

This Act is current to February 22, 2023

See the [Tables of Legislative Changes](#) for this Act's legislative history, including any changes not in force.

SECURITIES ACT

[RSBC 1996] CHAPTER 418

Contents

Part 1 — Interpretation

- 1 Definitions
- 2 Insiders
- 3 Definition of special relationships
- 3.1 Exemption orders
- 3.2 Designations

Part 2 — The Commission

- 4 Commission continued
- 4.1 Application of *Administrative Tribunals Act* to commission
- 5 Commission is an agent of the government
- 6 Panels of commission
- 7 Delegation of commission powers and duties
- 8 Executive director
- 9 Officers and employees
- 10 Public service benefits
- 11 Obligation to keep information confidential
- 12 Repealed
- 13 Appointment of experts

Part 3 — Financial Administration

- 14 Minister of Finance
- 15 Revenue and expenditure
- 15.1 Claim for wrongful benefit
- 16 Administrative services
- 17 Fiscal agent
- 18 Investment
- 19 Borrowing powers
- 20 Accounting
- 21 Business plan
- 22 Annual report

Part 4 — Benchmark Administrators, Clearing Agencies, Exchanges, Information Processors, Quotation and Trade Reporting Systems, Self-Regulatory Bodies and Trade Repositories

- 23 Interpretation
- 24 Recognition
- 25 Recognition required for exchanges and clearing agencies
- 25.1 Designated exchange
- 26 Duty to regulate, conduct and provide information
- 27 Powers of the commission
- 28 Review of action
- 29 Repealed
- 30 Records of transactions
- 31 Auditors
- 32 Audits of members of exchanges and self-regulatory bodies
- 32.1 Duties of auditor oversight body
- 32.2 Auditor oversight body may adopt rules, standards or policies
- 32.3 Auditor oversight body may require disclosure
- 32.4 Directors, officers of auditor oversight body not compellable
- 33 Exemption order by commission

Part 5 — Registration

- 34 Persons who must be registered
- 35 Granting registration
- 36 Conditions imposed on registration and registrants
- 37 Repealed
- 38 Further information may be required from applicant
- 39 Repealed
- 40 Termination or suspension of employment
- 40.1 Suspension of registration
- 41 Surrender of registration
- 42 Repealed

Part 6 — Exemption from Registration Requirements

- 43-47 Repealed
- 48 Exemption order by commission or executive director

Part 7 — Trading in Securities Generally

- 49 Calling at or telephoning residence
- 50 Representations prohibited
- 51 Registered dealer acting as principal
- 52 Disclosure of investor relations activities
- 53 Use of name of another registrant, etc.
- 54 Representation or holding out of registration
- 55 Approval of commission or executive director not to be represented
- 56 Declaration as to short position
- 57 Manipulation and fraud
- 57.1 Repealed
- 57.2 Insider trading, tipping and recommending
- 57.3 Front running

- 57.4 Defences
- 57.5 Obstruction of justice
- 57.6 Duty to comply with undertaking
- 57.7 Records

Part 8 — Trading in Derivatives

- 58 Disclosure documents
- 58.1 Effect of failure to comply
- 59 Repealed
- 60 Exemption order by commission or executive director

Part 9 — Prospectus

- 61 Prospectus required
- 62 Voluntary filing of prospectus
- 63 Contents of prospectus
- 64 Executive director's discretion
- 65 Receipts for prospectus
- 66-71 Repealed
- 72 Order to provide information regarding distribution

Part 10 — Exemptions from Prospectus Requirements

- 73-75 Repealed
- 76 Exemption order by commission or executive director
- 77 List of defaulting reporting issuers

Part 11 — Circulation of Materials

- 78 Waiting period
- 79-80 Repealed
- 81 Defective preliminary prospectus
- 82 Material given on distribution
- 83 Obligation to send prospectus
- 84 Exemption order by commission or executive director

Part 12 — Continuous Disclosure

- 84.1 Repealed
- 85 Continuous disclosure
- 86 Repealed
- 87 Initial and subsequent insider report
- 87.1 Repealed
- 88 Order relieving reporting issuer
- 89 Halt trading order
- 90 Further information from directors, officers, promoters or control persons
- 91 Exemption order by commission or executive director

Part 13 — Take Over Bids, Issuer Bids, Business Combinations and Related Party Transactions

Division 1 — Interpretation

- 92 Definitions
- 93-97 Repealed

Division 2 — General

- 98 Making a bid
- 99 Recommendation relating to bid
- 100 Repealed

Division 3 - 6

- 101-113 Repealed

Division 7 — Special Applications

- 114 Applications to the commission
- 115 Applications to the court

Part 14 — Proxies

- 116 Definitions
- 117 Repealed
- 118 Voting if proxies provided
- 119 Exemptions

Part 15 — Self Dealing

- 120-122 Repealed
- 123 Repealed
- 124 Repealed
- 125 Standard of care for investment fund manager
- 126-127 Repealed
- 128 Repealed
- 129 Repealed
- 130 Exemptions
- 130.1 Independent committee for mutual funds

Part 16 — Civil Liability

- 131 Liability for misrepresentation in prospectus
- 132 Liability for misrepresentation in circular or notice
- 132.1 Liability for misrepresentation in prescribed disclosure document
- 132.2 Liability for misrepresentation in prescribed disclosure document — derivatives
- 133 Standard of reasonableness
- 134 Liability in margin contracts
- 135 Right of action for failure to deliver documents
- 135.1 Right of action for failure to deliver prescribed disclosure documents
- 136 Liability for insider trading, tipping and recommending
- 136.1 Accounting for benefits
- 136.2 Due diligence defence for insider trading
- 137 Action by commission on behalf of issuer
- 138 Rescission of contract
- 138.1 Rescission of purchase of security under prescribed disclosure document
- 139 Rescission of purchase of mutual fund security
- 140 Limitation period

Part 16.1 — Civil Liability for Secondary Market Disclosure**Division 1 — Interpretation and Application**

140.1 Definitions

140.2 Application

Division 2 — Liability

140.3 Liability for secondary market disclosure

140.4 Burden of proof and defences

Division 3 — Damages

140.5 Assessment of damages

140.6 Proportionate liability

140.7 Limits on damages

Division 4 — Procedural Matters

140.8 Leave to proceed

140.9 Notice

140.91 Restriction on discontinuation, etc., of action

140.92 Power of the commission

140.93 No derogation from other rights

140.94 Limitation period

Part 17 — Investigations and Audits

140.95 Definitions

141 Provision of information to executive director

141.1 Compliance review for SRO or exchange

141.2 Compliance review of registrant or custodian

141.3 Compliance review of reporting issuer

141.4 Compliance review of other market participants

141.5 Warrant for private residence

142 Investigation order by commission

143 Power of investigator

143.1 Investigation for purposes of Part 18.1

143.2 Duty to assist

143.3 Entry on private property

143.4 Contempt — obstructing entry

144 Investigator's power to compel evidence

145 Appointment of expert

146 Report to commission

146.01 Preservation demand

146.02 Order to preserve information, records or things

146.03 Preservation order — computer data

146.04 Order for production of information, etc.

146.05 General production order

146.06 Production order to trace specified communication

146.07 Production order — transmission data

146.08 Production order — tracking data

146.09 Production order — financial data

146.10 Order for production of names

146.11 Conditions in preservation and production orders

- 146.12 Order prohibiting disclosure
- 146.13 Particulars — production orders
- 146.14 Application for review of production order
- 146.15 Requests to preserve data
- 146.16 Self-incrimination
- 146.17 Procedure
 - 147 Investigation order by minister
 - 148 Evidence not to be disclosed
 - 149 Report to minister
 - 150 Costs payable by person investigated
 - 151 Repealed
 - 152 Repealed
 - 153 Examination of financial affairs
 - 154 Repealed

