a security, or class of securities, to be a derivative;
- (m) a derivative, or class of derivatives, to be a designated derivative;
- (n) a person to be an accredited investor for the purposes of Part V (Distribution of Securities).

Restriction

(3) The Chief Regulator must not make an order under subsection (1) or (2) without giving the persons directly affected by the order an opportunity to be heard.

Notice re opportunity to be heard

(4) Notice of an opportunity to be heard for the purposes of subsection (3) is sufficiently given if the Chief Regulator publishes the notice in accordance with section 256 (Publication of notices, etc., by Commission).

Public notice, derivatives

(5) In the case of an order made under subsection (1) or (2) in respect of a derivative, the Chief Regulator must either,

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

Duration of class orders re exemption, designation

128. (1) If an order made under section 126 or 127 applies to a class of persons, trades, intended trades, distributions, securities or derivatives, the order ceases to have effect on the earlier of the following days, subject to subsection (2):

1. The day set out in the order.
2. The day that is 18 months after the day on which the order comes into force.

Extension by rule

(2) The Commission may make a rule in accordance with sections 269 to 271 and subsections 272 (1) and (3) extending the order for up to 18 months after the day on which it would otherwise cease to have effect, but such a rule can be made only once with respect to a particular order.

Exception

- (3) Subsection (1) does not apply to an order made under section 126 or 127 if,
- (a) the order applies to a class of persons, trades, intended trades, distributions, securities or derivatives that are directly connected to an applicant; and
 - (b) the application of the order to the class referred to in clause (a) is reasonably necessary to achieve the purposes of the order.

Public notice

(4) On or before the date on which an order described in subsection (1) becomes effective, the Chief Regulator must publish a notice that includes a description of the order, the reasons for it and the day on which it ceases to have effect.

Order re: recognition or designation for purposes of a rule

129. (1) If the Chief Regulator considers that it would be in the public interest, the Chief Regulator may, on application or on the Chief Regulator's own initiative, make an order that,

- (a) an exchange or clearing agency be recognized for the purposes of a rule or any provisions of a rule;
- (b) a marketplace be designated for the purposes of a rule or any provision of a rule.

Restriction

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

Order to extend a period

130. If the Chief Regulator considers that it would not be prejudicial to the public interest, the Chief Regulator may, on application or on the Chief Regulator's own initiative, make an order extending any period in Parts II to IX or the rules.

Order re: when distribution concluded

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

Order re: filing of records, etc.

132. The Chief Regulator may make an order exempting a person from any requirement referred to in section 242 (Filing of records) or 245 (Linguistic versions of records) with respect to the filing of records.

COURT ORDERS**Court orders — general****Declaration of non-compliance**

133. (1) In addition to any other powers the Chief Regulator has, the Chief Regulator may apply to the Superior Court of Justice for a declaration that a person has not complied with or is not complying with capital markets law and for an order under subsection (3) or (4).

Same

(2) The Chief Regulator is not required to seek an order under section 116 (Orders of the Tribunal — general) before making an application under subsection (1).

Orders

(3) If the court makes a declaration that a person has not complied with or is not complying with capital markets law, the court may make any order that it considers appropriate with respect to the person who is the subject of the declaration, despite any order made under section 116 or 119 (Order to pay administrative monetary penalty) and despite the imposition of any penalty under section 172 (Offences and penalties).

Same

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

1. An order that the person comply with capital markets law.
2. An order that the person purchase securities of a security holder.
3. An order rescinding a transaction relating to trading in securities.
4. An order requiring the issuance, cancellation, purchase, exchange or disposition of a security.
5. An order prohibiting voting or the exercise of any other right attaching to a security.

6. If the person who is the subject of the declaration is not an individual, an order appointing officers and directors in place of or in addition to all or any of the person's directors and officers.
7. An order prohibiting the person from acting as an officer or director or prohibiting the person from acting as a promoter, either permanently or for a period specified in the order.
8. An order directing the person to submit to a review by the Chief Regulator of the person's practices and procedures and to institute changes as directed by the Chief Regulator.
9. An order requiring the person to produce to the court, or to another person named in the order, financial statements in the form required under capital markets law, or an accounting in any other form that the court directs.
10. An order directing rectification of the person's registers or other records.
11. An order requiring the person to rectify any past or current non-compliance with capital markets law to the extent that rectification is practicable.
12. An order directing that the person repay to a security holder any part of the money paid by the security holder for a security.
13. An order requiring the person to compensate or make restitution to another person.
14. An order requiring the person to pay general or punitive damages to another person.
15. An order requiring the person to pay to the Commission any amount obtained, or the amount of any payment or loss avoided, directly or indirectly as a result of the non-compliance.
16. An order directing that the information or a record described in the order,
 - i. be provided by the person to another person,
 - ii. not be provided by the person to another person, or
 - iii. be amended by the person to the extent that amendment is practicable.

Interim orders

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

Application for payment from disgorged amount

(6) Subsections 120 (3) to (11) apply, with necessary modifications, with respect to any amount received by the Commission under an order described in paragraph 15 of subsection (4).

Limitation

(7) A person is not entitled to participate in a proceeding in which an order described in paragraph 15 of subsection (4) may be made solely on the basis that the person may be eligible to receive a payment under subsection 120 (10).

Court appointment of receiver, etc.

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

- (a) in the best interests of the person's creditors, the person's security holders or subscribers or persons whose property is in the person's possession or under the person's control; or
- (b) appropriate for the administration or enforcement of capital markets law or the regulation of capital markets or expedient for assisting in the administration or enforcement of securities or derivatives law or the regulation of capital markets of another jurisdiction.

Evidence

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

Application without notice

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

Application to continue order

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

Powers of appointee

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

Same

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

Directors' powers

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

Fees and expenses

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

Variation or revocation of order

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

Court order re costs

135. Nothing shall preclude a court from ordering costs payable to the Commission or the Chief Regulator and in the event that costs are awarded to either of them, a counsel fee may be awarded despite the fact that the Commission or Chief Regulator was represented by Commission staff.

APPEAL OR REVIEW OF CERTAIN DECISIONS

Appeal of the Tribunal's decision

136. (1) The Chief Regulator or a person directly affected by a final decision of the Capital Markets Tribunal may appeal the decision to the Divisional Court within 30 days after the later of the day on which the decision is made or the day on which the reasons for the final decision are issued, or within such longer period as the court may permit.

Chief Regulator

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

Minister

(3) The Minister is entitled to be heard by counsel or otherwise on the argument of an appeal under this section, whether or not the Minister is named as a party to the appeal.

Stay of decision

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

Disposition of appeal

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

New material

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

Review of the Chief Regulator's decision

137. (1) A person who is directly affected by a decision of the Chief Regulator, other than a decision described in subsection (2), may apply to the Capital Markets Tribunal for a hearing and review of the decision.

Exceptions

(2) Subsection (1) does not apply to a decision of the Chief Regulator under any of the following provisions:

1. Section 12 (Recognition of entities).
2. Section 19 (Designation of entities).
3. Section 28 (Designation of benchmarks and benchmark administrators).
4. Section 34 (Order to provide information to designated benchmark administrator).
5. Section 123 (Cease-trade order — extraordinary circumstances).
6. Section 126 (Exemption orders).
7. Section 127 (Designation orders).
8. Section 129 (Order re: recognition or designation for purposes of a rule).
9. Section 131 (Order re: when distribution concluded).

Time limit

(3) Notice of an application for a hearing and review must be filed with the Tribunal within 30 days after the later of the day on which the decision is made or the day on which the reasons for the decision are issued.

Extension

(4) Despite subsection (3), the Tribunal may extend the time limit for filing notice of the application if an extension is not prejudicial to the public interest.

Chief Regulator

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

Disposition on review

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

Stay of decision

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

Review of decisions of recognized entities

138. (1) In this section,

“decision” means,

- (a) a decision, direction, order or ruling made under a by-law, policy or other regulatory instrument of a recognized entity, and
- (b) a decision, direction, order or ruling made under a power or duty delegated to a recognized self-regulatory organization by the Chief Regulator.

Application for review

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

Time

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

Parties

(4) The Chief Regulator, the recognized entity and one or more persons directly affected by the decision are parties to the hearing and review.

Disposition on review

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

Stay of decision

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

Privative clauses

Decisions of Commission

139. (1) A decision of the Commission is final and, except for judicial review, is not subject to appeal or review by the Capital Markets Tribunal or by any court.

Decisions of Tribunal

(2) If a decision of the Tribunal may be appealed under section 136, the decision is not subject to judicial review and it is not to be restrained, prohibited, removed, set aside or otherwise dealt with other than under that section.

Decisions of Chief Regulator

(3) If a decision of the Chief Regulator may be reviewed under section 137, the decision is not subject to judicial review and is not to be restrained, prohibited, removed, set aside or otherwise dealt with other than under that section.

Decisions of recognized entity

(4) If a decision of a recognized entity may be reviewed under section 138, the decision is not subject to judicial review and it is not to be restrained, prohibited, removed, set aside or otherwise dealt with other than under that section.

PART XI ADMINISTRATION AND ENFORCEMENT

INTERPRETATION

Definitions

140. In this Part,

“authorized investigator”

“authorized investigator” means a person who is authorized, or who is within a class of persons that are authorized, under subsection 146 (1) to investigate a matter under section 146;

“computer data”

“computer data” has the same meaning as in section 487.011 of the *Criminal Code* (Canada);

“data”

“data” has the same meaning as in section 487.011 of the *Criminal Code* (Canada);

“designated reviewer”

“designated reviewer” means a person who is designated, or who is within a class of persons that are designated, under subsection 145 (1) to exercise powers under section 145.

“document”

“document” has the same meaning as in section 487.011 of the *Criminal Code* (Canada);

“justice”

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

“tracking data”

“tracking data” has the same meaning as in section 487.011 of the *Criminal Code* (Canada);

“transmission data”

“transmission data” has the same meaning as in section 487.011 of the *Criminal Code* (Canada).

GENERAL POWERS

Complaints and dispute resolution

141. The Chief Regulator may, in accordance with the rules,

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

Order to provide information, etc., to Chief Regulator

142. (1) The Chief Regulator may make an order under subsection (2) for the administration or enforcement of capital markets law or the regulation of the capital markets or to assist in the administration or enforcement of the securities or derivatives laws or the regulation of the capital markets of another jurisdiction.

Same

(2) The Chief Regulator may order any of the following persons to provide the Chief Regulator with any information, record or thing in the person’s possession or under the person’s control that is specified or otherwise described in the order, in the form and within the time or at the intervals specified in the order:

- 1. A market participant.
- 2. A control person of a reporting issuer.
- 3. A person providing record-keeping services to a registrant.
- 4. A person distributing or purporting to distribute securities in reliance on an exemption from section 45 (Requirement to file prospectus, etc.).
- 5. A person who is a director, officer, control person or promoter of a person described in paragraph 4.

6. A general partner of a person described in paragraphs 2 to 5.

Verification

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

Order re books and records of banks

143. (1) Despite subsection 33 (4) of the *Evidence Act*, the Chief Regulator may by order compel a bank or an officer of a bank, in an investigation, financial examination or hearing under capital markets law to which the bank is not a party, to produce any book or record the contents of which can be proved under section 33 of the *Evidence Act* or to appear as a witness to provide the matters, transactions and accounts contained in the book or record.

Definitions

(2) In subsection (1), “bank” and “officer of a bank” have the same meaning as in subsection 33 (4) of the *Evidence Act*.

Order to pay costs of investigation, etc.

144. (1) If, in respect of a person whose affairs were the subject of an investigation, the Capital Markets Tribunal,

- (a) is satisfied that the person has not complied with, or is not complying with, capital markets law; or
- (b) considers that the person has not acted in the public interest,

the Tribunal may, after conducting a hearing, order the person to pay the costs of the investigation.

Hearing costs

(2) If, in respect of a person whose affairs were the subject of a hearing, the Tribunal, after conducting the hearing,

- (a) is satisfied that the person has not complied with, or is not complying with, capital markets law; or
- (b) considers that the person has not acted in the public interest,

the Tribunal may order the person to pay the costs of, or related to, the hearing that are incurred by or on behalf of the Commission.

Costs where offence

(3) If a person is guilty of an offence under this Act, the Tribunal may, after conducting a hearing, order the person to pay the costs of any investigation carried out in respect of that offence.

Included costs

(4) For the purposes of subsections (1), (2) and (3), the costs that a person may be ordered to pay include, but are not limited to, all or any of the following:

1. Costs incurred in respect of services provided by or on behalf of a designated reviewer or authorized investigator.
2. Costs of matters preliminary to the hearing.
3. Costs for time spent by the Chief Regulator or the staff of the Commission, other than the costs described in subsection (5).
4. Any fee paid to a witness.
5. Costs of legal services provided to the Chief Regulator or to the staff of the Commission, other than the costs described in subsection (5).

Excluded costs

(5) The costs that a person may be ordered to pay under subsection (2) do not include costs for time spent by the staff of the Commission to provide services to the Tribunal or costs for legal services provided to the staff of the Commission for that purpose.

REVIEWS AND INVESTIGATIONS

Review of market participants and others

Designation of reviewers

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

Review

(2) A designated reviewer may review the business and conduct of any person described in subsection 142 (2).

Requirement to provide records

(3) A designated reviewer conducting a review under subsection (2) may, for that purpose, require that a person described in subsection 142 (2) provide the designated reviewer with any information, record or thing in the person's possession or under the person's control, and to do so in the form and within the time or at the intervals specified.

Authority to enter, etc.

(4) A designated reviewer may, in conducting a review under subsection (2), enter the business premises of a person described in subsection 142 (2) 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 information contained in, or available to, the electronic device or system;
- (d) prepare a record, or cause one to be prepared, based on the information;
- (e) use, or cause to be used, any copying equipment at the place to make copies of any record; and
- (f) remove any record or thing from the place for examination or copying.

Business hours

(5) A designated reviewer may enter the business premises only during business hours.

Authority to inquire

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

Fees

(7) A person under review shall pay the Commission such fees as may be prescribed.

Freedom of Information and Protection of Privacy Act

(8) If the Chief Regulator determines that any information or records obtained in the review should be maintained in confidence, the Commission is not permitted to disclose them pursuant to a request for access made under the *Freedom of Information and Protection of Privacy Act*.

Investigation — order authorizing exercise of powers

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

Same

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

Scope of investigation

(3) For the purposes of the investigation, an authorized investigator may investigate and inquire into,

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

Power to compel, etc.

(4) For the purpose of the investigation, the authorized investigator may do one or more of the following:

1. Compel any person to preserve information, records or things in the person's possession or under their control.
2. Summon the attendance of any person.
3. Compel any person to testify on oath or otherwise.
4. Compel any person to produce information, records or things in the person's possession or under their control, and to do so, if possible, in the form specified.

Power of contempt

(5) The failure or refusal of a person to preserve information, to attend, to testify or to produce information, records or things under subsection (4) makes that person, on application to the Superior Court of Justice by the Chief Regulator, liable to be committed for contempt by that court in the same manner as if that person were in breach of an order or judgment of that court.

Representation by a lawyer

(6) A person testifying or producing information, records or things under subsection (4) may be represented by a lawyer.

Authority to inspect business premises

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

Court order authorizing search, etc.

(8) Subject to sections 151 and 153, on being satisfied by information on oath that there are reasonable grounds to believe that a place contains anything that is related to the investigation, a justice may make an order authorizing an authorized investigator to enter the place and,

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

Permitted hours of entry

(9) The authority under subsection (8) to enter a place may be exercised only between the hours of 6 a.m. and 9 p.m.

Production of authorization

(10) An authorized investigator shall produce the authorization order on request.

Freedom of Information and Protection of Privacy Act

(11) The Commission is not permitted to disclose any of the following matters pursuant to a request for access under the *Freedom of Information and Protection of Privacy Act*:

1. The existence of an investigation and any information about the matter under investigation.
2. The existence and contents of the order made under this section.

3. Any inquiries and demands made by the authorized investigator in the course of the investigation.
4. The name of any person examined or sought to be examined in the course of the investigation.
5. Any questions asked by the authorized investigator and any testimony given by any person in the course of the investigation.
6. The fact that testimony was given to the authorized investigator in the course of the investigation.
7. Any information, records and things sought by or produced to the authorized investigator in the course of the investigation.
8. The fact that information, records or things were produced to the authorized investigator in the course of the investigation.

Order prohibiting disclosure of investigation

147. (1) For the purpose of protecting the integrity of an investigation authorized under section 146, the Chief Regulator may make an order prohibiting a person from disclosing to any other person all or any of the matters relating to the investigation that are described in paragraphs 1 to 8 of subsection 146 (11).

Duration

- (2) The order applies for the period specified in the order.

Limitation, disclosure to lawyer

- (3) The order does not apply to a disclosure by the person to their lawyer.

Same, disclosure to insurer

(4) The order does not apply to a disclosure by the person or their lawyer to the person's insurer or insurance broker if all of the following conditions are satisfied:

1. The person or lawyer gives notice of the intended disclosure to the authorized investigator at least 10 days before the intended disclosure. However, the authorized investigator may waive the notice period.
2. The notice includes the name and head office of the insurer or insurance broker and the name of the individual acting on behalf of the insurer or insurance broker to whom the disclosure is intended to be made.

3. On making the disclosure, the person or lawyer advises the insurer or insurance broker that the insurer or insurance broker is bound by the confidentiality requirements of the order and obtains written acknowledgement from the insurer or insurance broker of this advice.

Same, disclosure to prescribed persons

(5) The order does not apply to a disclosure to such persons and entities as may be prescribed by regulation in such circumstances as may be prescribed. The Lieutenant Governor in Council may make regulations for the purposes of this subsection.

Confidentiality of compelled evidence

148. (1) The Commission shall not disclose any testimony, information, records or things obtained under subsection 146 (4) except as permitted under this section.

Disclosure in investigation or proceeding

(2) The Commission may disclose testimony, information, records or things obtained under subsection 146 (4) if the disclosure is made in connection with the examination of a witness or in connection with a proceeding or proposed proceeding under this Act.

Same

(3) The Commission may disclose testimony, information, records or things obtained under subsection 146 (4) if the disclosure is made in connection with a proceeding or proposed proceeding in which the Commission or the Chief Regulator is a party.

Disclosure after notice, opportunity to be heard

(4) If the Chief Regulator considers it to be in the public interest, the Chief Regulator may authorize the Commission to disclose testimony, information, records or things obtained under subsection 146 (4) but only if, before authorizing the disclosure, the Chief Regulator first gives the person from whom the testimony, information, record or thing was obtained notice of the proposed disclosure and an opportunity to be heard.

Disclosure to law enforcement agencies, etc.

(5) If the Capital Markets Tribunal considers it to be in the public interest, the Tribunal may make an order, on application without notice by the Chief Regulator, authorizing the Commission to disclose testimony, information, records or things obtained under subsection 146 (4) to a person described in paragraph 1 or 2 of section 254 (Exchange of information).

Prohibition on use of compelled testimony

149. Testimony given by a person under subsection 146 (4) cannot be admitted in evidence against that person in a prosecution for an offence under this Act or in any other prosecution governed by the *Provincial Offences Act* other than a prosecution for perjury in giving the testimony, for giving contradictory evidence, for contravening section 110 (Obstruction) or for contravening section 113 (False or misleading statements to the Chief Regulator, etc.).

Duty to assist

150. The owner or person who is in charge of a place that is entered under subsection 145 (4), 146 (7) or 146 (8), and every person who is in the place, shall give all assistance that is reasonably required to enable the designated reviewer to conduct the review or the authorized investigator to conduct the investigation, as the case may be.

Entry to dwelling-house

151. If the place referred to in subsection 145 (4) or 146 (8) is a dwelling-house, the designated reviewer or authorized investigator shall not enter it without the occupant's consent except under the authority of a warrant issued under section 153.

Entry on private property

152. (1) A designated reviewer or authorized investigator may enter on and pass through private property for the purpose of gaining entry to a place referred to in subsection 145 (4), 146 (7) or 146 (8) and is not liable for doing so.

Same

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

Same

(3) A person may, at the request of the designated reviewer or authorized investigator, accompany the reviewer or investigator to assist them in gaining entry to a place referred to in subsection 145 (4), 146 (7) or 146 (8) and is not liable for doing so.

WARRANTS AND ORDERS**Warrant to enter a place or dwelling-house**

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

- (a) the place or dwelling-house is a place referred to in subsection 145 (4) or 146 (8); and
- (b) entry to the place or dwelling-house is necessary for the purpose of conducting a review under section 145 or an investigation under section 146.

Use of force

(2) In executing a warrant issued under this section to enter a place or dwelling-house, a designated reviewer or authorized investigator may use as much force as is reasonably necessary for that purpose.

Preservation demand

154. (1) A peace officer or a person investigating an offence under this Act may make a demand to a person in writing requiring them to preserve computer data that is in their possession or control when the demand is made.

Conditions for making demand

(2) The peace officer or person investigating an offence under this Act may make the demand only if they have reasonable grounds to suspect that,

- (a) an offence under this Act has been or will be committed; and
- (b) the computer data is in the person's possession or control and will assist in the investigation of the offence.

Limitation

(3) A demand may not be made to a person who is under investigation for the offence referred to in clause (2) (a).

Expiry and revocation of demand

(4) A peace officer or person investigating an offence under this Act may revoke the demand by notice given to the person at any time. Unless the demand is revoked earlier, the demand expires 21 days after the day on which it is made.

Conditions in the demand

(5) The peace officer or person investigating an offence under this Act who makes the demand may impose any conditions in the demand that they consider appropriate – including conditions prohibiting the disclosure of its existence or some or all of its contents – and may revoke a condition at any time by notice given to the person.

No further demand

(6) A peace officer or person investigating an offence under this Act may not make another demand requiring the person to preserve the same computer data in connection with the investigation.

Preservation order – computer data

155. (1) On application without notice made by a peace officer or a person investigating an offence under this Act, a justice may order a person to preserve computer data that is in their possession or control when they receive the order.

Conditions for making order

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

- (a) that there are reasonable grounds to suspect that,

- (i) an offence under this Act has been or will be committed,
 - (ii) the computer data that is to be preserved will assist in the investigation of the offence, and
 - (iii) the person who is the subject of the order has in their possession or control the computer data that is to be preserved; and
- (b) that a peace officer or a person investigating an offence under this Act intends to apply or has applied for a warrant or an order in connection with the investigation to obtain a document that contains the computer data.

Limitation

(3) A person who is under investigation for an offence referred to in subclause (2) (a) (i) may not be made subject to an order under this section in relation to the offence.

Expiry of order

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

General production order

156. (1) Subject to sections 157 to 162, on application without notice made by a peace officer or a person investigating an offence under this Act, a justice may order a person to produce a document that is a copy of a document that is in their possession or control when they receive the order, or to prepare and produce a document containing data that is in their possession or control at that time.

Conditions for making order

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

- (a) an offence under this Act has been or will be committed; and
- (b) the document or data is in the person's possession or control and will afford evidence respecting the commission of the offence.

Limitation

(3) A person who is under investigation for an offence referred to in subsection (2) may not be made subject to an order under this section in relation to the offence.

Production order — records, etc.

157. (1) On application without notice made by a peace officer or a person investigating an offence under this Act, a justice may order a dealer who is not an individual, a party to a derivative who is not an individual, a registrant who is not an individual or an issuer whose

securities are publicly traded to do one or more of the following within a specified period and at a specified place:

1. Produce to the peace officer or the investigator a true copy, certified by affidavit, of a record that is specified in the order.
2. Prepare and produce to the peace officer or the investigator a written statement setting out in detail the information that is required by the order.
3. Prepare and produce to the peace officer or the investigator a record containing the information that is required by the order.

Conditions for making order

(2) Before making the order, the justice must be satisfied by information on oath 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 who is the subject of the order has knowledge, possession or control of the information that is or is to be contained in the record or statement.

Limitation

(3) A person who is under investigation for an offence referred to in subsection (2) may not be made subject to an order under this section in relation to the offence.

Production order — names, etc.

158. (1) On application without notice made by a peace officer or a person investigating an offence under this Act, a justice may order one or more of the following:

1. Order that a clearing agency, marketplace or self-regulatory organization prepare and produce a record, in the form specified in the order, containing the names of all dealers, other than those who are individuals, that acquired or traded a specified security or derivative during a specified period.
2. Order that a trade repository prepare and produce a record, in the form specified in the order, containing information that would identify all persons that acquired or traded a specified security or derivative during a specified period.
3. Order that a dealer, other than one who is an individual, prepare and produce a record, in the form specified in the order, containing the names of all persons on whose behalf

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

Conditions for making order

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

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

Limitation

(3) A person who is under investigation for an offence referred to in subsection (2) may not be made subject to an order under this section in relation to the offence.

Production order to trace specified communication

159. (1) On application without notice made by a peace officer or a person investigating an offence under this Act for the purpose of identifying a device or person involved in the transmission of a communication, a justice may order a person to prepare and produce a document containing transmission data that is related to that purpose and that is, when they are served with the order, in their possession or control.

Conditions for making order

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

- (a) an offence under this Act has been or will be committed;
- (b) the identification of a device or person involved in the transmission of a communication will assist in the investigation of the offence; and
- (c) transmission data that is in the possession or control of one or more persons whose identity is unknown when the application is made will enable that identification.

Service of order

(3) A peace officer or a person investigating an offence under this Act may, within 60 days after the day on which the order is made, serve the order on any person that was involved in the transmission of the communication, including, for greater certainty, a person whose identity was unknown when the application was made.

Limitation

(4) A person who is under investigation for an offence referred to in subsection (2) may not be made subject to an order under this section in relation to the offence.

Report

(5) A peace officer or person investigating an offence under this Act who is named in the order must provide a written report to the justice who made the order as soon as feasible after the person from whom the communication originated is identified or after the expiry of the period referred to in subsection (3), whichever occurs first. The report must state the name and address of each person on whom the order was served and the date of service.

Production order — transmission data

160. (1) On application without notice made by a peace officer or a person investigating an offence under this Act, a justice may order a person to prepare and produce a document containing transmission data that is in their possession or control when they receive the order.

Conditions for making order

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

- (a) an offence under this Act has been or will be committed; and
- (b) the transmission data is in the person's possession or control and will assist in the investigation of the offence.

Limitation

(3) A person who is under investigation for an offence referred to in subsection (2) may not be made subject to an order under this section in relation to the offence.

Production order — tracking data

161. (1) On application without notice made by a peace officer or a person investigating an offence under this Act, a justice may order a person to prepare and produce a document containing tracking data that is in their possession or control when they receive the order.

Conditions for making order

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

- (a) an offence under this Act has been or will be committed; and
- (b) the tracking data is in the person's possession or control and will assist in the investigation of the offence.

Limitation

(3) A person who is under investigation for an offence referred to in subsection (2) may not be made subject to an order under this section in relation to the offence.

Production order — financial data

162. (1) On application without notice made by a peace officer or a person investigating an offence under this Act, a justice may order a financial institution, a registrant, the Ontario Lottery and Gaming Corporation or a person operating a lottery scheme as defined in subsection 207 (4) of the *Criminal Code* (Canada) to prepare and produce a document setting out the following data that is in their possession or control when they receive the order:

1. Either the account number of a person named in the order or the name of a person whose account number is specified in the order.
2. The type of account.
3. The status of the account.
4. The date on which the account was opened or closed.

Same

(2) For the purpose of confirming the identity of a person who is named or whose account number is specified in the order, the order may also require the person who is subject to the order to prepare and produce a document setting out the following data that is in their possession or control:

1. The date of birth of a person who is named or whose account number is specified in the order.
2. That person's current address.
3. Any previous addresses of that person.

Conditions for making order

(3) Before making the order, the justice must be satisfied by information on oath that there are reasonable grounds to suspect that,

- (a) an offence under this Act has been or will be committed;
- (b) the data is in the possession or control of the person who would be subject to the order; and
- (c) the data will assist in the investigation of the offence.

Limitation

(4) A person who is under investigation for an offence referred to in subsection (3) may not be made subject to an order under this section in relation to the offence.

Definition of “financial institution”

(5) In this section,

“financial institution” means,

- (a) a bank listed in Schedule I, II or III to the *Bank Act* (Canada),
- (b) an association or central cooperative credit society to which the *Cooperative Credit Associations Act* (Canada) applies,
- (c) a loan corporation, trust company, trust corporation, insurance company, treasury branch, credit union, financial services cooperative or credit union league, central or federation that is authorized by a statute of Canada or Ontario to carry on business in Canada or Ontario, as the case may be,
- (d) a person that controls a person described in clauses (a) to (c),
- (e) a person engaged in the business of foreign exchange dealing, dealing in virtual currencies or remitting funds or transmitting funds by any means or through any person, entity or electronic funds transfer network, or of issuing or redeeming money orders, traveller’s cheques or other similar negotiable instruments except for cheques payable to a person named on a cheque.

Conditions in preservation and production orders

163. (1) An order made under any of sections 155 to 162 may contain any conditions that the justice considers appropriate including, in the case of an order made under section 156 (General production order), conditions to protect a privileged communication between a lawyer and their client.

Power to revoke or vary

(2) On application without notice by a peace officer or a person investigating an offence under this Act, the justice who made the order — or another justice of the same court — may on the basis of an information on oath, revoke or vary the order. The peace officer or the person investigating an offence under this Act must give notice of the revocation or variation to the person who is subject to the order as soon as feasible.