Part 18 — Enforcement

- 155 Offences generally
- 155.1 Additional remedies
- 155.2 Enforcement of court orders
 - 156 Execution of warrant issued in another province
 - 157 Order for compliance
 - 158 Section 5 of the *Offence Act*
 - 159 Limitation period
 - 160 Costs of investigation
 - 161 Enforcement orders
 - 162 Administrative penalty
 - 162.01 Administrative penalty imposed by notice
 - 162.02 Amount of administrative penalty imposed by notice
 - 162.03 Notice of administrative penalty
 - 162.04 Payment or dispute of administrative penalty imposed by notice
 - 162.05 Administrative penalty against officers or directors imposed by notice
 - 162.06 Administrative penalty against investment fund manager imposed by notice
 - 162.07 Extraprovincial orders
 - 162.1 Demand on third party
 - 162.2 Settlements
 - 163 Enforcement of commission orders
 - 163.1 Amount owing forms lien
 - 163.2 Debtor's licences and number plates
 - 163.3 Withdrawing the notice
 - 164 Failure to comply with filing requirements

Part 18.1 — Preservation Orders and Additional Collection Remedies

Division 1 — Interpretation

- 164.01 Definitions
- 164.02 Application
- 164.03 Remedies not limited

Division 2 — Preliminary and Interim Preservation Orders

- 164.04 Preservation orders
- 164.05 Preservation order made without notice
- 164.06 Notification of order
- 164.07 Opportunity to be heard
- 164.08 Powers

Division 3 — Civil Actions and Forfeiture Orders

- 164.09 Joint and several liability
- 164.10 Application for forfeiture order
- 164.11 Parties and notification
- 164.12 Forfeiture order
- 164.13 Relief from forfeiture
- 164.14 Effective date of forfeiture order

Division 4 — Proceedings, Presumptions and Proof

- 164.15 Proceedings
- 164.16 Determination respecting property
- 164.17 Presumption of advancement
- 164.18 Filing notice in registries

Division 5 — General Provisions

- 164.19 Dealing with property
- 164.20 Obligations of commission on forfeiture

Part 19 — Reviews and Appeals

- 165 Review of decision of executive director
- 166 Review of decision of person acting under delegated authority
- 167 Appeal of commission decision

Part 19.1 — Interjurisdictional Cooperation

- 167.1 Definitions
- 167.2 Delegation and acceptance of authority
- 167.3 Subdelegation
- 167.4 Revocation
- 167.5 Adoption or incorporation of extraprovincial securities laws
- 167.6 Exercise of discretion, interprovincial reliance
- 167.7 Review of extraprovincial decision
- 167.8 Appeal of decision of an extraprovincial securities commission
- 167.9 Appeal of determination of the commission

Part 20 — General Provisions

- 168 Admissibility in evidence of certified statements
- 168.01 Aiding, abetting and counselling contraventions
- 168.02 Custody of property
- 168.03 Conspiracy
- 168.04 Protection of employee from reprisals
- 168.05 Civil remedies not limited
- 168.1 False or misleading statements prohibited

168.2 Contraventions attributable to employees, officers, directors and agents

169 Filing and inspection of records

169.1 Information collection and sharing

170 Immunity of commission and others

170.1 Compulsion protection

171 Discretion to revoke or vary decision

172 Conditions on decisions

173 Authority of persons presiding at hearings

174 Hearing fees and charges

175 Extrajurisdictional evidence

176 Extrajurisdictional request for evidence

177 Committal for contempt

178 Executive director may refund fee

179 Review of fees and charges

179.1 Receiver manager

180 Notices generally

181 Reference to record includes amendment

181.1 Reference to administration includes enforcement

182 Required records

183 Lieutenant Governor in Council regulations

184 Commission rules

185 *Regulations Act* applies to commission rules

186 Regulation prevails over commission rule

187 Administrative powers respecting commission rules

188 Policy statements

Part 1 — Interpretation

Definitions

1 (1) In this Act:

"adviser" means a person engaging in, or holding himself, herself or itself out as engaging in, the business of advising another with respect to investment in or the purchase or sale of securities or trades of derivatives;

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

- a partner, other than a limited partner, of that person,
- (a) a trust or estate in which that person has a substantial beneficial interest
- (b) or for which that person serves as trustee or in a similar capacity,
- an issuer in respect of which that person beneficially owns or controls,
- (c) directly or indirectly, voting securities carrying more than 10% of the voting rights attached to all outstanding voting securities of the issuer, or
- a relative, including the spouse, of that person or a relative of that
- (d)

person's spouse, if the relative has the same home as that person;

"auditor oversight body" means a self-regulatory body that

- (a) regulates the auditing or review of financial statements that are required to be filed under this Act, and

is recognized under section 24;

(b)

"benchmark" means a price, rate, index, value or measurement, or an estimate of a price, rate, index, value or measurement, that

- (a) is determined from time to time by reference to or an assessment of an underlying interest,

is disclosed to the public, and

(b)

once publicly disclosed, would reasonably be expected to be referenced

- (c) or used by or in relation to a security or derivative, including, for greater certainty, for the purposes of

determining the interest payable or other sums that are due under

- (i) a security or derivative,

determining the value of the security or derivative or the price at

- (ii) which the security or derivative may be traded, or

measuring the performance of a security or derivative;

(iii)

"benchmark contributor" means a person that provides, or intends to provide, information in relation to a benchmark with the expectation that the information will or could be used by a benchmark administrator to determine the benchmark;

"business day" means a day other than Saturday or a holiday;

"Business Development Bank of Canada" means the Business Development Bank of Canada incorporated under the [Business Development Bank of Canada Act](#) (Canada);

"class of securities" includes a series of a class of securities;

"clearing agency" means,

when used in relation to securities, a person that

(a)

in connection with trades in securities, acts as an intermediary in

- (i) paying funds or delivering securities,

provides a centralized facility through which trades in securities

- (ii) are cleared, or

provides a centralized facility as a depository of securities, and

(iii)

when used in relation to derivatives, a person that provides a centralized

(b)

facility for the clearing or settlement of trades in derivatives if the facility

enables the substitution of the credit of the person for the credit of

- (i) a party to a derivative through novation or otherwise,

- (ii) arranges for or provides, on a multilateral basis, the settlement or netting of obligations resulting from a derivative or a trade in a derivative, or
- arranges for or provides the mutualization or transfer of credit risk
- (iii) that results from a derivative among some or all the persons that have entered into an agreement to access the facility,

but does not include a prescribed person or a person within a class of prescribed persons;