Order prohibiting disclosure

164. (1) On application without notice by a peace officer or a person investigating an offence under this Act, a justice may make an order prohibiting a person from disclosing the existence or some or all of the contents of a preservation demand made under section 154 or a

preservation or production order made under any of sections 155 to 162 during the period set out in the order.

Conditions for making the order

(2) Before making the order, the justice must be satisfied by information on oath that there are reasonable grounds to believe that the disclosure during that period would jeopardize the conduct of the investigation of the offence to which the preservation demand or the preservation or production order relates.

Application to revoke or vary order

(3) A peace officer, a person investigating the offence or a person who is subject to an order made under subsection (1) may apply in writing to the justice who made the order -- or to another justice of the same court — to revoke or vary the order.

Particulars — production orders

165. (1) An order made under any of sections 156 to 158 and 160 to 162 must require the person who is subject to the order to produce the document within the time, at the place and in the form specified in the order to a peace officer or person investigating an offence under this Act who is named in the order.

Particulars — production order to trace specified communication

(2) An order made under section 159 must require the person who is subject to the order to produce the document as soon as feasible after they are served with the order, at the place and in the form specified in the order to a peace officer or person investigating an offence under this Act who is named in the order.

Form of production

(3) For greater certainty, an order under any of sections 156 to 162 may specify that a document may be produced on or through an electro-magnetic medium.

Probative force of copies

(4) Every copy of a document produced under any of sections 156 to 158 is admissible in evidence in proceedings under this Act on proof by affidavit that it is a true copy and has the same probative force as the document would have if it were proved in the ordinary way.

Evidence Act

(5) A document that is prepared for the purpose of production is considered to be original for the purposes of the *Evidence Act*.

Application for review of production order

166. (1) Before they are required by an order made under any of sections 156 to 162 to produce a document, a person who is subject to the order may apply in writing to the justice who made the order — or to another justice of the same court — to revoke or vary the order.

Notice required

(2) The person may make the application only if, within 30 days after the day on which the order is made, they give notice of their intention to do so to a peace officer or person investigating an offence under this Act who is named in the order.

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 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.

Destruction of preserved computer data and documents — preservation demand or order

167. (1) A person to whom a preservation demand is made under section 154 shall destroy the computer data that would not be retained in the ordinary course of business and any document that is prepared for the purpose of preserving computer data under that section as soon as feasible after the demand expires or is revoked, unless they are subject to an order made under any of sections 155 to 161 with respect to the computer data.

Destruction of preserved computer data and documents — preservation order

(2) A person who is subject to a preservation order made under section 155 shall destroy the computer data that would not be retained in the ordinary course of business and any document that is prepared for the purpose of preserving computer data under that section as soon as feasible after the order expires or is revoked, unless they are subject to a new preservation order or to a production order made under any of sections 156 to 161 with respect to the computer data.

Destruction of preserved computer data and documents — production order

(3) A person who is subject to a production order made under any of sections 156 to 161 with respect to computer data that they preserved under a preservation demand or order made under section 154 or 155 shall destroy the computer data that would not be retained in the ordinary course of business and any document that is prepared for the purpose of preserving computer data under that section as soon as feasible after the earlier of,

- (a) the day on which the production order is revoked; and
- (b) the day on which a document that contains the computer data is produced under the production order.

Destruction of preserved computer data and documents — warrant

(4) Despite subsections (1) to (3), a person who preserved computer data under a preservation demand or order made under section 154 or 155 shall destroy the computer data that would not be retained in the ordinary course of business and any document that is prepared for the purpose of preserving computer data under that section when a document that contains the computer data is obtained under a warrant.

Voluntary preservation, production

168. (1) For greater certainty, no preservation demand, preservation order or production order is necessary for a peace officer or a person investigating an offence under this Act to ask a person to voluntarily preserve data that the person is not prohibited by law from preserving or to voluntarily provide a document to them that the person is not prohibited by law from disclosing.

No liability

(2) A person who preserves data or provides a document in those circumstances does not incur any liability for doing so.

Self-incrimination

169. No one is excused from complying with an order made under any of sections 156 to 162 on the ground that the document that they are required to produce may tend to incriminate them or subject them to a proceeding or penalty. However, no document that an individual is required to prepare may be used or received in evidence against them in a prosecution that is subsequently instituted against them, other than a prosecution for contravening section 113 (False or misleading statements to the Chief Regulator, etc.), for perjury in giving such evidence, for a witness giving contradictory evidence or for fabricating evidence.

Assistance order

170. If a preservation or production order is issued under this Act, the justice who issues the order may order a person to provide assistance, if the person's assistance may reasonably be considered to be required to give effect to the preservation or production order.

OFFENCES AND PENALTIES

Offences and penalties

171. (1) Every person who does any of the following is guilty of an offence and, on conviction, is liable to a fine of not more than \$10 million or to imprisonment for a term of not more than five years less a day, or to both:

1. Contravenes capital markets law.
2. Fails to comply with a demand made under section 154 without lawful excuse.

3. Fails to comply with an order made under any of sections 155 to 162 without lawful excuse.

Exception

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

Order to pay compensation, etc.

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

1. An order that the person compensate or make restitution to another person.
2. An order that the person pay to the Commission any amount obtained, or the amount of any payment or loss avoided, directly or indirectly as a result of the offence.

Enforcement of order to pay

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

Postjudgment interest

(5) Section 129 of the *Courts of Justice Act* applies in respect of an order filed under subsection (4) and, for that purpose, the date of filing is deemed to be the date of the order.

Application for payment from disgorged amount

(6) Subsections 120 (3) to (11) apply, with necessary modifications, with respect to any amount received by the Commission under an order described in paragraph 2 of subsection (3).

Limitation

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

Civil remedies protected

(8) A civil remedy for an act or omission is not affected by reason only that an order described in subsection (3) has been made in respect of that act or omission.

Liability of directors, officers, employees, agents

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

Liability of investment fund managers

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

Offences re: actions of employees, agents

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

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

Increased fines for specified contraventions

174. (1) Despite the fine provided for in subsection 171 (1), a person convicted of an offence for a contravention of any of sections 97 to 103, or for a contravention of section 114 in relation to a contravention of any of sections 97 to 103, is liable to a fine that is not less than "A" and not more than "B" where,

- A is the amount of the profit made or loss avoided by the person as a result of the contravention, and
- B is the greater of \$10 million and the amount equal to triple the profit made or loss avoided by all persons as a result of the contravention.

Exception

(2) If it is not possible to determine the profit made or loss avoided, subsection (1) does not apply and the fine referred to in subsection 171 (1) applies.

Calculating profit made or loss avoided

(3) For the purposes of subsection (1), the amount of the profit made or loss avoided with respect to a contravention of any of sections 97 to 103 must be calculated in accordance with the rules.

Exception

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

Procedural matters

Consent of Chief Regulator

175. (1) No proceeding for an offence under this Act shall be commenced except with the consent of the Chief Regulator.

Trial by provincial judge

(2) The Chief Regulator or an agent for the Chief Regulator may, by notice to the clerk of the court having jurisdiction in respect of an offence under this Act, require that a provincial judge preside over the proceeding.

Information containing more than one offence

(3) An information in respect of any contravention of this Act may be for one or more offences, and no information, summons, warrant, conviction or other proceeding in any prosecution is objectionable or insufficient by reason of the fact that it relates to two or more offences.

PART XII CIVIL LIABILITY

Definitions

176. In this Part

“conversion”

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

“expert”

“expert” means a person whose profession gives authority to a statement made in a professional capacity by the person, including an accountant, actuary, appraiser, auditor, engineer, financial analyst, geologist or lawyer but does not include a credit rating organization designated under section 19;

“influential person”

“influential person” means, with respect to an issuer, a control person, a promoter, an insider who is not a director or officer of the issuer or, if the issuer is an investment fund, an investment funds manager;

“underlying security”

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

Actions relating to prospectus or prescribed offering document

177. (1) If, during the period of distribution, a person purchases securities offered by a prospectus or a prescribed offering document that contains a misrepresentation, that person has, without regard to whether the person relied on the misrepresentation, either a right of,

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

Depreciation resulting from the misrepresentation

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

Liability of underwriter

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

Amount recoverable

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

Joint and several liability

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

Contributions

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

Actions relating to prospectus or prescribed offering document — after conversion, etc.

Definition

178. (1) In this section,

“original purchaser” means a person who purchased the first security offered by a prospectus or prescribed offering document during the period of distribution.

Actions relating to prospectus or prescribed offering document

(2) If a prospectus or prescribed offering document is filed to distribute a security that is convertible into, or that carries the right of the holder to purchase or otherwise acquire or the right of the issuer to cause the purchase or acquisition of, a security of the same issuer, and if the prospectus or prescribed offering document contains a misrepresentation at the time of purchase of the first security, an original purchaser who purchases, acquires or automatically acquires the second security under the terms of the security purchased under the prospectus or prescribed offering document has, without regard to whether the person relied on the misrepresentation, either a right of,

(a) action for damages against,

- (i) the issuer or selling security holder on whose behalf the distribution of the first security is made,
- (ii) every underwriter of the securities that is in a contractual relationship in respect of the securities with a person referred to in subclause (i),
- (iii) every person who, at the time the prospectus or the prescribed offering document was filed, was a director of the issuer,
- (iv) every person who, at the time the prospectus or the prescribed offering document was filed, was a promoter of the issuer,

- (v) such other influential persons with respect to the issuer as may be prescribed, in such circumstances as may be prescribed,
 - (vi) every person whose consent to disclosure of information in the prospectus or the prescribed offering document has been filed but only with respect to reports, statements or opinions that have been made by the person, and
 - (vii) every person who signed the prospectus or the prescribed offering document; or
- (b) rescission against any of the following persons who sold the first security to the purchaser:
- (i) the issuer or selling security holder on whose behalf the distribution is made, or
 - (ii) the underwriter of the securities.

Rescission

(3) For the purposes of clause (2) (b), the right of rescission includes the right to rescind the transaction under which the person acquired the first security.

Depreciation resulting from the misrepresentation

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

Liability of underwriter

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

Amount recoverable

(6) The amount recoverable in an action under this section must not exceed the price at which the first securities were offered under the prospectus or the prescribed offering document, plus any additional amount that the original purchaser was required to pay for the second securities.

Joint and several liability

(7) Subject to subsections (5) and (8), each person liable in an action under this section is jointly and severally liable with every other person so liable.

Contributions

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

Actions relating to prospectus or prescribed offering document — prescribed converting securities

179. (1) If a prospectus or prescribed offering document is filed for the purpose of the distribution of an underlying security related to the conversion of a prescribed converting security, and if, at any time during the period of distribution of the underlying security, the prospectus or prescribed offering document contains a misrepresentation, a person that acquired an underlying security as a result of the conversion has, without regard to whether the person relied on the misrepresentation, either a right of,

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

- (iii) the underwriter of the prescribed converting security or the underlying security.

Rescission

(2) For the purposes of clause (1) (b), the right of rescission includes the right to rescind the transaction under which the person acquired the prescribed converting security.

Amount recoverable

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

Joint and several liability

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

Contributions

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

No liability — prospectus or prescribed offering document

180. (1) A person is not liable in an action under section 177, 178 or 179 if the person proves that the purchaser purchased the security or converted the prescribed converting security with knowledge of the misrepresentation.

No liability — other circumstances

(2) A person, other than the issuer or selling security holder, is not liable in an action under section 177, 178 or 179 if the person proves that,

- (a) the prospectus or the prescribed offering document was filed without the person's knowledge or consent and that, on becoming aware of its filing, the person advised the Chief Regulator and gave reasonable general notice that it was so filed;
- (b) after the issuance of a receipt for the prospectus or the prescribed offering document and before the purchase of the security or conversion of the prescribed converting security, on becoming aware of any misrepresentation in the prospectus or the prescribed offering document, the person withdrew the person's consent to the filing of the prospectus or the prescribed offering document, and advised the Chief Regulator and gave reasonable general notice of the withdrawal and the reason for it;
- (c) with respect to any part of the prospectus or the prescribed offering document purporting to be made on an expert's authority or purporting to be a copy of or extract

from an expert's report, statement or opinion, the person had no reasonable grounds to believe and did not believe that,

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

Liability — purported authority of expert

(3) A person, other than the issuer or selling security holder, is not liable in an action under section 177 or 178 with respect to any part of the prospectus or the prescribed offering document purporting to be made on the person's own authority as an expert or purporting to be a copy of or extract from the person's own report, statement or opinion as an expert if the person proves that, after conducting a reasonable investigation, the person had no reasonable grounds to believe and did not believe that there was a misrepresentation.

Liability — no purported authority of expert

(4) A person, other than the issuer or selling security holder, is not liable in an action under section 177, 178 or 179 with respect to any part of the prospectus or the prescribed offering document not purporting to be made on an expert's authority and not purporting to be a copy of

or extract from an expert's report, statement or opinion if the person proves that, after conducting a reasonable investigation, the person had no reasonable grounds to believe and did not believe that there was a misrepresentation.

Actions relating to take-over or issuer bid circular

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

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

Actions relating to other circulars

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

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

Depreciation resulting from the misrepresentation

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

Joint and several liability

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

Contributions

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

Deemed issuer bid circular

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

No liability — circular

182. (1) A person is not liable in an action under section 181 if the person proves that the security holder had knowledge of the misrepresentation.

No liability — other circumstances

(2) A person, other than the offeror, is not liable in an action under section 181 if the person proves that,

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

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

Liability — purported authority of expert

(3) A person, other than the offeror, is not liable in an action under section 181 with respect to any part of the circular or the notice purporting to be made on the person's own authority as an expert or purporting to be a copy of or extract from the person's own report, statement or opinion as an expert if the person proves that, after conducting a reasonable investigation, the person had no reasonable grounds to believe and did not believe that there was a misrepresentation.

Liability — no purported authority of expert

(4) A person, other than the offeror, is not liable in an action under section 181 with respect to any part of the circular or the notice not purporting to be made on an expert's authority and not purporting to be a copy of or extract from an expert's report, statement or opinion if the person proves that, after conducting a reasonable investigation, the person had no reasonable grounds to believe and did not believe that there was a misrepresentation.

Actions relating to prescribed disclosure documents

Re: offering memorandum, etc.

183. (1) If a person purchases securities offered by a document that is a prescribed disclosure document for the purposes of this subsection that contains a misrepresentation, that

person has, without regard to whether the person relied on the misrepresentation, either a right of,

- (a) action for damages against,
 - (i) the issuer,
 - (ii) every person who, on the date of the prescribed disclosure document, was a director of the issuer,
 - (iii) every person who, on the date of the prescribed disclosure document, was a promoter of the issuer, and
 - (iv) such other influential persons with respect to the issuer as may be prescribed, in such circumstances as may be prescribed,
 - (v) such other persons as may be prescribed, in such circumstances as may be prescribed, if the person is an expert and whose consent to disclosure of the information in the prescribed disclosure document has been filed but only with respect to reports, statements or opinions that have been made by the person, and
 - (vi) every person who signed the prescribed disclosure document; or
- (b) rescission against the issuer.

Re: certain other documents

(2) If a person purchases securities offered by a document that is a prescribed disclosure document for the purposes of this subsection that contains a misrepresentation, that person has, without regard to whether the person relied on the misrepresentation, either a right of,

- (a) action for damages against the issuer or selling security holder on whose behalf the distribution is made; or
- (b) rescission against the issuer or selling security holder on whose behalf the distribution is made.

Depreciation resulting from the misrepresentation

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

Amount recoverable

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

Joint and several liability

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

Contributions

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

Exception

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

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

No liability — prescribed disclosure document

184. (1) A person is not liable in an action under section 183 if the person proves that the purchaser purchased the securities with knowledge of the misrepresentation.

No liability — other circumstances

(2) A person, other than the issuer or selling security holder, is not liable in an action under section 183 if the person proves that,

- (a) the prescribed disclosure document was sent to the purchaser without the person's knowledge or consent and that, on becoming aware of that fact, the person gave notice to the Chief Regulator and the issuer that it was so sent;
- (b) after the sending of the prescribed disclosure document and before the purchase of the securities, on becoming aware of the misrepresentation in the prescribed disclosure document, the person withdrew the person's consent to the sending of the prescribed disclosure document and gave notice to the Chief Regulator and the issuer of the withdrawal and the reason for it; or

- (c) with respect to any part of the prescribed disclosure document purporting to be made on the authority of an expert or purporting to be a copy of or extract from an expert's report, statement or opinion, the person had no reasonable grounds to believe and did not believe that,
 - (i) there had been a misrepresentation,
 - (ii) the part of the prescribed disclosure document did not fairly represent the expert's report, statement or opinion, or
 - (iii) the part of the prescribed disclosure document was not a fair copy of or extract from the expert's report, statement or opinion.

Liability — no purported authority of expert

(3) A person, other than the issuer or selling security holder, is not liable in an action under section 183 with respect to any part of the prescribed disclosure document not purporting to be made on an expert's authority and not purporting to be a copy of or extract from an expert's report, statement or opinion if the person proves that, after conducting a reasonable investigation, the person had no reasonable grounds to believe and did not believe that there was a misrepresentation.

No derogation — rights of action

185. (1) The rights of action conferred under sections 177, 178, 179, 181 and 183 are in addition to, and without derogation from, any other right that the plaintiff may have at law.

No derogation — defences

(2) The defences provided under sections 180, 182 and 184 are in addition to, and without derogation from, any other defences that the defendant may have at law.

Records incorporated by reference

186. For the purposes of sections 177, 178, 179, 181 and 183, a misrepresentation contained in a record that is incorporated by reference in, or deemed incorporated into, a prospectus, prescribed offering document, prescribed disclosure document, take-over bid circular, issuer bid circular or notice of change or variation to either of those circulars is deemed to be contained in the prospectus, document, circular or notice.

Defence — forward-looking information

187. (1) A person is not liable in an action under section 177, 178, 179, 181 or 183 for a misrepresentation in forward-looking information if the person proves that,

- (a) the forward-looking information was accompanied by,
 - (i) reasonable cautionary language identifying the forward-looking information as such, and identifying material factors that could cause actual results to

differ materially from a conclusion, forecast or projection set out in the forward-looking information, and

- (ii) a statement of the material factors or assumptions that were applied in drawing a conclusion or making a forecast or projection set out in the forward-looking information; and
- (b) the person had a reasonable basis for drawing the conclusions or making the forecasts and projections set out in the forward-looking information.

Exception

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

Standard of reasonableness

188. For greater certainty, in determining what constitutes reasonable investigation or reasonable grounds for belief for the purposes of sections 180, 182 and 184, the standard of reasonableness is that required of a prudent person in the circumstances of the particular case.

Liability of trader, offeror or issuer

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

1. A purchaser of the security, if the prospectus, prescribed offering document or amendment for the security was not filed as required by section 45.
2. A purchaser of the security to whom a prospectus, prescribed offering document or amendment was not sent as required by section 58.
3. A person to whom a take-over bid circular, issuer bid circular or notice of change or variation to either of them was not sent as required under capital markets law.
4. A purchaser of a security to whom a prescribed disclosure document or amendment was not sent or made available as required by the rules.

Action for damages — insider trading, etc.

190. (1) A person who contravenes section 102 is liable for damages to a person who purchases or sells a security of the issuer referred to in that section — or enters into a transaction involving a related financial instrument — during the period beginning at the time when the contravention occurred and ending at the time when the material change or material fact is generally disclosed.

Amount of damages

(2) The amount of damages payable to the plaintiff under this section is equal to the amount of the loss incurred by the plaintiff.

Loss incurred by plaintiff

(3) For the purposes of subsection (2), the loss incurred by the plaintiff must not include an amount that the defendant proves is attributable to a change in the market price or value of the security or of the related financial instrument, as the case may be, that is unrelated to the contravention.

Joint and several liability

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

Contribution

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

Liability limit

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

$$A - B - C$$

in which,

- A is triple the amount of the profit made or loss avoided by all persons as a result of the contravention,
- B is the aggregate of all damages assessed after appeals, if any, against the person in all other actions brought under this section and under comparable legislation in other provinces and territories in Canada with respect to the same contravention, and
- C is any amount paid in settlement of any of those actions.

Payment of benefit — insider trading, etc.

191. (1) An insider, affiliate or associate of an issuer who contravenes section 102 shall pay to the issuer an amount equal to the benefit or advantage received or receivable by the insider, affiliate or associate and all other persons as a result of the contravention.

Payment of benefit — front-running

(2) A person who contravenes section 103 shall pay to the investor, as defined in subsection 103 (1), an amount equal to the benefit or advantage received or receivable by the person and all other persons as a result of the contravention.

Payment of benefit — improper use of information, investment funds

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

- (a) the portfolio securities of the investment fund include securities of that issuer; and
- (b) the person,
 - (i) has access to information concerning the investment program of the investment fund, and
 - (ii) uses that information for the person's direct benefit or advantage to purchase or sell securities of that issuer for the person's own account.

Payment of benefit — improper use of information, discretionary investment portfolios

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

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

Action on behalf of issuer — insider trading, etc.

192. (1) The Superior Court of Justice may, on application, make an order, on any terms as to security for costs or otherwise that it considers appropriate, requiring the Chief Regulator or authorizing the applicant to commence or continue an action on behalf of the issuer in order to enforce the obligation created by subsection 191 (1).

Application

- (2) An application under subsection (1) may be made by,
- (a) the Chief Regulator; or
 - (b) a person who was, at the time of the contravention in question, or is, at the time of the application, a security holder of the issuer.

Exception

- (3) The court must not make the order unless it is satisfied that,
- (a) the applicant has reasonable grounds to believe that the issuer has a cause of action to enforce the obligation created by subsection 191 (1); and
 - (b) the issuer,
 - (i) has not commenced such an action within 60 days after the day on which it received a written request from the applicant to do so, or
 - (ii) has not diligently pursued such an action commenced by it.

Action on behalf of investor — front-running

193. (1) The Superior Court of Justice may, on application, make an order, on any terms that it considers appropriate including terms as to security for costs, requiring the Chief Regulator or authorizing the applicant to commence or continue an action on behalf of the investor, as defined in subsection 103 (1), in order to enforce the obligation created by subsection 191 (2).

Application

- (2) An application under subsection (1) may be made by,
- (a) the Chief Regulator; or
 - (b) a person who was, at the time of the contravention in question, or is, at the time of the application, a security holder of the investor.

Exception

- (3) The court must not make the order unless it is satisfied that,
- (a) the applicant has reasonable grounds to believe that the investor has a cause of action to enforce the obligation created by subsection 191 (2); and
 - (b) the investor,

- (i) has not commenced such an action within 60 days after the day on which the investor received a written request from the applicant to do so, or
- (ii) has not diligently pursued such an action commenced by the investor.

Action on behalf of investment fund — improper use of information

194. (1) The Superior Court of Justice may, on application, make an order, on any terms that it considers appropriate including terms as to security for costs, requiring the Chief Regulator or authorizing the applicant to commence or continue an action on behalf of the investment fund in order to enforce the obligation created by subsection 191 (3).

Application

- (2) An application under subsection (1) may be made by,
 - (a) the Chief Regulator; or
 - (b) a person who was, at the time of the contravention in question, or is, at the time of the application, a security holder of the investment fund.

Exception

- (3) The court must not make the order unless it is satisfied that,
 - (a) the applicant has reasonable grounds to believe that the investment fund has a cause of action to enforce the obligation created by subsection 191 (3); and
 - (b) the investment fund,
 - (i) has not commenced such an action within 60 days after the day on which the investment fund received a written request from the applicant to do so, or
 - (ii) has not diligently pursued such an action commenced by the investment fund.

Notice of application

195. Notice of an application under section 192, 193 or 194 must be sent to the Chief Regulator and to the issuer, investor or investment fund, as the case may be, and each of them may appear and be heard.

Order to cooperate

196. An order made under section 192, 193 or 194 requiring or authorizing the Chief Regulator to commence or continue an action must provide that the issuer, investor or investment fund, as the case may be, shall,

- (a) cooperate fully with the Chief Regulator in the commencement or continuation of the action; and

- (b) make available to the Chief Regulator all records and information that are relevant to the action and known to, or reasonably ascertainable by, the issuer, investor or investment fund.

Orders as to costs

Costs of Chief Regulator

197. (1) If an action under section 192, 193 or 194 is commenced or continued by the Chief Regulator, the Superior Court of Justice must order the issuer, investor or investment fund, as the case may be, to pay all costs properly incurred by the Chief Regulator in commencing or continuing the action.

Costs of security holder

(2) If an action under section 192, 193 or 194 is commenced or continued by a security holder of the issuer, investor or investment fund, as the case may be, the court may order the issuer, investor or investment fund to pay all costs properly incurred by the security holder in commencing or continuing the action, if it is satisfied that,

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

Determination of best interests

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

Rescission — registered dealer

Intending to act as principal

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

Acting as principal

(2) If, contrary to the rules, a registered dealer does not disclose to a person with whom it effects a purchase of or trade in a security that it has acted as principal in respect of the purchase or trade, the person may rescind the contract effecting the purchase or trade by sending notice of

the rescission to the registered dealer within seven days after the day on which the written confirmation of the contract is delivered to the person.

Exception

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

Onus

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

Time limit

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

Rescission of purchase — prospectus or prescribed offering document

199. (1) In the prescribed circumstances and subject to subsection (2), a purchaser of a security offered in a distribution to which subsection 45 (1) applies may rescind the agreement of purchase and sale by sending, in accordance with the rules, a notice to the person from whom the security was purchased.

Exceptions

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

Onus

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

Rescission of purchase — continuous distribution

200. (1) A purchaser of a security offered in a continuous distribution to which subsection 45 (1) applies may rescind the purchase in accordance with the rules if the purchase is made after the prescribed period for the distribution has expired.

Sales charges

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

Rescission of purchase — mutual fund security

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

Amount recoverable

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

Sales charges

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

Rescission of purchase — prescribed disclosure document

202. In prescribed circumstances, a purchaser of a security to whom a prescribed disclosure document is required to be sent may rescind the agreement of purchase and sale by sending, in accordance with the rules, a notice to the person from whom the security was purchased.

Withdrawal from scholarship plan, etc.

203. (1) A purchaser of an interest or right in a scholarship plan or educational plan, or a subscriber to such a plan, may withdraw from the plan by sending, in accordance with the rules, a notice to the issuer of the plan or to the person from whom the interest, right or subscription was purchased.

Amount recoverable

(2) If the purchaser or subscriber withdraws from the plan, the issuer of the plan shall refund to the purchaser or subscriber the amount determined in accordance with the rules.

Class proceeding

204. (1) In a class proceeding to enforce a right or obligation created by this Part, the person who brings an application or a motion to certify the class, or who files any material with the court, shall send a copy of the application, notice of motion or material, as the case may be, to the Chief Regulator when filed.

Notice of date — application

(2) A representative plaintiff shall send the Chief Regulator notice of the day on which the application or motion for certification is scheduled to be heard at the same time that notice of the day is given to each defendant.

Notice of appeal — certification

(3) If a party appeals the court's decision on whether a class is certified,

- (a) each party to the appeal shall send a copy of any materials filed with the court hearing the appeal to the Chief Regulator at the same time that they are filed with the court; and
- (b) the appellant shall send the Chief Regulator notice of the day on which the appeal is scheduled to be heard at the same time that notice of the day is given to each respondent.

Notice of date — trial

205. (1) A plaintiff in an action to enforce a right or obligation created by this Part shall send the Chief Regulator,

- (a) a copy of the statement of claim or other originating document when filed; and
- (b) a notice of the day on which the trial of the action is scheduled to proceed at the same time that notice of the day is given to each defendant.

Notice of appeal — trial decision

(2) If a party appeals the court's decision after the trial of the action,

- (a) each party to the appeal shall send a copy of any materials filed with the court hearing the appeal to the Chief Regulator at the same time that they are filed with the court; and
- (b) the appellant shall send the Chief Regulator notice of the day on which the appeal is scheduled to be heard at the same time that notice of the day is given to each respondent.

Notice re discontinuation, etc.

(3) If an action to enforce a right or obligation created by this Part is discontinued, settled or abandoned, the plaintiff shall promptly send notice to the Chief Regulator, including a copy of any order made by the court in connection with the discontinuation, settlement or abandonment.

Intervention by Chief Regulator

206. The Chief Regulator may intervene in a proceeding to enforce a right or obligation created by this Part, in an application or motion to certify a class and in any appeal from the court's decision at the trial of the action or from a decision on whether a class is certified.

Limitation period

207. No action to enforce a right or obligation created by this Part is to be commenced,

- (a) in the case of an action for rescission, later than six months after the transaction that gave rise to the cause of action; or

- (b) in the case of any other action, later than the earlier of,
 - (i) six months after the day on which the plaintiff first had knowledge of the facts giving rise to the cause of action, and
 - (ii) three years after the transaction, contravention or alleged contravention, as the case may be, that gave rise to the cause of action.