"commission" means the British Columbia Securities Commission continued under Part 2;

"commission rule" means a rule made or deemed to be made by the commission under section 184;

"commodity" means

- any good, article, service, right or interest of which any unit is, from its
- (a) nature or by mercantile custom, treated as the equivalent of any other unit,
- the currency of any jurisdiction,
- (b) a gem, gemstone, or other precious stone, or
- (c) any other prescribed good, article, service, right or interest, or a class of
- (d) any of those;

"contract" includes a trust agreement, declaration of trust or other similar instrument;

"contractual plan" means a contract or other arrangement for the purchase of securities of a mutual fund by payments over a specified period or by a specified number of payments where the amount deducted from any one of the payments as sales charges is larger than the amount that would have been deducted from that payment for sales charges if deductions had been made from each payment at a constant rate for the duration of the plan;

"control person" means

- a person who holds a sufficient number of the voting rights attached to
- (a) all outstanding voting securities of an issuer to affect materially the control of the issuer, or
- each person in a combination of persons, acting in concert by virtue of
- (b) 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 person or combination of persons holds more than 20% of the voting rights attached to all outstanding voting securities of an issuer, the person or

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;

"dealer" means a person who trades in securities or derivatives as principal or agent;

"decision", in relation to the commission, the executive director or a designated organization, means a direction, decision, order, ruling or requirement made under a power or right conferred by this Act or the regulations;

"derivative" includes

(a) an option, swap, futures contract, forward contract or other financial or commodity contract or instrument if the market price or value of, or the delivery obligations, payment obligations or settlement obligations connected to, the option, swap, contract or instrument reference, or are derived from or based on, an underlying interest,

(b) a security, or a security within a class of securities, described in an order made under section 3.2, or

(c) a security within a class of securities that are prescribed to be derivatives, but does not include

(d) a derivative, or a derivative within a class of derivatives, described in an order made under section 3.1, or

(e) a prescribed derivative or a derivative within a prescribed class of derivatives;

"designated organization" means an organization that is authorized under section 184 (2) (e) to exercise a power or perform a duty of the executive director;

"director" means a director of a corporation or an individual performing a similar function or occupying a similar position for a corporation or for any other person;

"distribution" means, if used in relation to trading in securities,

(a) a trade in a security of an issuer that has not been previously issued, a trade by or on behalf of an issuer in a previously issued security of that issuer that has been redeemed or purchased by or donated to that issuer,

(c) a trade in a previously issued security of an issuer from the holdings of a control person,

(d) a trade by or on behalf of an underwriter in a security that was acquired by the underwriter, acting as underwriter, before February 1, 1987, if the security continues, on February 1, 1987, to be owned by or on behalf of that underwriter so acting,

(e) a trade deemed to be a distribution

- (i) in an order made under section 76 by the commission or the executive director, or
- in the regulations,
- (ii) a transaction or series of transactions involving further purchases and
- (f) sales in the course of or incidental to a distribution, and
- a prescribed class of trade or transaction;

(g)
"distribution contract" means a contract under which a mutual fund or its legal representative 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;

"economic interest" means

- a right to receive or the opportunity to participate in a reward, benefit or
- (a) return from a security, or

the exposure to a risk of a financial loss in respect of a security;

(b)
"exchange issuer" means an issuer whose securities are listed and posted for trading on an exchange recognized for the purpose of this definition by the commission, but does not include

- an issuer, or
- (a) a class of issuers

(b)
described in an order which the commission may make for the purpose of this definition;

"executive director" means the executive director appointed under section 8;

"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;

"holder in British Columbia" means, in respect of a security of an issuer, a holder of the security of the issuer whose last address as shown on the books of the issuer is in British Columbia;

"individual" means a natural person, but does not include

- a partnership, unincorporated association, unincorporated syndicate,
- (a) unincorporated organization or trust, or

- a natural person in the person's capacity as a trustee, executor,
- (b) administrator or personal or other legal representative;

"insider" means

- (a) a director or an officer of an issuer,
 - a director or an officer of a person that is itself an insider or a subsidiary
- (b) of an issuer,
 - a person that has
- (c)
 - beneficial ownership of, or control or direction over, directly or
 - (i) indirectly, or
 - a combination of beneficial ownership of, and control or direction
 - (ii) over, directly or indirectly,
- securities of an issuer carrying more than 10% of the voting rights attached to all the issuer's outstanding voting securities, excluding, for the purpose of the calculation of the percentage held, any securities held by the person as underwriter in the course of a distribution,
- an issuer that has purchased, redeemed or otherwise acquired a security
- (d) of its own issue, for so long as it continues to hold that security,
- a person designated as an insider in an order made under section 3.2, or
- (e) a person that is in a prescribed class of persons;
- (f)

"insurer" means an insurance company;

"investment fund" means a mutual fund or a non-redeemable investment fund;

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

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

- the dissemination of information provided, or records prepared, in the
- (a) ordinary course of the business of the issuer
 - to promote the sale of products or services of the issuer, or
 - (i) to raise public awareness of the issuer,
 - (ii) that cannot reasonably be considered to promote the purchase or sale of securities of the issuer,
- activities or communications necessary to comply with the requirements
- (b) of
 - this Act or the regulations, or
 - (i) the bylaws, rules or other regulatory instruments of a self
 - (ii) regulatory body, exchange or quotation and trade reporting system,
- communications by a publisher of, or writer for, a newspaper, news
- (c)

magazine or business or financial publication, that is of general and regular paid circulation, distributed only to subscribers to it for value or to purchasers of it, if

the communication is only through the newspaper, magazine or
(i) publication, and

the publisher or writer receives no commission or other
(ii) consideration other than for acting in the capacity of publisher or writer, or

activities or communications that may be prescribed for the purpose of
(d) this definition;

"issuer" means a person who

- has a security outstanding,
- (a) is issuing a security, or
- (b) proposes to issue a security;
- (c)

"management contract" means a contract under which a mutual fund is provided with investment advice;

"material change" means,

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

(C) by senior management of the investment fund manager who believe that confirmation of the decision by the directors of the manager is probable;

"material fact" means,

- when used in relation to a security issued or proposed to be issued, a fact
- (a) that would reasonably be expected to have a significant effect on the market price or value of the security, and
- when used in relation to a derivative, a fact that would reasonably be
- (b) expected to have a significant effect on the market price or value of, or obligations under, the derivative;

"misrepresentation" means

- an untrue statement of a material fact, or
- (a) an omission to state a material fact that is
- (b) required to be stated, or
 - (i) necessary to prevent a statement that is made from being false or
 - (ii) misleading in the circumstances in which it was made;

"mutual fund" means

- an issuer of a security that entitles the holder to receive on demand, or
- (a) within a specified period after demand, an amount computed by reference to the value of a proportionate interest in the whole or in a part of the net assets, including a separate fund or trust account, of the issuer of the security,
- an issuer described in an order made under section 3.2, and
- (b) an issuer that is in a class of prescribed issuers,
- (c) but does not include an issuer, or a class of issuers, described in an order made under section 3.1;