PART XIII CIVIL LIABILITY FOR SECONDARY MARKET DISCLOSURE

INTERPRETATION AND APPLICATION

Definitions

208. The following definitions apply in this Part:

“document”

“document” means a written communication, including, for greater certainty, an electronic one, that is,

- (a) filed or required to be filed with the Chief Regulator,
- (b) filed or required to be filed with a government or a government agency under applicable securities or corporate law or with an exchange under its by-laws or regulatory instruments, or
- (c) any other communication, the content of which would reasonably be expected to affect the market price or value of a security of a responsible issuer;

“expert”

“expert” means a person whose profession gives authority to a statement made in a professional capacity by the person, including an accountant, actuary, appraiser, auditor, engineer, financial analyst, geologist or lawyer. It does not include a credit rating organization designated under section 19;

“failure to make timely disclosure”

“failure to make timely disclosure” means a failure to disclose a material change in the manner and at the time required under this Act;

“influential person”

“influential person” means, with respect to a responsible issuer, a control person, a promoter, an insider who is not a director or officer of the responsible issuer or, if the responsible issuer is an investment fund, an investment fund manager;

“public oral statement”

“public oral statement” means an oral statement made in circumstances in which a reasonable person would believe that information contained in it will become generally disclosed;

“release”

“release” means, with reference to a document, to file the document with the Chief Regulator or with an exchange or to otherwise make it available to the public;

“responsible issuer”

“responsible issuer” means,

- (a) a reporting issuer, or
- (b) any other issuer who has a real and substantial connection to Ontario and whose securities are publicly traded;

“responsible issuer’s security”

“responsible issuer’s security” includes a security,

- (a) the market price or value of which, or the payment obligations under which, are derived from or based on a responsible issuer’s security, and
- (b) that is created by a person on the responsible issuer’s behalf or that is guaranteed by the responsible issuer.

Non-application

209. This Part does not apply to,

- (a) the purchase of a security offered by a prospectus or a prescribed offering document during the period of distribution;
- (b) the acquisition of a responsible issuer’s security on the basis of a distribution that is exempt from section 45, except as may be prescribed;
- (c) the acquisition or disposition of a responsible issuer’s security in connection with a take-over bid or issuer bid, except as may be prescribed; or
- (d) any other transaction or class of transactions that may be prescribed.

CAUSES OF ACTION AND DEFENCES

Documents released by responsible issuer

210. If a responsible issuer or a person with actual, implied or apparent authority to act on its behalf releases a document that contains a misrepresentation, a person who acquires or

disposes of the responsible issuer's security during the period between the time when the document was released and the time when the misrepresentation contained in it was publicly corrected has, without regard to whether the person relied on the misrepresentation, a right of action for damages against each of the following:

1. The responsible issuer.
2. Each director of the responsible issuer at the time the document was released.
3. Each officer of the responsible issuer who authorized, permitted or acquiesced in the document's release.
4. Each influential person, and each director and officer of an influential person, who knowingly influenced,
 - i. the responsible issuer or any person acting on its behalf to release the document, or
 - ii. a director or officer of the responsible issuer to authorize, permit or acquiesce in its release.
5. An expert if,
 - i. the misrepresentation is also contained in a report, statement or opinion made by the expert,
 - ii. the document includes, summarizes or quotes from the expert's report, statement or opinion, and
 - iii. in the case where the document was released by a person other than the expert, the expert consented in writing to the use of the expert's report, statement or opinion in the document.

Public oral statements by responsible issuer

211. If a person with actual, implied or apparent authority to speak on behalf of a responsible issuer makes a public oral statement that relates to the responsible issuer's business or affairs and that contains a misrepresentation, a person who acquires or disposes of the responsible issuer's security during the period between the time when the statement was made and the time when the misrepresentation contained in it was publicly corrected has, without regard to whether the person relied on the misrepresentation, a right of action for damages against each of the following:

1. The responsible issuer.

2. The person who made the statement.
3. Each director and officer of the responsible issuer who authorized, permitted or acquiesced in the making of the statement.
4. Each influential person, and each director and officer of an influential person, who knowingly influenced,
 - i. the person who made the statement to make it, or
 - ii. a director or officer of the responsible issuer to authorize, permit or acquiesce in the making of the statement.
5. An expert if,
 - i. the misrepresentation is also contained in a report, statement or opinion made by the expert,
 - ii. the person making the public oral statement includes, summarizes or quotes from the expert's report, statement or opinion, and
 - iii. in the case where the public oral statement was made by a person other than the expert, the expert consented in writing to the use of the expert's report, statement or opinion in the public oral statement.

Influential persons

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

1. The responsible issuer, if a director or officer of the responsible issuer — or, if the responsible issuer is an investment fund, the investment fund manager — authorized, permitted or acquiesced in the document's release or the making of the statement.
2. The person who made the statement.
3. Each director and officer of the responsible issuer who authorized, permitted or acquiesced in the document's release or the making of the statement.

4. The influential person.
5. Each director and officer of the influential person who authorized, permitted or acquiesced in the document's release or the making of the statement.
6. An expert if,
 - i. the misrepresentation is also contained in a report, statement or opinion made by the expert,
 - ii. the document or public oral statement includes, summarizes or quotes from the expert's report, statement or opinion, and
 - iii. in the case where the document was released or the public oral statement was made by a person other than the expert, the expert consented in writing to the use of the expert's report, statement or opinion in the document or public oral statement.

Failure to make timely disclosure

213. If a responsible issuer fails to make timely disclosure, a person who acquires or disposes of the responsible issuer's security between the time when the material change was required to be disclosed and the subsequent disclosure of the material change has, without regard to whether the person relied on the responsible issuer having complied with its disclosure requirements, a right of action for damages against each of the following:

1. The responsible issuer.
2. Each director and officer of the responsible issuer who authorized, permitted or acquiesced in the failure to make the disclosure.
3. Each influential person, and each director and officer of an influential person, who knowingly influenced,
 - i. the responsible issuer or any person acting on its behalf in the failure to make the disclosure as required, or
 - ii. a director or officer of the responsible issuer to authorize, permit or acquiesce in the failure to make the disclosure as required.

Multiple roles

214. In an action under any of sections 210 to 213, a person who is a director or officer of an influential person is not liable in that capacity if the person is liable as a director or officer of the responsible issuer.

Multiple misrepresentations

215. In an action under any of sections 210 to 213,

- (a) multiple misrepresentations having common subject matter or content may, in the discretion of the court, be treated as a single misrepresentation; and
- (b) multiple instances of failure to make timely disclosure of a material change or material changes concerning common subject matter may, in the discretion of the court, be treated as a single failure to make such disclosure.

No implied or actual authority

216. In an action under section 211 or 212, if the person who made the public oral statement had apparent authority, but not implied or actual authority, to speak on behalf of the responsible issuer, no other person is liable with respect to any of the responsible issuer's securities that were acquired or disposed of before that other person became, or should reasonably have become, aware of the misrepresentation.

Conditions for liability — certain misrepresentations

217. (1) Subject to subsection (2), a plaintiff shall prove, to establish liability in an action under any of sections 210 to 212 in relation to a misrepresentation in a document or in a public oral statement, that the person against whom the action is brought,

- (a) knew, at the time that the document was released or the statement was made, that the document or statement contained the misrepresentation;
- (b) deliberately avoided, at or before the time that the document was released or the statement was made, acquiring knowledge that the document or statement contained the misrepresentation; or
- (c) committed, through action or failure to act, gross misconduct in connection with the release of the document or the making of the statement that contained the misrepresentation.

Exception — expert's liability and core documents

(2) A plaintiff is not required to prove any of the matters referred to in clauses (1) (a) to (c) with respect to,

- (a) the liability of an expert;
- (b) the liability for a misrepresentation in a document, if the document is a prospectus, a prescribed offering document, a take-over bid circular, an issuer bid circular, a directors' circular, a notice of change or variation in respect of any of those circulars, a rights offering circular, management's discussion and analysis, an annual information form, an information circular, an annual financial statement or an interim

financial report of a responsible issuer, or if the document is any other prescribed disclosure document; or

- (c) the liability of the responsible issuer or any of its officers — or, if the responsible issuer is an investment fund, of the investment fund manager or an officer of the investment fund manager — for a misrepresentation in a material change report required to be filed under clause 65 (b) or the rules.

Definition of “management’s discussion and analysis”

- (3) In clause (2) (b),

“management’s discussion and analysis” means the portion of an annual information form, annual report or other document that contains management’s discussion and analysis of a responsible issuer’s financial condition and performance as required under capital markets law.

Conditions for liability — failure to make timely disclosure

218. (1) Subject to subsection (2), a plaintiff must prove, to establish liability in an action under section 213 in relation to a failure to make timely disclosure, that the person against whom the action is brought,

- (a) knew, at the time that the failure first occurred, of the change and that it was a material change;
- (b) deliberately avoided, at the time that or before the failure first occurred, acquiring knowledge of the change or knowledge that the change was a material change; or
- (c) committed, through action or failure to act, gross misconduct in connection with the failure.

Exception

(2) A plaintiff is not required to prove any of the matters referred to in subsection (1) with respect to the liability of a responsible issuer, an investment fund manager or an officer of either of them.

No liability for misrepresentation — reasonable investigation

219. (1) A person is not liable in an action under any of sections 210 to 212 in relation to a misrepresentation in a document or in a public oral statement if the person proves that,

- (a) before the release of the document or the making of the statement containing the misrepresentation, the person conducted or caused to be conducted a reasonable investigation; and

- (b) at the time of the release of the document or the making of the statement, the person had no reasonable grounds to believe and did not believe that the document or statement contained the misrepresentation.

No liability for misrepresentation — forward-looking information

(2) A person is not liable in an action under any of sections 210 to 212 for a misrepresentation in forward-looking information contained in the document or public oral statement if the person proves that,

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

Elements — forward-looking information

(3) A person satisfies the requirements of clause (2) (a) with respect to a public oral statement containing forward-looking information if the person proves that the person who made the statement,

- (a) made a cautionary statement that the oral statement contains forward-looking information;
- (b) stated that,
 - (i) the actual results could differ materially from a conclusion, forecast or projection in the forward-looking information, and
 - (ii) certain material factors or assumptions were applied in drawing a conclusion or making a forecast or projection set out in the forward-looking information; and
- (c) stated that additional information about the following factors is contained in a readily available document and has identified that document:

- (i) the material factors that could cause actual results to differ materially from the conclusion, forecast or projection in the forward-looking information, and
- (ii) the material factors or assumptions that were applied in drawing a conclusion or making a forecast or projection set out in the forward-looking information.

Certain documents presumed readily available

(4) For the purposes of clause (3) (c), a document filed with the Chief Regulator or otherwise generally disclosed is presumed to be readily available.

Financial statements and initial public offerings

(5) Subsection (2) does not relieve a person of liability respecting forward-looking information in a financial statement or financial report required to be filed under capital markets law or in a document released in connection with an initial public offering.

No liability — person other than expert

(6) A person, other than an expert, is not liable in an action under any of sections 210 to 212 with respect to any part of a document or public oral statement that includes, summarizes or quotes from a report, statement or opinion made by an expert from whom the responsible issuer obtained the written consent for the use of the report, statement or opinion, if the person proves that,

- (a) the person did not know and had no reasonable grounds to believe that there had been a misrepresentation in the part of the document or public oral statement made on the authority of the expert; and
- (b) the part of the document or public oral statement fairly represented the expert's report, statement or opinion.

Exception

(7) Subsection (6) does not apply to a document or public oral statement if the expert's consent referred to in that subsection is withdrawn in writing before the document is released or the public oral statement is made.

No liability — expert

(8) An expert is not liable in an action under any of sections 210 to 212 with respect to any part of a document or public oral statement that includes, summarizes or quotes from a report, statement or opinion made by the expert if the expert proves that the expert withdrew in writing, before the document was released or the public oral statement was made, the written consent that the expert had previously provided.

No liability — unanticipated release

(9) A person is not liable in an action under any of sections 210 to 212 in respect of a misrepresentation in a document, other than a document required to be filed with the Chief

Regulator, if the person proves that, at the time of the document's release, the person did not know and had no reasonable grounds to believe that the document would be released.

No liability — other circumstances

(10) A person is not liable in an action under any of sections 210 to 212 for a misrepresentation in a document or a public oral statement if the person proves all of the following:

1. The misrepresentation was also contained in a document filed by or on behalf of another person, other than the responsible issuer, with the Chief Regulator or an exchange and was not corrected in another document filed by or on behalf of that other person with the Chief Regulator or exchange before the release of the document or statement made by or on behalf of the responsible issuer.
2. The document or statement contained a reference identifying the document that was the source of the misrepresentation.
3. When the document was released or the statement was made, the person did not know and had no reasonable grounds to believe that the document or statement contained a misrepresentation.

No liability for failure to make timely disclosure — confidential filing

220. (1) A person is not liable in an action under section 213 in respect of a failure to make timely disclosure if,

- (a) the person proves that the material change was disclosed by the responsible issuer in a report filed on a confidential basis with the Chief Regulator under clause 65 (b) or the rules;
- (b) the responsible issuer had a reasonable basis for making the disclosure on a confidential basis;
- (c) in the case where the information contained in the report filed on a confidential basis remains material, disclosure of the material change was generally disclosed immediately after the basis for confidentiality ceased to exist;
- (d) the person or responsible issuer did not release a document or make a public oral statement that, due to the undisclosed material change, contained a misrepresentation; and
- (e) in the case where the material change became generally disclosed in a manner other than the manner required under capital markets law, the responsible issuer immediately disclosed the material change in the manner required under capital markets law.

No liability — reasonable investigation

(2) A person is not liable in an action under section 213 in relation to a failure to make timely disclosure if the person proves that,

- (a) before the failure to make timely disclosure first occurred, the person conducted or caused to be conducted a reasonable investigation; and
- (b) the person had no reasonable grounds to believe and did not believe that the failure to make timely disclosure would occur.

Circumstances to be considered

221. In determining whether a person committed gross misconduct under clause 217 (1) (c) or 218 (1) (c) or whether an investigation referred to in clause 219 (1) (a) or 220 (2) (a) that is conducted or caused to be conducted by a person is reasonable, the court must consider all relevant circumstances, including,

- (a) the nature of the responsible issuer;
- (b) the knowledge, experience and function of the person;
- (c) the office held, if the person was an officer;
- (d) the presence or absence of another relationship with the responsible issuer, if the person was a director;
- (e) the existence, if any, and the nature of any compliance system designed to ensure that the responsible issuer meets its disclosure obligations;
- (f) the reasonableness of reliance by the person on the responsible issuer's disclosure compliance system and on the responsible issuer's officers and employees and others whose duties would ordinarily have given them knowledge of the relevant facts;
- (g) the period within which disclosure was required to be made;
- (h) in respect of an expert's report, statement or opinion, any professional standards applicable to the expert;
- (i) the extent to which the person knew, or should reasonably have known, the content and medium of dissemination of the document or public oral statement;
- (j) in the case of a misrepresentation, the role and responsibility of the person in the preparation and release of the document or the making of the public oral statement

containing the misrepresentation or in the ascertainment of the facts contained in that document or statement; and

- (k) in the case of a failure to make timely disclosure, the role and responsibility of the person involved in a decision not to disclose the material change.

No liability — plaintiff's knowledge

222. A person is not liable in an action under any of sections 210 to 213 in relation to a misrepresentation in a document or public oral statement or a failure to make timely disclosure if the person proves that the plaintiff acquired or disposed of the responsible issuer's security with knowledge that the document or statement contained the misrepresentation or with knowledge of the material change.

No liability — immediate notice

223. A person, other than the responsible issuer, is not liable in an action under any of sections 210 to 213 if the misrepresentation or failure to make timely disclosure was made without the person's knowledge or consent and if, after becoming aware of the misrepresentation before it was corrected or of the failure to make timely disclosure before it was disclosed in the manner required under capital markets law,

- (a) the person immediately notified the responsible issuer's directors or other persons acting in a similar capacity of the misrepresentation or the failure to make timely disclosure; and
- (b) if the responsible issuer did not correct the misrepresentation or subsequently disclose the material change in the manner required under capital markets law within two business days after the notification under clause (a), the person immediately notified the Chief Regulator in writing, unless the person was prohibited by law or by professional confidentiality rules, of the misrepresentation or the failure to make timely disclosure.

DAMAGES

Assessment of damages — acquisition of securities

224. (1) The following rules apply to the assessment of damages in favour of a person who acquired a responsible issuer's securities after a document was released or a public oral statement was made containing a misrepresentation or after a failure to make timely disclosure:

1. If the person subsequently disposed of any of the responsible issuer's securities on or before the 10th trading day after the public correction of the misrepresentation or the disclosure of the material change in the manner required under capital markets law, assessed damages for those securities are equal to the amount, calculated taking into account the result of hedging or other risk limitation transactions, that is determined by the formula,

$$C - D$$

where,

- C is the average price paid for those securities, including any commissions paid in respect of them, and
- D is the price received on the disposition of those securities, without deducting any commissions paid in respect of the disposition.

2. If the person subsequently disposed of any of the responsible issuer's securities after the 10th trading day following the public correction of the misrepresentation or the disclosure of the material change in the manner required under capital markets law, assessed damages for those securities are equal to the lesser of,
 - i. the amount, calculated taking into account the result of hedging or other risk limitation transactions, that is determined by the formula,

$$C - D$$

where,

- C is the average price paid for those securities, including any commissions paid in respect of them, and
 - D is the price received on the disposition of those securities, without deducting any commissions paid in respect of the disposition, and
- ii. the amount that is determined by the formula,

$$E \times (F - G)$$

where,

- E is the number of securities that the person disposed of,
- F is the average price per security paid for those securities, including any commissions paid in respect of their acquisition, determined on a per security basis, and
- G is,

- a. if the responsible issuer's securities trade on a published market, the trading price, calculated in accordance with the rules, of the responsible issuer's securities on the principal market for the 10 trading days after the public correction of the misrepresentation or the disclosure of the material change in the manner required under capital markets law, or
 - b. if there is no published market, the amount that the court considers just.
3. If the person has not disposed of any of the responsible issuer's securities, assessed damages for those securities are equal to the amount that is determined by the formula,

$$H \times (F - G)$$

where,

H is the number of securities that the person acquired,

F is the average price per security paid for those securities, including any commissions paid in respect of their acquisition, determined on a per security basis, and

G is,

- a. if the responsible issuer's securities trade on a published market, the trading price, calculated in accordance with the rules, of the responsible issuer's securities on the principal market for the 10 trading days after the public correction of the misrepresentation or the disclosure of the material change in the manner required under capital markets law, or
- b. if there is no published market, the amount that the court considers just.

Assessment — disposal of securities

(2) The following rules apply to the assessment of damages in favour of a person who disposed of a responsible issuer's securities after a document was released or a public oral statement was made containing a misrepresentation or after a failure to make timely disclosure:

1. If the person subsequently acquired any of the responsible issuer's securities, of the same class or series as those that the person disposed of, on or before the 10th trading day after the public correction of the misrepresentation or the disclosure of the

material change in the manner required under capital markets law, assessed damages for the securities the person disposed of are equal to the amount, calculated taking into account the result of hedging or other risk limitation transactions, that is determined by the formula,

$$J - L$$

where,

J is the price paid for the securities the person subsequently acquired, without including any commissions paid in respect of them, and

L is the average price received on the disposition of the securities the person disposed of, deducting any commissions paid in respect of the disposition.

2. If the person subsequently acquired any of the responsible issuer's securities, of the same class or series as those that the person disposed of, after the 10th trading day following the public correction of the misrepresentation or the disclosure of the material change in the manner required under capital markets law, assessed damages for the securities the person disposed of are equal to the lesser of,
 - i. the amount, calculated taking into account the result of hedging or other risk limitation transactions, that is determined by the formula,

$$K - L$$

where,

K is the price paid for the securities the person subsequently acquired, without including any commissions paid in respect of them, and

L is the average price received on the disposition of the securities the person disposed of, deducting any commissions paid in respect of the disposition, and

- ii. the amount that is determined by the formula,

$$M \times (N - P)$$

where,

M is the number of securities that the person disposed of,

N is,

- a. if the securities trade on a published market, the trading price, calculated in accordance with the rules, of the securities on the principal market for the 10 trading days after the public correction of the misrepresentation or the disclosure of the material change in the manner required under capital markets law, or
- b. if there is no published market, the amount that the court considers just, and

P is the average price per security received on the disposition of the securities the person disposed of, deducting any commissions paid in respect of the disposition determined on a per security basis.

3. If the person has not subsequently acquired securities of the same class or series as those that the person disposed of, assessed damages are equal to the amount that is determined by the formula,

$$M \times (N - P)$$

where,

M is the number of securities that the person disposed of,

N is,

- (i) if the securities trade on a published market, the trading price, calculated in accordance with the rules, of the securities on the principal market for the 10 trading days after the public correction of the misrepresentation or the disclosure of the material change in the manner required under capital markets law, or
- (ii) if there is no published market, the amount that the court considers just, and

P is the average price per security received on the disposition of the securities the person disposed of, deducting any commissions paid in respect of the disposition determined on a per security basis.

Exception

(3) For the purposes of subsections (1) and (2), assessed damages are not to include any amount that the defendant proves is attributable to a change in the market price of securities that is unrelated to the misrepresentation or the failure to make timely disclosure.

Definitions

(4) In this section,

“principal market”

“principal market” means, for a class or series of securities,

- (a) the published market in Canada on which the greatest volume of trading in securities of that class or series occurred during the 10 trading days before the day on which the misrepresentation was made or the failure to make timely disclosure first occurred, or
- (b) if securities of that class or series are not traded during those 10 trading days on a published market in Canada, the published market on which the greatest volume of trading in securities of that class or series occurred during the 10 trading days before the day on which the misrepresentation was made or the failure to make timely disclosure first occurred;

“trading day”

“trading day” means a day during which the principal market for a security is open for trading.

Proportionate liability

225. (1) Subject to section 226, each defendant found liable in an action under any of sections 210 to 213 is only liable for that portion of the aggregate amount of damages assessed in favour of the plaintiff that corresponds to that defendant’s responsibility for the damages, as determined by the court.

Exception

(2) Despite subsection (1), if, in an action referred to in that subsection in respect of a misrepresentation or a failure to make timely disclosure, a court determines that a particular defendant, other than the responsible issuer, authorized, permitted, acquiesced in or influenced the making of the misrepresentation or the failure to make timely disclosure, while knowing it to be a misrepresentation or a failure to make timely disclosure, the whole amount of the damages assessed in the action may be recovered from that defendant.

Joint and several liability

(3) Each defendant in respect of whom the court has made a determination under subsection (2) is jointly and severally liable with each other defendant in respect of whom the court has made such a determination.

Contribution

(4) Any defendant against whom recovery is obtained under subsection (2) is entitled to claim contribution from any other defendant who is found liable in the action.

Liability limit

226. (1) Despite section 224, the damages payable by a person in an action under any of sections 210 to 213 are not to exceed the lesser of,

- (a) the aggregate damages assessed against the person in the action; and
- (b) the amount determined by the formula,

$$Q - R - S$$

where,

Q is

- (i) for a responsible issuer, the greater of \$1 million and 5 per cent of its market capitalization,
- (ii) for a director or officer of a responsible issuer, the greater of \$25,000 and 50 per cent of the aggregate of the director's or officer's compensation from the responsible issuer and its affiliates,
- (iii) for an influential person who is not an individual, the greater of \$1 million and 5 per cent of its market capitalization,
- (iv) for an influential person who is an individual, the greater of \$25,000 and 50 per cent of the aggregate of that person's compensation from the responsible issuer and its affiliates,
- (v) for a director or officer of an influential person, the greater of \$25,000 and 50 per cent of the aggregate of the director's or officer's compensation from that person and its affiliates,
- (vi) for an expert, the greater of \$1 million and the revenue that the expert and the expert's affiliates have earned from the responsible issuer and its affiliates during the 12-month period preceding the misrepresentation, and
- (vii) for each person who made a public oral statement, other than an individual referred to in subclause (iv), (v) or (vi), the greater of

\$25,000 and 50 per cent of the aggregate of the person's compensation from the responsible issuer and its affiliates,

R is the aggregate of all damages assessed after appeals, if any, against the person in all other actions brought under any of sections 210 to 213 and under comparable legislation in other provinces and territories in Canada with respect to the same misrepresentation or failure to make timely disclosure, and

S is any amount paid in settlement of any of those other actions.

Exception

(2) Subsection (1) does not apply to a person, other than the responsible issuer, if the court determines that the person authorized, permitted, acquiesced in or influenced the making of the misrepresentation or the failure to make timely disclosure while knowing it to be a misrepresentation or a failure to make timely disclosure.

Definition of "compensation"

(3) In subsection (1),

"compensation" means the compensation received during the 12-month period immediately before the day on which a misrepresentation is made or on which a failure to make timely disclosure first occurs, together with the fair market value of all deferred compensation — including options, pension benefits and stock appreciation rights — granted during that period, valued as of the day on which that compensation is awarded.

PROCEDURAL MATTERS

Leave required

227. (1) No action is to be commenced under any of sections 210 to 213 without leave of the court granted on application or motion with notice to each defendant.

Conditions for leave

(2) The court may grant leave only if it is satisfied that,

- (a) the action is being brought in good faith; and
- (b) there is a reasonable possibility that the action will be resolved at trial in favour of the plaintiff.

Affidavits

(3) On an application or motion for leave under this section, the plaintiff shall serve and file with the court one or more affidavits setting out the material facts on which the plaintiff intends to rely.

Examination permitted

(4) The maker of an affidavit may be examined on it in accordance with the rules of court.

Copies to Chief Regulator

(5) A person who brings an application or motion for leave, or who files material with the court, shall send a copy of the application, motion or material, as the case may be, to the Chief Regulator when filed.

Notice of date

(6) The plaintiff shall send the Chief Regulator notice of the day on which the application or motion for leave is scheduled to be heard at the same time that notice of the day is given to each defendant.

Notice of appeal

(7) If a party appeals the court's decision on whether leave to commence an action is granted,

- (a) each party to the appeal shall send a copy of any materials filed with the court hearing the appeal to the Chief Regulator at the same time that they are filed with the court; and
- (b) the appellant shall send the Chief Regulator notice of the day on which the appeal is scheduled to be heard at the same time that notice of the day is given to each respondent.

Notice

228. (1) A person who has been granted leave to commence an action under any of sections 210 to 213 shall,

- (a) issue, as soon as practicable, a news release disclosing that leave has been granted to commence an action under that section;
- (b) send a notice of the leave to the Chief Regulator within seven days after it is granted, together with a copy of the news release;
- (c) send a copy of the statement of claim or other originating document to the Chief Regulator when filed; and
- (d) send the Chief Regulator notice of the day on which the trial of the action is scheduled to proceed at the same time that notice of the day is given to each defendant.

Notice of appeal

(2) If a party appeals the court's decision after the trial of the action,

- (a) each party to the appeal shall send a copy of any materials filed with the court hearing the appeal to the Chief Regulator at the same time that they are filed with the court; and
- (b) the appellant shall send the Chief Regulator notice of the day on which the appeal is scheduled to be heard at the same time that notice of the day is given to each respondent.

Notice re discontinuation, etc.

(3) If an action under any of sections 210 to 213 is discontinued, settled or abandoned, the plaintiff shall promptly send notice to the Chief Regulator, including a copy of any order made by the court in connection with the discontinuation, settlement or abandonment.

Restriction on discontinuation

229. (1) An action under any of sections 210 to 213 must not be discontinued, settled or abandoned without the approval of the court given on the terms, including terms as to costs, that the court considers appropriate.

Consideration

(2) In determining whether to approve the settlement of an action referred to in subsection (1), the court must consider, among other things, whether there are any other actions outstanding under any of sections 210 to 213 or under comparable legislation in another province or territory of Canada.

Intervention by Chief Regulator

230. The Chief Regulator may intervene in an action under any of sections 210 to 213, in an application or motion for leave to commence such an action and in any appeal from a decision in the action or from a decision on whether leave to commence such an action is granted.

No derogation

231. The right of action for damages and the defences to an action under any of sections 210 to 213 are in addition to, and without derogation from, any other rights or defences that the plaintiff or defendant may have at law.

Limitation period

232. (1) No action is to be commenced under any of sections 210 to 213,

- (a) in relation to a misrepresentation in a document, later than the earlier of,
 - (i) three years after the day on which the document was first released, and

- (ii) six months after the day on which a news release was issued, disclosing that leave has been granted to commence such an action under this Act or under comparable legislation in another province or territory of Canada;
- (b) in relation to a misrepresentation in a public oral statement, later than the earlier of,
 - (i) three years after the day on which the statement was made, and
 - (ii) six months after the day on which a news release was issued, disclosing that leave has been granted to commence such an action under this Act or under comparable legislation in another province or territory of Canada; and
- (c) in relation to a failure to make timely disclosure, later than the earlier of,
 - (i) three years after the day on which the disclosure was required to be made, and
 - (ii) six months after the day on which a news release was issued, disclosing that leave has been granted to commence such an action under this Act or under comparable legislation in another province or territory of Canada.

Same

(2) A limitation period established by subsection (1) in respect of an action is suspended on the day on which a notice of application or motion for leave under section 227 is filed with the court and resumes running on the day,

- (a) the court grants leave or dismisses the application or motion; and
 - (i) all appeals have been exhausted, or
 - (ii) the time for an appeal has expired without an appeal being filed; or
- (b) the application or motion is abandoned or discontinued.

**PART XIV
GENERAL**

POWERS AND DUTIES OF THE TRIBUNAL, THE COMMISSION AND THE CHIEF REGULATOR

Powers of the Tribunal re: decisions

233. (1) The Capital Markets Tribunal may impose conditions, restrictions or requirements in its decisions.