"mutual fund distributor" means a person distributing a security under a distribution contract;

"mutual fund in British Columbia" means a mutual fund that is

- a reporting issuer, or
- (a) organized under the laws of British Columbia,
- (b) but does not include a private mutual fund;

"mutual fund manager" means a person who provides investment advice under a management contract;

"non-redeemable investment fund" means

(a) an issuer

whose primary purpose is to invest money provided by its security

(i) holders,

that does not invest

(ii) for the purpose of exercising or seeking to exercise control

(A) of an issuer, other than a mutual fund or a non-redeemable investment fund, or

for the purpose of being actively involved in the

(B) management of any issuer in which it invests, other than a mutual fund or a non-redeemable investment fund, and

that is not a mutual fund,

(iii)

an issuer designated in an order made under section 3.2, and

(b) an issuer that is in a class of prescribed issuers,

(c) but does not include an issuer, or a class of issuers, described in an order made under section 3.1;

"officer", with respect to an issuer or a registrant, means

a chair or vice chair of the board of directors, or a chief executive officer,

(a) chief operating officer, chief financial officer, president, vice president, secretary, assistant secretary, treasurer, assistant treasurer or general manager,

an individual who is designated as an officer under a bylaw or similar

(b) authority of the registrant or issuer, or

an individual who performs functions similar to those normally

(c) performed by an individual referred to in paragraph (a) or (b);

"person" includes an individual, corporation, partnership, party, trust, fund, association and any other organized group of persons and the personal or other legal representative of a person to whom the context can apply according to law;

"portfolio manager" means an adviser who manages the investment portfolio of clients through discretionary authority granted by one or more clients;

"portfolio security" means, if used in relation to a mutual fund, a security or derivative held or proposed to be purchased by the mutual fund;

"private mutual fund" means a mutual fund that is

operated as an investment club, if

(a) the securities issued by it are held by not more than 50 persons

(i) and it has never sought to borrow money from the public,

it does not pay or give any remuneration for investment,

(ii) management or administration advice in respect of trades in securities or derivatives, except normal brokerage fees, and

- (iii) all of its members are required, for the purpose of financing its operations, to make contributions in proportion to the securities issued by it that each member holds, or
- administered by a trust company but which has no promoter or manager
- (b) other than a trust company, and consists of
 - a pooled fund that is maintained solely to serve registered
 - (i) retirement savings plans, retirement income plans, deferred profit sharing plans, pension plans or other similar plans registered under the [Income Tax Act](#) (Canada),
 - a common trust fund as defined by the [Financial Institutions Act](#), or
 - (ii) a pooled fund that is maintained by a trust company in which
 - (iii) money, belonging to various estates and trusts in its care, is commingled, with the authority of the settlor, will-maker or trustee, for the purpose of facilitating investment if no general solicitations are made to sell securities in the fund;

"promoter" means, if used in relation to an issuer, a person who

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

but does not include a person who

- receives securities or proceeds referred to in paragraph (b) solely
- (c) as underwriting commissions, or
- (i) in consideration for property, and
- (ii) does not otherwise take part in founding, organizing or substantially
- (d) reorganizing the business;

"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

- to purchase, not purchase, trade or not trade a security, or
 - (a) to trade or not trade a derivative,
 - (b)
- but does not include an activity prescribed for the purpose of this definition;

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

"regulation", except in sections 155 (1) (d), 183, 184, 186 and 188, includes a commission rule;

"related financial instrument" means

- an instrument, agreement, security or derivative the value, market price
- (a) or payment obligations of which are derived from, referenced to or based on the value, market price or payment obligations of a security, or
- any other instrument, agreement or understanding that affects, directly
- (b) or indirectly, a person's economic interest in respect of a security;

"reporting issuer" means an issuer that

- has issued securities in respect of which
- (a) a prospectus was filed and a receipt was issued,
 - (i) a statement of material facts was filed and accepted, or
 - (ii) a securities exchange take over bid circular was filed,
 - (iii) under a former enactment,
- has filed a prospectus or statement of material facts and the executive
- (b) director has issued a receipt for it under this Act,
- has any securities that have been at any time listed and posted for
- (c) trading on any exchange in British Columbia, regardless of when the listing and posting for trading began,
- is an issuer that has exchanged its securities with another issuer or with
- (d) the holders of the securities of that other issuer in connection with an amalgamation, merger, reorganization, arrangement or similar transaction if one of the parties to the amalgamation, merger, reorganization, arrangement or similar transaction was a reporting issuer at the time of the amalgamation, merger, reorganization, arrangement or similar transaction,
- is designated as a reporting issuer in an order made under section 3.2,
- (e) is a person that is within a prescribed class of persons, or
- (e.1) has filed a securities exchange take over bid circular under this Act for
- (f) the acquisition of securities of a reporting issuer and has taken up and paid for securities subject to the bid in accordance with the circular,

unless the commission orders under section 88 that the issuer has ceased to be a reporting issuer;

"salesperson" means an individual employed by a dealer to make trades on the dealer's behalf in securities, derivatives or both;

"securities regulatory authority" means a person empowered by the laws of a jurisdiction to regulate trading in securities or derivatives or to administer or

enforce laws respecting trading in securities or derivatives;

"security" includes

- a document, instrument or writing commonly known as a security,
- (a) a document evidencing title to, or an interest in, the capital, assets,
- (b) property, profits, earnings or royalties of a person,
- a document evidencing an option, subscription or other interest in or to a
- (c) security,
- a bond, debenture, note or other evidence of indebtedness, share, stock,
- (d) unit, unit certificate, participation certificate, certificate of share or interest, preorganization certificate or subscription other than
 - a contract of insurance issued by an insurer, and
 - (i) an evidence of deposit issued by a savings institution,
 - (ii)
- (e) an agreement under which the interest of the purchaser is valued, for the purposes of conversion or surrender, by reference to the value of a proportionate interest in a specified portfolio of assets, but does not include a contract issued by an insurer that provides for payment at maturity of an amount not less than 3/4 of the premiums paid by the purchaser for a benefit payable at maturity,
- an agreement providing that money received will be repaid or treated as
- (f) a subscription to shares, stock, units or interests at the option of the recipient or of any person,
- a profit sharing agreement or certificate,
- (g) a certificate of interest in an oil, natural gas or mining lease, claim or
- (h) royalty voting trust certificate,
 - an oil or natural gas royalty or lease or a fractional or other interest in
 - (i) either,
 - a collateral trust certificate,
 - (j) an income or annuity contract, other than one made by an insurer,
 - (k) an investment contract,
 - (l) a document evidencing an interest in a scholarship or educational plan or
- (m) trust,
- [Repealed 2019-38-1.]
- (n) a permit under the [Oil and Gas Activities Act](#),
- (o) a derivative, or a derivative within a class of derivatives, described in an
- (p) order made under section 3.2, or
 - a derivative within a class of derivatives that are prescribed to be
- (q) securities,

whether or not any of the above relate to an issuer, but does not include a security, or a security within a class of securities, described in an order made under section 3.1, or a prescribed security or a security within a prescribed class of securities;

"self-regulatory body" means a regulatory body other than a government or governmental authority;

"spouse" means a person who

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

"subsidiary" means an issuer that is controlled by another issuer;

"trade" includes

- a disposition of a security for valuable consideration whether the terms
- (a) of payment be on margin, instalment or otherwise, but does not include a purchase of a security or a transfer, pledge, mortgage or other encumbrance of a security for the purpose of giving collateral for a debt or other obligation,
- [Repealed 2019-38-1.]
- (a.1) and (b) participation as a trader in a transaction in a security or derivative made
- (c) on or through the facilities of an exchange or reported through the facilities of a quotation and trade reporting system,
- the receipt by a registrant of an order to buy or sell a security or effect a
- (d) transaction in a derivative,
- a transfer of beneficial ownership of a security to a transferee, pledgee,
- (e) mortgagee or other encumbrancer under a realization on collateral given for a debt or other obligation,
- entering into a derivative, materially amending a derivative or
- (e.1) terminating a derivative,
- a purchase, sale, assignment or novation of a derivative, other than a
- (e.2) novation with a clearing agency, and
- any act, advertisement, solicitation, conduct or negotiation directly or
- (f) indirectly in furtherance of any of the activities specified in paragraphs (a) to (e.2);

"trade repository" means a person that collects and maintains records relating to derivatives;

"underlying interest" includes, in relation to a derivative,

- a benchmark, and
- (a)

- (b) any other price, quote, estimate, rate, index, value, probability, event or thing;

"underwriter" means a person who,

- as principal, agrees to purchase a security for the purpose of distribution,
- (a) as agent, offers for sale or sells a security in connection with a
- (b) distribution, or
- participates directly or indirectly in a distribution described in paragraph
- (c) (a) or (b),

but does not include

- a person whose interest in the transaction is limited to receiving the
- (d) usual and customary distribution or sales commission payable by an underwriter or issuer,
- a mutual fund that accepts its securities for surrender and resells them,
- (e) a corporation that purchases shares of its own issue and resells them, or
- (f) a bank with respect to prescribed securities or banking transactions;
- (g)

"voting security" means a security of an issuer that

- is not a debt security, and
- (a) carries a voting right either under all circumstances or under some
- (b) circumstances that have occurred and are continuing.

For the purposes of this Act, other than section 53, an issuer is affiliated with
(2) another issuer if

- one of them is the subsidiary of the other, or
- (a) each of them is controlled by the same person.
- (b)

For the purposes of this Act, an issuer is controlled by a person if
(3)

- voting securities of the issuer are held, other than by way of security
- (a) only, by or for the benefit of that person, and
- the voting rights attached to those voting securities are entitled, if
- (b) exercised, to elect a majority of the directors of the issuer.

For the purposes of this Act, a person beneficially owns securities that are
(4) beneficially owned by

- an issuer controlled by that person, or
- (a) an affiliate of that person or an affiliate of any issuer controlled by that
- (b) person.

Insiders

2 (1) The following persons are insiders of a mutual fund that is a reporting issuer:

- a mutual fund manager for the mutual fund;
- (a) a mutual fund distributor for the mutual fund;
- (b) an insider of a manager or distributor described in paragraph (a) or (b).
- (c)

[Repealed 2006-32-2.]

(2) and (3)

Definition of special relationships

3 For the purposes of sections 57.2 and 136, a person is in a special relationship with an issuer if the person

- is an insider, affiliate or associate of
 - (a) the issuer,
 - (i) a person that is considering or proposing to make a take over bid,
 - (ii) as defined in section 92, for the securities of the issuer, or
 - a person that is considering or proposing
 - (iii) to become a party to a reorganization, amalgamation,
 - (A) merger, arrangement or similar business combination with the issuer, or
 - to acquire a substantial portion of the property of the issuer,
 - (B)
 - (b) has engaged in, is engaging in or is considering or proposing to engage in any business or professional activity with or on behalf of the issuer or with or on behalf of a person described in paragraph (a) (ii) or (iii),
 - (c) is a director, officer or employee of the issuer or of a person described in paragraph (a) (ii) or (iii) or (b),
 - (d) knows of a material fact or of a material change with respect to the issuer, having acquired the knowledge while in a relationship described in paragraph (a), (b) or (c) with the issuer,
 - (e) knows of a material fact or of a material change with respect to the issuer, having acquired the knowledge from another person at a time when
 - that other person was in a special relationship with the issuer,
 - (i) whether under this paragraph or any of paragraphs (a) to (d), and
 - the person that acquired knowledge of the material fact or
 - (ii) material change from that other person knew or reasonably ought to have known of the special relationship referred to in subparagraph (i), or
 - (f) is within a prescribed class of persons.

Exemption orders

3.1 (1) If the commission considers that to do so would not be prejudicial to the public interest, the commission may, for the purposes of this Act and the regulations,

order that

- a derivative, or a class of derivatives, is not a derivative,
- (a) a security, or a class of securities, is not a security,
- (a.1) an issuer, or a class of issuers, is not a mutual fund, or
- (b) an issuer, or a class of issuers, is not a non-redeemable investment fund.
- (c) An order under subsection (1) may be made on application by an interested person
- (2) or on the commission's own motion.

Designations

3.2 (1) If the commission considers it to be in the public interest, the commission may, for the purposes of this Act, order that

- a person is an insider,
- (a) a person or a person within a class of persons is a mutual fund, a non-redeemable investment fund or a reporting issuer,
- a derivative, or a derivative within a class of derivatives, is a security, or
- (b.1) a security, or a security within a class of securities, is a derivative.
- (b.2) [Repealed 2007-37-3.]
- (c) and (d) An order under subsection (1) may be made on application by an interested person
- (2) or on the commission's own motion.

Part 2 — The Commission

Commission continued

- 4** (1) The British Columbia Securities Commission is continued as a corporation consisting of up to 11 members appointed as follows by the Lieutenant Governor in Council after a merit-based process:
- one member designated as the chair and chief executive officer of the
 - (a) commission;
 - one or more members designated as vice chairs after consultation with
 - (b) the chair;
 - other members appointed after consultation with the chair.
 - (c) The commission is responsible for the administration of this Act.
 - (2) [Repealed 2003-47-61.]
 - (3) The Lieutenant Governor in Council may set the terms and conditions of the
 - (4) appointments of the members of the commission including, but not limited to, appointing members of the commission for different terms of office, or for limited, specified purposes or functions or for all purposes or functions of the commission.

[Repealed 2003-47-61.]

- (5) The members of the commission must be reimbursed for any reasonable expenses
- (6) necessarily incurred by them in the performance of their duties.

- If a member of the commission is appointed for a limited, specified purpose or
- (7) function of the commission, the member

- is not to be considered a member of the commission for any other
- (a) purpose or function than that specified, and
- must not participate in any aspect of the commission's business outside
- (b) the limited, specified purpose or function for which the member was appointed.