Power to revoke or vary decisions

(2) On application by the Chief Regulator or by a person directly affected by a decision of the Tribunal, the Tribunal may vary or revoke the decision if the Tribunal considers that it

would not be prejudicial to the public interest, whether or not the decision has been filed with a court.

Power of the Commission re: decisions

234. (1) The Commission may impose conditions, restrictions or requirements in its decisions.

Power to revoke or vary decisions

(2) The Commission may revoke or vary any of its decisions if the Commission considers that it would not be prejudicial to the public interest.

Powers of the Chief Regulator re: decisions

235. (1) The Chief Regulator may impose conditions, restrictions or requirements in the Chief Regulator's decisions.

Power to revoke or vary decisions

(2) The Chief Regulator may revoke or vary the Chief Regulator's decision if the Chief Regulator considers that it would not be prejudicial to the public interest.

Opportunity to be heard

(3) However, the Chief Regulator must not revoke or vary a decision without giving an opportunity to be heard to each person who both,

- (a) had an opportunity to be heard when the decision was made; and
- (b) is directly affected by the decision.

Decisions under delegated authority

(4) If the Chief Regulator delegates to a recognized self-regulatory organization the Chief Regulator's power to make decisions under Part IV (Registration) or the rules related to it, the recognized entity has the powers and duties described in this section with respect to its decisions under the delegation.

Delegation of powers, etc., by the Commission

236. (1) The Commission may delegate any of the Commission's powers and duties under this Act to the Chief Regulator, other than its powers and duties relating to the making of rules.

Same

(2) A delegation by the Commission is subject to such conditions, restrictions and requirements as may be set out in the delegation.

Delegation of powers, etc., by the Chief Regulator

237. (1) The Chief Regulator may delegate any of the Chief Regulator's powers and duties under this Act, including those delegated to the Chief Regulator by the Commission,

- (a) to a person or class of persons employed in the regulatory division of the Commission; or
- (b) to a recognized entity.

Same

(2) A delegation by the Chief Regulator is subject to such conditions, restrictions and requirements as may be set out in the delegation.

Same

(3) A delegation by the Chief Regulator is not effective unless it is made in writing and is approved by the Commission in writing.

Subdelegation

(4) Unless the Chief Regulator specifies otherwise in the delegation, a person exercising a delegated power or performing a delegated duty may subdelegate it to any person or class of persons to whom the Chief Regulator is permitted to delegate it.

Chief Regulator's power to refer questions to the Commission

238. (1) The Chief Regulator may refer a question to the Commission for determination if the Chief Regulator is of the opinion that a material question affecting the public interest or a novel question of interpretation is raised because of,

- (a) an application made to the Chief Regulator;
- (b) information or material filed with the Chief Regulator; or
- (c) a matter arising out of the exercise of the Chief Regulator's powers or the performance of the Chief Regulator's duties under this Act.

Same

(2) The Chief Regulator shall state the question in writing, setting out the facts on which it is based, and then refer it to the Commission together with such additional information and material as the Chief Regulator considers relevant.

Same

(3) The Commission shall promptly provide a copy of the question to any interested person.

Answer and referral

(4) After giving the Chief Regulator and any interested persons an opportunity to be heard, the Commission shall answer the question and then refer the matter back to the Chief Regulator for final consideration.

Chief Regulator bound

(5) The Commission's answer to the question constitutes a decision of the Commission and it binds the Chief Regulator.

INTERJURISDICTIONAL MATTERS

Evidence to be taken in another jurisdiction

239. (1) The Chief Regulator may apply to the Superior Court of Justice for an order,

- (a) appointing a person to take the evidence of a witness in another jurisdiction for use in a proceeding in Ontario related to the administration or enforcement of capital markets law or the regulation of capital markets; and
- (b) providing for the issuance of a letter of request directed to the judicial authority of the jurisdiction in which the witness is believed to be located, requesting the judicial authority to compel the witness to be examined by the person appointed under clause (a) in order to give testimony on oath or solemn affirmation and to produce information, records and things that are relevant to the subject matter of the proceeding.

Practice and procedure

(2) The practice and procedure in connection with an appointment under this section, the taking of evidence and the certifying and return of the appointment are, as far as possible, the same as those that govern similar matters in civil proceedings in the court.

Admissibility of evidence

(3) The making of an order under subsection (1) does not determine whether evidence obtained as a result of the order is admissible in the proceeding.

Evidence request from another jurisdiction

240. The Superior Court of Justice may make one or more of the following orders if the court is satisfied that a judicial authority of competent jurisdiction outside of Ontario has, on behalf of a body empowered by law to regulate trading in securities or derivatives, authorized the taking of evidence of a witness within Ontario for use in a proceeding before the body:

1. An order compelling the witness to be examined by the person appointed in the manner and form directed by the judicial authority in order to give testimony on oath or solemn affirmation.
2. An order compelling the witness to produce records and things mentioned in the order.
3. An order giving any directions that the court considers appropriate as to the time and place for the examination and any other matters related to it.

Execution of warrant issued in another province or territory

241. (1) If a court of another province or territory in Canada issues a warrant for the arrest of a person on a charge of contravening the provisions of an Act or rules of that province or territory that are similar to provisions of Ontario capital markets law, and if the person is or is suspected to be in Ontario, a court of Ontario may, on satisfactory proof of the handwriting of the person who issued the warrant, make an endorsement on the warrant.

Same

(2) A warrant that is endorsed under subsection (1) is sufficient authority to the following persons to execute the warrant in Ontario, to take the person arrested under the warrant out of, or anywhere in, Ontario and to re-arrest that person anywhere within Ontario:

1. The person bringing the warrant.
2. All other persons to whom it was originally directed.
3. All peace officers within Ontario.

Same

(3) If a peace officer of this or another jurisdiction who is passing through Ontario has in the peace officer's custody a person arrested in another province or territory in Canada under a warrant endorsed under subsection (1), the peace officer is entitled to hold, take and re-arrest the person anywhere in Ontario under the warrant without proof of the warrant or the endorsement.

RECORDS

Filing of records

242. (1) Unless otherwise provided by capital markets law, records required to be filed under capital markets law must be filed with the Chief Regulator in accordance with such requirements as may be prescribed and within the period specified under this Act.

Permitted alternatives

(2) If a record is to be filed with the Commission or the Chief Regulator, the Chief Regulator may permit the filing to be effected in another manner, using another format or form, if any, or within a longer period if the Chief Regulator considers it to be in the public interest.

Limitation

(3) This section does not apply with respect to a filing with a court or with the Capital Markets Tribunal.

Delivery, etc., of records

243. (1) If under capital markets law a record is to be provided, delivered, sent or made available to a person — including the Commission or the Chief Regulator — it must be done in

accordance with such requirements as may be prescribed and within the period specified under this Act.

Variation of Act

(2) If a provision of this Act specifies that a record is to be provided, delivered or sent to a person, the rules may authorize or require the record to be made available to the person in another way instead.

Permitted alternatives

(3) The Chief Regulator may permit the record to be provided, delivered, sent or made available to the person in another manner, using another format or form, if any, or within a longer period if the Chief Regulator considers it to be in the public interest.

Deemed receipt

(4) A record provided, delivered, sent or made available to a person in accordance with subsection (1), (2) or (3) is deemed to have been received on the day and at the time, if any, determined under the rules.

Certification of records

244. The rules may require that a record that is to be filed, provided, delivered, sent or made available to a person must be certified by specified persons in accordance with such conditions, restrictions and requirements as may be prescribed.

Linguistic versions of records

245. Unless otherwise provided by capital markets law, if a record is required to be filed under capital markets law, all linguistic versions of that record that are sent to security holders or potential investors must also be filed as soon as practicable after they are so sent.

Record as amended

246. Unless otherwise provided under capital markets law, a reference to a specific record includes a reference to any amendment of it that is permitted or required under capital markets law.

DISCLOSURES TO AND BY THE COMMISSION

Duty to keep and provide records, information

247. (1) The rules may prescribe requirements in relation to the keeping of records and the provision of records and information to the Commission, the Chief Regulator or a recognized trade repository for the purposes of,

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

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

Duty to provide records, information on request

(2) At the request of the Chief Regulator, a market participant or other person shall, at the time and in the format and form that the Chief Regulator specifies, provide the Commission or the Chief Regulator with the records and information the Commission or Chief Regulator requires for the purposes of,

- (a) monitoring activity in capital markets or detecting, identifying or mitigating systemic risks related to capital markets; or
- (b) conducting policy analysis related to the Commission's mandate and the purposes of this Act.

Immunity re disclosure

248. (1) No action for damages may be commenced against a person for having disclosed any information to the Commission or the Chief Regulator or to anyone acting under the authorization of the Chief Regulator if the person reasonably believes that the information,

- (a) is true, in the case where the person is providing the information at the request of a peace officer who is investigating an offence under capital markets law, a designated reviewer conducting a review under section 145 or an authorized investigator conducting an investigation under section 146; or
- (b) is true and may be related to an offence or a contravention under capital markets law, in any other case.

Effect of disclosure

(2) The disclosure of information to the Commission or a trade repository that is made in good faith by a person in compliance or intended compliance with capital markets law,

- (a) does not constitute a breach of any contractual provision to which the person or any other person is subject; and
- (b) does not constitute any other basis of liability, and no action lies or may be commenced, against the person or any other person in respect of the person's disclosure.

Whistle-blower protection

249. (1) The Commission is not permitted to disclose, pursuant to a request for access under the *Freedom of Information and Protection of Privacy Act*, the identity of a whistle-blower, or any information or record that may reasonably be expected to reveal the identity of a whistle-blower unless,

- (a) the Chief Regulator and the whistle-blower consent to the disclosure; or
- (b) the Chief Regulator has reasonable grounds to believe that the whistle-blower has committed an offence under this Act or under the *Criminal Code* (Canada) that is related to information the whistle-blower disclosed to the Commission.

Protection against further disclosure

(2) A person to whom the identity of a whistle-blower, or any information or record that may reasonably be expected to reveal the identity of a whistle-blower, has been disclosed shall not disclose the identity or the information or record to any other person unless otherwise authorized under this section.

Compellable witness

(3) Despite anything else in this section, a whistle-blower is a compellable witness.

Protection against examination re identity, etc.

(4) No witness in a proceeding under this Act may be examined respecting the witness's knowledge or belief about the existence or identity of a whistle-blower.

Definition

(5) In this section,

“whistle-blower” means an individual, or two or more individuals acting jointly, who voluntarily provide original information to the Commission in the prescribed form relating to a violation of capital markets law that has occurred, is ongoing or is about to occur.

Same, original information

(6) For the purpose of the definition of “whistle-blower” in subsection (5),

- (a) original information is information that is not already known to the Commission from any other source and that the whistle-blower obtained,
 - (i) from the whistle-blower's independent knowledge, derived from the whistle-blower's experiences, communications and observations in employment, business or social interactions, or
 - (ii) from the whistle-blower's critical analysis of publicly available information, if the analysis reveals information that is not generally known or available to the public; and
- (b) original information does not include information that the whistle-blower obtained,
 - (i) through a communication that was subject to solicitor-client privilege,

- (ii) from an allegation made in a judicial or administrative hearing, an enforcement matter of a self-regulatory organization, a government report, hearing, audit or investigation, or news media, unless the whistle-blower is the source of the information, or
- (iii) by a means or in a manner that violates applicable criminal law.

Collection of personal information

250. Personal information received by the Chief Regulator under this Act is deemed, for the purposes of the *Freedom of Information and Protection of Privacy Act*, to have been collected by the Commission.

Public consultation of records

251. (1) A record required to be filed under capital markets law must be made available by the Chief Regulator during business hours for public inspection.

Exception

(2) Despite subsection (1), the Chief Regulator may keep material or any class of material required to be filed under capital markets law in confidence if the Chief Regulator is of the opinion that the material discloses intimate financial, personal or other information and that the interests of any person affected outweighs the desirability of adhering to the principle that material filed under capital markets law be available to the public for inspection.

Public list of non-compliant persons

252. The Chief Regulator may publish a list of persons who are not in compliance with a requirement of capital markets law.

Exchange of information

253. (1) The Chief Regulator may provide information to and receive information from the following entities, both in Canada and elsewhere:

1. A law enforcement agency.
2. A capital markets or financial regulatory authority, a recognized entity, a designated entity, a marketplace that is neither a recognized entity nor a designated entity, a trade repository, a clearing agency, a self-regulatory organization or a governmental or regulatory authority.
3. A person providing services to the Commission.

Freedom of Information and Protection of Privacy Act

(2) If the Chief Regulator determines that information received from an entity described in subsection (1) should be maintained in confidence, the Commission is not permitted to disclose

the information pursuant to a request for access made under the *Freedom of Information and Protection of Privacy Act*.

Privileged information

254. Nothing in this Act is to be construed to affect the privilege that exists between a lawyer and the lawyer's client in relation to information or records that are subject to that privilege.

OTHER MATTERS

Admissibility in evidence of certified statements

255. A statement concerning any of the following matters that purports to be certified by the Chief Regulator is, without proof of the office or signature of the person certifying it, admissible in evidence for all purposes in any action, proceeding or prosecution:

1. The registration or non-registration of a person under this Act.
2. The filing or non-filing of a record required or permitted to be filed under capital markets law.
3. Any other matter or information related to the matters referred to in paragraph 1 or 2.

Publication of notices, etc., by Commission, Chief Regulator

256. The Commission and the Chief Regulator comply with a requirement of capital markets law to publish or to make accessible a notice or other record if the Commission or Chief Regulator provides the notice or record in electronic form through an electronic medium or posts it on the public website maintained by the Commission.

Service of documents by the Chief Regulator or an authorized investigator

257. (1) If under this Act the Chief Regulator or an authorized investigator as defined in section 140 is required to serve a document, service may be effected in accordance with the rules.

Limitation

(2) This section does not apply with respect to the service of a document in connection with a proceeding of a court or the Capital Markets Tribunal.

Enforcement by court

258. A certified copy of a decision made by the Capital Markets Tribunal under this Act or a decision made by a recognized self-regulatory organization may be filed with the Superior Court of Justice and, on being filed, the decision may be enforced as if it were an order of the court.

Duty to comply with undertaking

259. A person who gives a written undertaking to the Commission, the Chief Regulator or the Capital Markets Tribunal shall comply with the undertaking.

Contravention by directors, officers, etc.

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

Contravention by investment fund manager

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

Contravention re: actions of employees, agents

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

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

Immunity for compliance

262. No action for damages lies, and no action may be commenced, against any person for any act done or omitted to be done in compliance with capital markets law.

Limitation period

263. (1) No proceeding, other than a proceeding under Parts XII and XIII, is to be commenced later than six years after the day on which the last event that gave rise to the proceeding occurred.

Extension by agreement

(2) However, the limitation period described in subsection (1) may be extended by express agreement of the parties.