[Repealed 2003-47-61.]

- (8) The commission may hold hearings in or outside British Columbia in conjunction
- (9) with any other body empowered by law to administer or regulate trading in securities or derivatives and may consult with that other body during the course of a hearing.

[Repealed 2006-32-6.]

- (9.1) A person who is the chair, a vice chair or a member of the commission may
- (10) exercise the powers and must perform the duties delegated to that person by the commission under section 7.

Application of *Administrative Tribunals Act* to commission

4.1 The following provisions of the *Administrative Tribunals Act* apply to the commission:

- Part 1 *[Interpretation and Application]*;
- (a) Part 2 *[Appointments]*, except the following:
- (b)
 - section 7 (3) *[powers after resignation or expiry of term]*;
 - (i) section 9 *[responsibilities of the chair]*;
 - (ii) section 10 *[remuneration and benefits for members]*;
 - (iii) section 43 *[discretion to refer questions of law to court]*;
- (c) section 11 *[general power to make rules respecting practice and procedure]*;
- (c.1) section 46 *[notice to Attorney General if constitutional question raised in application]*;
- (d) section 46.1 *[discretion to decline jurisdiction to apply the Human Rights Code]*;
- (e) section 55 *[compulsion protection]*;
- (f) section 61 *[application of Freedom of Information and Protection of Privacy Act]*.
- (g) *Act*.

Commission is an agent of the government

5 (1) The commission is an agent of the government.

The commission has the power and capacity of a natural person of full capacity.

- (2) The *Business Corporations Act* does not apply to the commission, but the Lieutenant Governor in Council may order that one or more of the provisions of that Act apply.

(4) The commission is not liable to taxation, except insofar as the government is liable.

Panels of commission

6 (1) The chair may establish one or more panels of the commission, and, in matters referred to a panel by the chair, a panel has the powers of the commission.

The chair may refer a matter that is before the commission to a panel or a matter

- (2) that is before a panel to the commission or another panel.

A panel consists of 2 or more members of the commission appointed by the chair.

- (3) The chair may terminate an appointment to a panel and may fill a vacancy on a
(4) panel before the commencement of a hearing.

Delegation of commission powers and duties

7 (1) Subject to subsections (2) and (3), the commission may delegate its powers and duties under this Act or another enactment to the chair, a vice chair, a member of the commission or the executive director.

The commission must not delegate a power or duty referred to in section 114 (1),

- (2) 137, 142, 143, 143.1, 145, 148, 149, 150, 157, 162, 163, 164.04, 165 or 179.1 to the executive director.

The commission must not delegate the power to make rules under section 184.

- (3) Unless the parties consent, a member of the commission must not sit on any
(4) hearing required to be held by the commission with respect to any matter in relation to which the member exercised a power or performed a duty referred to in section 142, 143, 143.1, 145, 148, 149, 150, 164.04 or 179.1 and which was delegated to the member under subsection (1).

Executive director

8 (1) The commission must appoint a person to be the executive director.

The executive director is the chief administrative officer of the commission and

- (2) must obey the policy directives given by the commission.

The executive director may exercise the powers and must perform the duties

- (3) vested in or imposed on

the executive director under this Act, and

- (a) the commission under this Act that are delegated to the executive
(b) director by the commission.

- (4) The executive director, by conditional or unconditional written authority, may delegate the executive director's powers and duties under this Act or another enactment to any person employed under section 9.

Despite subsection (4), the executive director must not delegate

- (5) powers or duties of the commission that are delegated to the executive
(a) director by the commission, or
a power or duty referred to in section 81, 89, 161, 162.2, 166 (3) or 182.
(b) A person to whom the executive director, by written authority under subsection (4),
(6) delegates powers and duties may exercise the powers and must perform the duties in accordance with the written authority.

- Persons employed in the office of the executive director as directors are deputies
(7) of the executive director.

Officers and employees

9 The commission may

- appoint officers and employees of the commission necessary to enable
(a) the commission and the executive director to perform their duties and exercise their powers under this Act,
define the duties of the officers and employees, and
(b) determine the remuneration of its members, and the remuneration and
(c) classification of the officers and employees.

Public service benefits

- 10 (1) The *Public Service Benefit Plan Act* applies to the commission and to the officers and employees.

[Repealed 1999-44-104.]

(2) and (3)

Obligation to keep information confidential

- 11 (1) Every person acting under the authority of this Act must keep confidential all facts, information and records obtained or provided under this Act, or under a former enactment, except so far as the person's public duty requires or this Act permits the person to disclose them or to report or take official action on them.

- Subject to subsections (3) and (4), the facts, information and records referred to in
(2) subsection (1) must be released to the Ombudsperson at the request of the Ombudsperson.

- All facts, information and records that are obtained
(3) from a law enforcement agency, or
(a) pursuant to an investigation under this Act,
(b)

must only be released to the Ombudsperson if the Ombudsperson first produces the written consent of

- the law enforcement agency, or
- (c) the person from whom the facts, information or records were obtained
- (d) pursuant to the investigation,

to release the facts, information or records.

- All facts, information and records that could lead to the identification of an
- (4) informant under this Act must only be released to the Ombudsperson if the person to whom the Ombudsperson makes the request first obtains the written consent of the informant to release the facts, information or records.

Repealed

12 [Repealed 2006-32-8.]

Appointment of experts

- 13 (1) The commission may appoint an expert to assist it in any way it considers expedient.

- The commission may submit any record or thing for examination to an expert
- (2) appointed under subsection (1), and the commission has the same power as is vested in an investigator under section 144 to summon and enforce the attendance of witnesses before the expert and to compel them to give evidence under oath or in any other manner, and to preserve and produce records and things or classes of records and things.

- If an expert has made an examination or conducted an investigation under this
- (3) section, the commission may require the person whose records or things were examined or investigated to pay prescribed fees or charges for the costs of the examination or investigation.

Part 3 — Financial Administration

Minister of Finance

- 14 In this Part, "**Minister of Finance**" has the same meaning as in the *Financial Administration Act*.

Revenue and expenditure

- 15 (1) Revenue required to be paid under this Act, including but not limited to
- money required to be paid under an order made under section 155.1 (b),
 - (a) 157 (1) (b), 161 (1) (g), 162, 162.04, 164.09 or 164.12,
 - money required to be paid under a notice given under section 162.01,
 - (b) and

any cost recoveries under this Act,
 (c) but not including money from fines referred to in section 155, must be paid to the commission.

Subject to subsection (3), money received by the commission may be expended for
 (2) any costs involved in the administration and enforcement of this Act and for any costs involved in operating the commission.

Money received by the commission

(3) under an order made under section 155.1 (b), 157 (1) (b), 161 (1) (g), 162,
 (a) 162.04, 164.09 or 164.12,
 under a notice given under section 162.01, or
 (b) from the disposition of property forfeited under section 164.12,
 (c) may, subject to the regulations, be expended for the purpose of
 educating securities market participants and members of the public
 (d) about investing, financial matters or the operation or regulation of securities markets,
 benefiting a third party the commission considers appropriate,
 (e) enforcing
 (f) the order or notice, or
 (i) this Act, including, for greater certainty, the enforcement of
 (ii) another order made under section 155.1 (b), 157 (1) (b), 161 (1) (g), 162, 162.04, 164.09 or 164.12 or a notice given under section 162.01, or
 exercising a power or performing a duty under section 15.1.