Transition

(3) This section applies whether the last event that gave rise to the proceeding occurred before, on or after the day on which subsection (1) comes into force.

PART XV
REGULATIONS, RULES AND POLICIES

Regulations

264. (1) The Lieutenant Governor in Council may make regulations in respect of any matter in respect of which the Commission may make rules.

Same

(2) Subsections 266 (2) to (9) and section 267 apply with necessary modifications with respect to the regulations.

Same

(3) If there is a conflict or an inconsistency between a regulation made by the Lieutenant Governor in Council under this Act and a rule made by the Commission, the regulation prevails.

Authority in extraordinary circumstances

265. (1) In this section, “extraordinary circumstances” has the same meaning as in subsection 123 (1).

Authority of the Lieutenant Governor in Council

(2) The Lieutenant Governor in Council may make a regulation relating to any matter governed by capital markets law, despite any other provision of this Act, if in the opinion of the Lieutenant Governor in Council,

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

Authority of the Commission

(3) Subject to the approval of the Minister, the Commission may make a rule relating to any matter governed by capital markets law, despite any other provision of this Act, if in the opinion of the Commission,

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

Same, duration

(4) On being approved by the Minister, a rule comes into force immediately and it is revoked no later than 30 days after the day on which it comes into force.

Same, extension

(5) Despite subsection (4), an amendment to a rule may provide that the rule remains in effect for a further period of 30 days, and the rule may be so amended more than once.

Notice and publication of rule

(6) When a rule comes into force, the Commission shall promptly issue a news release describing the details of the rule and shall publish the rule in its bulletin together with a statement setting out the substance and purpose of the rule and the nature of the extraordinary circumstances.

Same, amendment of rule

(7) Subsection (6) applies with necessary modifications with respect to any amendment to the rule.

Same, additional information

(8) As soon as practicable after a rule comes into force, the Commission shall publish in its bulletin a description of the particular circumstances on which the Commission based its decision to make the rule.

Revocation by regulation

(9) A regulation made under this section may revoke a rule made under this section.

Conflict or inconsistency

(10) If there is a conflict or an inconsistency between a regulation or rule made under this section and an order made by the Chief Regulator under section 123 (Cease-trade order – extraordinary circumstances), the regulation or rule prevails.

Non-application of certain provisions

(11) Sections 268 to 272 do not apply with respect to a rule made under this section.

Rules

266. (1) Subject to sections 268 to 272, the Commission may make rules for carrying out the purposes and provisions of this Act.

Classes, etc.

(2) A rule may be general or specific in its application and may differentiate in any way and on any basis that the Commission considers appropriate.

Define

(3) A rule may define any word or expression used in this Act or a rule that has not been expressly defined in this Act.

Regulate, prohibit

(4) A rule relating to a matter may regulate, restrict or prohibit the matter in whole or in part.

Exempt

(5) A rule may exempt a person, trade, distribution, security or derivative from any provision of Parts II to IX or any requirement referred to in section 242 (Filing of records) or 245 (Linguistic versions of records) and may impose conditions, restrictions and requirements relating to an exemption.

Defences, etc.

(6) A rule may prescribe circumstances in which a person does not contravene this Act, including prescribing defences to any liability provision and the availability of any defences.

Subdelegate

(7) A rule may include conditions that consist of the approval or absence of objection by the Chief Regulator and conditions relating to compliance with the capital markets legislation of another jurisdiction or with a recognized entity's regulatory instruments.

Same, inclusion in a prescribed class

(8) A rule may authorize the Chief Regulator, for the purposes of a rule, to include persons or classes of persons within a prescribed class.

Fees and charges

(9) A rule may establish and require the payment of fees and charges to the Commission and may set the amount or specify the manner of calculating them.

Legislation Act, 2006, Part III

(10) Part III (Regulations) of the *Legislation Act, 2006* does not apply to a rule made under this Act.

Publication of rules

(11) The Commission must publish in *The Ontario Gazette* and in its bulletin every rule that comes into force.

Deemed notice of rules

(12) Every person affected by a rule is deemed to have notice of it when it is published in the Commission's bulletin.

Incorporation by reference

267. (1) A rule may incorporate by reference any material, regardless of its source, either as it exists on a particular date or as amended from time to time.

Public access

(2) The Commission must ensure that material that is incorporated by reference is accessible to the public.

No finding of guilt or administrative sanction

(3) A person is not liable to be found guilty of an offence or subjected to an administrative sanction for any contravention in respect of which material that is incorporated by reference in a rule is relevant unless, at the time of the alleged contravention, the material was accessible as required by subsection (2) or it was otherwise accessible to that person.

Notice of proposed rule

268. (1) The Commission must publish a notice of every rule that it proposes to make.

Content of notice

(2) The notice must include the following:

1. The proposed rule and any related forms.
2. A description of the proposed rule and the reasons for it.
3. A reference to the authority under which the rule is proposed or a statement that the Commission is seeking legislative amendments to provide the requisite rule-making authority.
4. A description of the anticipated costs and benefits of the proposed rule and a qualitative and quantitative analysis of those costs and benefits.
5. A discussion of all alternatives to the proposed rule that were considered by the Commission and the reasons for not proposing the adoption of the alternatives considered.

Same

(3) In the notice, the Commission must invite interested persons to make written comments about the proposed rule within a period of at least 60 days after the publication.

Exceptions to publication

(4) Despite subsection (1), a notice is not required to be published in any of the following circumstances:

1. The Commission considers that it would not be prejudicial to the public interest if the notice is not published, and the proposed rule exempts a class of persons, trades, intended trades, distributions, securities or derivatives or all persons, trades, intended trades, distributions, securities or derivatives from any requirement contained in Parts II to IX or the rules.
2. The Commission considers that it would not be prejudicial to the public interest if the notice is not published, and the proposed rule prescribes that,
 - i. all issuers within a class of issuers are not reporting issuers,
 - ii. all issuers within a class of issuers are not mutual funds,
 - iii. all issuers within a class of issuers are not non-redeemable investment funds,
 - iv. all persons within a class of persons are not insiders,
 - v. all persons within a class of persons are not market participants,
 - vi. all trades within a class of trades are not distributions,
 - vii. all contracts or instruments within a class of contracts or instruments are not derivatives,
 - viii. all securities within a class of securities are not securities;
 - ix. all derivatives within a class of derivatives are not designated derivatives; or
 - x. all persons within a class of persons are not marketplaces.
3. The proposed rule would be an amendment and the Commission considers that it does not change an existing rule in a material way.
4. The Commission,
 - i. believes that there is an urgent need for the proposed rule and that, without it, there is a substantial risk of material harm to investors or to the integrity or stability of the capital markets, and
 - ii. has the approval of the Minister to make the rule without the publication of notice.
5. The proposed rule would be made under clause 128 (2) (Extension of class orders).

Changes to proposal

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

1. The proposed rule with the proposed changes.
2. A description of the changes and the reasons for them.

Comments regarding changes

(6) In the notice of changes, the Commission must invite interested persons to make written comments about the changes within a period of at least 30 days after the publication.

Submission after comment period

(7) When the Commission is required to invite comments under this section, the Commission may submit the rule to the Minister under subsection 269 (1) only after the end of any comment periods and after considering all comments received.

Inspection of records

(8) Section 251 applies to all written comments made under this section as if they were records required to be filed.

Submission of rules to the Minister

269. (1) The Commission shall submit to the Minister for approval any rule made by it and must attach to it,

- (a) a copy of any notices published under section 268;
- (b) a summary of any written comments received about the rule; and
- (c) the analysis by the Commission of any significant issues and concerns raised in the written comments.

Publication

(2) Promptly after submitting the rule to the Minister, the Commission must publish it together with the following information:

1. The date on which the rule was submitted to the Minister.
2. The date on which the rule is intended to come into force.
3. A description of the rule and the reasons for it.
4. A summary of any written comments received about the rule.

5. The response of the Commission to the significant issues and concerns raised in the written comments.

Action by Minister

(3) Within 60 days after a rule is submitted to the Minister, the Minister may approve the rule, reject it or return it to the Commission for further consideration.

Returned for consideration

270. (1) If the Minister returns a rule to the Commission for further consideration, the Minister may specify what is to be considered and the process to be followed.

Publication

(2) Promptly after the Minister returns a rule for further consideration, the Commission must publish notice of the matters to be considered as specified by the Minister.

Coming into force of rules

271. (1) A rule that is approved by the Minister comes into force 15 days after it is approved unless a later day is specified in the rule, in which case it comes into force on that later day.

Urgent rules

(2) Despite subsection (1), every rule to which paragraph 4 of subsection 268 (4) applies that is approved by the Minister comes into force on the day it is published in the Commission's bulletin.

Rules neither approved, rejected nor returned

(3) If the Minister neither approves a rule, nor rejects it nor returns it to the Commission for further consideration, the rule comes into force as follows:

1. If the rule specifies a coming into force date that is at least 75 days after the rule is delivered to the Minister, the rule comes into force on the specified day.
2. If the rule specifies a coming into force date that is within 75 days after the rule is delivered to the Minister, the rule comes into force on the 75th day after the rule is delivered to the Minister.
3. If the coming into force date is not specified in the rule, the rule comes into force on the 75th day after the rule is delivered to the Minister.

Rules returned for further consideration

(4) A rule that is returned to the Commission for further consideration cannot come into force until it is returned by the Commission to the Minister at which time this section applies as if the rule were delivered for the first time.

Rejected rules

(5) A rule that is rejected by the Minister does not come into force.

Commencement by an order

(6) A rule may provide that one or more of its provisions comes into force on a day to be fixed by order of the Commission. The Commission cannot fix a day that falls before the day on which the rule would otherwise come into force in accordance with this section.

Publication of order

(7) The Commission must publish the order promptly after it is made.

Automatic revocation of certain rules

272. (1) A rule to which paragraph 1, 2, 4 or 5 of subsection 268 (4) applies,

- (a) must not amend a rule;
- (b) must not revoke a rule other than one to which paragraph 1, 2 or 4 of subsection 268 (4) applies;
- (c) may suspend the application of the provisions of another rule made under this Act; and
- (d) is revoked 18 months after the day on which it comes into force, if it has not already been revoked.

Extension

(2) Despite clause (1) (d), if the Commission determines that a rule to which paragraph 1, 2 or 4 of subsection 268 (4) applies should be continued in order to allow for publication and comment of the rule in accordance with subsection 268 (1), then the rule to which paragraph 1, 2 or 4 of subsection 268 (4) applies is revoked 36 months after the day on which it comes into force, if it has not already been revoked.

Publication of statement

(3) Promptly after the coming into force of a rule to which subsection 268 (4) applies, the Commission must publish it together with the following information:

1. With respect to a rule to which paragraph 1, 2 or 5 of subsection 268 (4) applies, a description of the rule, the reasons for the rule and the day on which the rule will be revoked.
2. With respect to a rule to which paragraph 3 of subsection 268 (4) applies, a description of the rule and the reasons for the rule.

3. With respect to a rule to which paragraph 4 of subsection 268 (4) applies, a description of the rule, the reasons for it, the nature of the urgency, the risk involved and the day on which the rule will be revoked.

Request by the Minister

273. (1) The Minister may request that the Commission consult on a matter that the Minister specifies and consider making a rule about it.

Report

(2) The Commission shall report to the Minister on the Commission's response to the request within one year after the day on which the request is made.

Forms

274. (1) Subject to the rules, if this Act or the rules provide that a record is to be prepared, filed, provided or sent in a required form, the Commission may specify the form or format, additional contents and other particulars relating to the record, including specifying,

- (a) the principles to be applied in its preparation; and
- (b) any accompanying records to be filed with it.

Same

(2) The Commission may specify different requirements under subsection (1) for different classes of persons, trades, securities or derivatives.

Publication

(3) If the Commission specifies a structure or additional contents for a form, the Commission must publish the entire form.

Guidance from the Commission

275. (1) The Commission may issue policy statements and other material that the Commission considers advisable to provide guidance on its interpretation of this Act and the rules and guidance on the exercise of its powers.

Policy statements

(2) Before the Commission issues a policy statement, the Commission 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 publication.

Proposed material changes

(3) If, after the proposed policy statement is published, the Commission proposes to make changes to it that the Commission considers material, the Commission must publish,

- (a) the proposed policy statement incorporating the changes;

- (b) a concise statement of the purpose of the changes; and
- (c) the reasons for the changes.

Same

(4) On publication of proposed changes referred to in subsection (3), the Commission must invite interested persons to make written comments with respect to the proposed changes within a period of at least 30 days after the publication.

Inspection of records

(5) Section 251 applies to all written comments made under this section as if they were records required to be filed.

Periodic review of Act

Initial review

276. (1) Within five years after this section comes into force, the Minister shall appoint one or more persons to review the operation of this Act, the regulations and the rules and to make recommendations to the Minister.

Subsequent reviews

(2) The Minister shall, no later than five years after the appointment under subsection (1), appoint one or more persons to conduct a subsequent review and shall, no later than five years after the most recent appointment under this subsection, appoint one or more persons to conduct subsequent reviews.

Public consultation

(3) When conducting a review, the appointees shall solicit the views of the public.

Available to public

(4) The Minister shall make the recommendations of the appointees available to the public.

Public access to rules, etc.

277. The Commission must ensure that the following documents are accessible to the public:

1. Current and previous versions of the rules.
2. The current versions of any forms specified by the Commission under section 274.
3. The current versions of the policy statements and other material issued under section 275.

Proof of the rules

278. In any proceeding in which any rule is relevant, a certificate purporting to be issued by the Commission that includes any of the following statements is, in the absence of evidence to the contrary, presumed to be authentic and to be proof of the matters set out in those statements:

1. A statement that the text attached to the certificate is the text of the rule as of a specified time or period.
2. A statement regarding the manner in which that text was accessible as of a specified date or period.

No finding of guilt or administrative sanction

279. A person is not liable to be found guilty of an offence or subjected to an administrative sanction for any contravention of a rule unless, at the time of the alleged contravention, the rule was accessible to the public as required by section 277 (Public access to rules, etc.) or it was otherwise accessible to that person.

PART XVI TRANSITIONAL MATTERS

Initial rules

280. (1) This section applies with respect to every rule made by the Commission that includes a provision stating that it comes into force, in whole or in part, on the same day that section 1 (Purposes of the Act) comes into force.

Non-application of certain requirements

(2) Sections 268 to 270 and subsections 271 (1) to (5) do not apply with respect to the making of the rule.

Approval by Minister

(3) The rule does not come into force until it is approved by the Minister.

Amendment, revocation

(4) After the rule comes into force, it may be amended or revoked by the Commission in accordance with sections 268 to 270.

Rules re transitional matters

281. A rule may provide for such transitional matters as may be considered advisable to facilitate the implementation of this Act or to address problems arising in connection with the repeal of all or part of the *Securities Act* or the *Commodity Futures Act*.