(g) Despite subsection (3) of this section, the commission may not expend money
 (3.1) received under section 155.1 (b), 157 (1) (b) or 161 (1) (g) for a purpose referred to in subsection (3) (d), (e) or (f) (ii) of this section unless the period set out in the notice published under section 15.1 (1) has expired.

[Repealed 2006-32-9.]

(4) This section applies despite section 12 of the [Financial Administration Act](#).
 (5)

Claim for wrongful benefit

15.1 (1) The commission must publish a notice if the commission receives money from an order made under section 155.1 (b), 157 (1) (b) or 161 (1) (g).

A notice under subsection (1) must set out a period within which a person may
 (1.1) make a claim.

The period referred to in subsection (1.1) must be at least 3 months from the date
 (1.2) that the notice is given.

- (2) A person may make a claim to money referred to in subsection (1) by submitting an application in accordance with the regulations.

If the commission receives an application under subsection (2), the commission

- (3) may, in accordance with the regulations, pay to the applicant all or a part of the amount claimed.

[Repealed 2011-29-120.]

- (4) The commission may retain any money not payable under subsection (3) after the
(5) period referred to in subsection (1.1) expires and after adjudicating all claims in accordance with the regulations.

Administrative services

- 16 The Lieutenant Governor in Council may designate administrative services that the commission must obtain from the government or from any government corporation, agency, branch, department or other government organization or entity that is specified in the order making the designation.

Fiscal agent

- 17 The Minister of Finance is the fiscal agent of the commission.

Investment

- 18 (1) The commission must place with the Minister of Finance, for investment, any money the commission receives but does not immediately require for carrying out the purposes of this Act.

Money placed with the Minister of Finance under this section is to be treated for all

- (2) purposes as money placed with that minister under section 40 (5) of the [Financial Administration Act](#).

Borrowing powers

- 19 Subject to the approval of the Lieutenant Governor in Council and the Minister of Finance, the commission, for the purpose of carrying out any power, right, function or duty conferred or imposed on the commission under this or any other Act, may borrow the sums of money the commission considers necessary or advisable.

Accounting

- 20 (1) The commission must establish and maintain accounting policies and systems satisfactory to the Minister of Finance.

Whenever required by the Minister of Finance, the commission must render

- (2) detailed accounts of the commission's revenues and expenditures for the period or to the day the Minister of Finance designates.

All books or records of account and other financial records must at all times be

- (3) open for inspection by the Minister of Finance or a person designated by that

minister.

- The chair of the Treasury Board may direct the Comptroller General to examine
- (4) and report to Treasury Board on any or all of the financial and accounting operations of the commission.

- At least once in every fiscal year, the accounts of the commission must be audited
- (5) and reported on by an auditor appointed by the Lieutenant Governor in Council, and the costs of the audit must be paid by the commission.

- The fiscal year for the commission is a period of 12 months beginning on April 1 in
- (6) each year and ending on March 31 in the next year.

Business plan

- 21** At least once in every fiscal year of the commission and as directed by the Treasury Board, the commission must submit to the Treasury Board, for review and approval, a business plan that includes
- a proposed budget for the subsequent 3 fiscal years,
 - (a) management objectives for the next 3 years, and
 - (b) other information that the Treasury Board may specify.
 - (c)

Annual report

- 22** (1) Within 90 days after the end of each fiscal year of the commission, the commission must prepare and submit to the minister a report for that fiscal year.

- The report must be laid before the Legislative Assembly by the minister as soon as
- (2) practicable.

- The report must contain
- (3)
- a summary of the commission's operations for the fiscal year of the report,
 - (a)
 - a financial statement in the form required by the Minister of Finance
 - (b) showing the revenues, expenditures, assets and liabilities of the commission for the fiscal year of the report, and
 - any other information that the minister may specify.
 - (c)

- The financial statement referred to in subsection (3) (b) must be prepared in
- (4) accordance with generally accepted accounting principles.

Part 4 — Benchmark Administrators, Clearing Agencies, Exchanges, Information Processors, Quotation and Trade Reporting Systems, Self-Regulatory Bodies and Trade Repositories

Interpretation

23 In sections 26 to 32,

- a reference to a clearing agency, exchange, quotation and trade
- (a) reporting system, self-regulatory body or trade repository means a person that has been recognized, under section 24, as a clearing agency, exchange, quotation and trade reporting system, self-regulatory body or trade repository, as the case may be,
- a reference to a benchmark administrator means a benchmark
- (b) administrator that has been designated for the purposes of a regulation referred to in section 183 (2.2), and
- a reference to an information processor means an information processor
- (c) that has been designated for the purposes of a regulation referred to in section 183 (2.3).

Recognition**24** On application, the commission may recognize a person as

- a self-regulatory body,
- (a) an exchange,
- (b) a quotation and trade reporting system,
- (c) a clearing agency, or
- (d) a trade repository.
- (e)

Recognition required for exchanges and clearing agencies**25** A person must not carry on business as an exchange or clearing agency in British Columbia unless the person is recognized by the commission under section 24.**Designated exchange****25.1** (1) If a person is not carrying on business as an exchange, but is carrying on business as a quotation and trade reporting system, or is otherwise facilitating transactions of securities or derivatives, the commission may, if it considers it to be in the public interest, order that

- the person is an exchange for the purposes of this Act and the
- (a) regulations, and
- the person must not carry on business as a quotation and trade
- (b) reporting system, or facilitate transactions of securities or derivatives, unless the person is recognized by the commission under section 24 (b).

An order under subsection (1) may be made on application by an interested person
(2) or on the commission's own motion.

Duty to regulate, conduct and provide information**26** (1) Subject to this Act, the regulations and any decision made by the commission, a

self-regulatory body, an exchange or a quotation and trade reporting system must regulate the operations, standards of practice and business conduct of its members or participants, and the representatives of its members or participants, in accordance with its bylaws, rules or other regulatory instruments.

A benchmark administrator, clearing agency, exchange, information processor,
(2) quotation and trade reporting system, self-regulatory body or trade repository must provide to the commission or the executive director, at the request of the commission or the executive director,

- in the case of an exchange or a self-regulatory body, a copy, or a partial
- (a) copy as specified in the request, of the charter, as defined in section 1 of the *Financial Institutions Act*, or
- any information or record in the possession of the benchmark
- (b) administrator, clearing agency, exchange, information processor, quotation and trade reporting system, self-regulatory body or trade repository relating to
 - a registrant or former registrant,
 - (i) a client or former client of a registrant or of a former registrant,
 - (ii) an issuer,
 - (iii) trading in securities or derivatives,
 - (iv) the bylaws, rules, other regulatory instruments or policies of the
 - (v) benchmark administrator, clearing agency, exchange, information processor, quotation and trade reporting system, self-regulatory body or trade repository,
 - the directions, decisions or similar determinations made by the
 - (vi) benchmark administrator, clearing agency, exchange, information processor, quotation and trade reporting system, self-regulatory body or trade repository,
 - the charter, as defined in section 1 of the *Financial Institutions Act*,
 - (vii) of the clearing agency, exchange, quotation and trade reporting system, self-regulatory body or trade repository, or
 - this Act or the regulations.
 - (viii)

Powers of the commission

27 (1) If the commission considers it to be in the public interest, the commission may make any decision respecting the following:

- a bylaw, rule or other regulatory instrument or policy, or a direction,
- (a) decision, order or ruling made under a bylaw, rule or other regulatory instrument or policy, of a benchmark administrator, clearing agency, exchange, information processor, quotation and trade reporting system, self-regulatory body or trade repository;

- (b) the procedures or practices of a benchmark administrator, clearing agency, exchange, information processor, quotation and trade reporting system, self-regulatory body or trade repository;
the manner in which a benchmark administrator, clearing agency,
- (c) exchange, information processor or trade repository carries on business;
the trading of securities or derivatives on or through the facilities of an
- (d) exchange, or the trading of securities on or through the facilities of a quotation and trade reporting system;
a derivative trading on an exchange or the provision of information
- (e) about a derivative to a trade repository;
a security listed on an exchange or quoted on a quotation and trade
- (f) reporting system;
issuers, whose securities are listed on an exchange or quoted on a
- (g) quotation and trade reporting system, to ensure that they comply with this Act and the regulations;
if it is reasonable to do so, requiring a person that is providing or has
- (h) provided information to a benchmark administrator to not cease providing information or provide information to the benchmark administrator.

A person affected by a decision made by the commission under subsection (1)
(2) must act in accordance with the decision.

Review of action

- 28** (1) The executive director or a person directly affected by a direction, decision, order or ruling made under a bylaw, rule or other regulatory instrument or policy of a clearing agency, exchange, quotation and trade reporting system, self-regulatory body or trade repository may apply by notice to the commission for a hearing and review of the matter under Part 19, and section 165 (3) to (9) applies.

An applicant under subsection (1), other than the executive director, must send a
(2) copy of the notice requesting a hearing and review to
the executive director, and
(a) the affected self-regulatory body, exchange, quotation and trade
(b) reporting system, trade repository or clearing agency.

If the executive director is the applicant under subsection (1), the executive director
(3) must send a copy of the notice requesting a hearing and review to
the affected self-regulatory body, exchange, quotation and trade
(a) reporting system, trade repository or clearing agency, and
the persons directly affected by the direction, decision, order or ruling
(b) referred to in subsection (1).

Repealed

29 [Repealed 2007-37-7.]

Records of transactions

30 (1) An exchange or a quotation and trade reporting system must keep a record showing the time and date when each transaction on the exchange or quotation and trade reporting system was recorded.

If a client of a member or participant produces to an exchange or a quotation and (2) trade reporting system a written confirmation of a transaction on the exchange or quotation and trade reporting system, the exchange or quotation and trade reporting system must supply to the client

- particulars of the time at which the transaction was recorded, and
- (a) verification or otherwise of the matters set out in the confirmation.
- (b)

Auditors

31 (1) An exchange or a quotation and trade reporting system must appoint an auditor.

If the commission determines it is appropriate, a self-regulatory body must appoint (2) an auditor.

- An auditor appointed under subsection (1) or (2) must
- (3) be practising as an auditor in Canada, and
 - (a) first be approved by the commission.
 - (b)

Audits of members of exchanges and self-regulatory bodies

32 (1) An exchange must appoint a panel of auditors from auditors who are practising as auditors in Canada.

If the commission determines it is appropriate, a self-regulatory body must appoint (2) a panel of auditors from auditors who are practising as auditors in Canada.

Each member of an exchange and a self-regulatory body, as the case may be, must (3) appoint an auditor from the panel appointed under subsection (1) or (2).

- An auditor appointed under subsection (3) must
- (4) examine the financial affairs of the member
 - (a) as required by the bylaws, rules or other regulatory instruments or
 - (i) policies of the self-regulatory body or exchange, and
 - in a manner satisfactory to the commission, and
 - (ii) report on each examination to the self-regulatory body or exchange, as
 - (b) the case may be.

A bylaw, rule or regulatory instrument referred to in subsection (4) respecting the (5)

practice and procedure of examinations does not come into force until it has been approved by the commission.

Duties of auditor oversight body

- 32.1** For the purposes of section 26, an auditor oversight body is not required to regulate the operations, standards of practice and business conduct of its members or participants except to the extent that the regulation relates to the auditing or review of financial statements that are required to be filed under this Act.

Auditor oversight body may adopt rules, standards or policies

- 32.2** For the purposes of performing its duties under section 26, an auditor oversight body may adopt a rule, standard or policy for regulating its members or participants on the basis that a government, a governmental authority or another regulatory body applies the same rule, standard or policy.

Auditor oversight body may require disclosure

- 32.3** (1) If a member or participant of an auditor oversight body receives from the auditor oversight body a written request to provide information or records relevant to the auditing or review of financial statements that are required to be filed under this Act, the member or participant must provide the information or records specified, or that are within the class described, in the request, including information or records relating to or prepared by an issuer whether or not the issuer is named in the request.

An auditor oversight body may, in a written request under subsection (1), specify a

(2) reasonable time or interval when the information or records are to be provided to the auditor oversight body.

For greater certainty, if a member or participant of an auditor oversight body is in

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

If a person consents to the disclosure to an auditor oversight body of information

(4) or a record that is subject to solicitor-client privilege, the consent neither negates nor constitutes a waiver of solicitor-client privilege and the privilege continues for all other purposes.

Directors, officers of auditor oversight body not compellable

- 32.4** An auditor oversight body or a director, officer, employee or agent of an auditor oversight body must not be required to testify or produce evidence, in any proceeding to which the auditor oversight body is not a party other than a criminal proceeding, about records or information obtained in the discharge of the auditor oversight body's duties.

Exemption order by commission

33 (1) If the commission considers that to do so would not be prejudicial to the public interest, it may order that

- a benchmark administrator, clearing agency, exchange, information processor, quotation and trade reporting system, self-regulatory body or trade repository, or
- (a) a class of benchmark administrators, clearing agencies, exchanges, information processors, quotation and trade reporting systems, self-regulatory bodies or trade repositories
- (b)

is exempt from one or more of the requirements of this Part or of the regulations relating to this Part.

An order under subsection (1) may be made on application by an interested person
(2) or on the commission's own motion.

Part 5 — Registration

Persons who must be registered

34 (1) A person must not

- trade in a security or derivative,
- (a) act as an adviser,
- (b) act as an investment fund manager, or
- (c) act as an underwriter,
- (d)

unless the person is registered in accordance with the regulations and in the category prescribed for the purpose of the activity.

[Not in force.]

(2)

Granting registration

35 (1) Subject to subsection (2), the executive director must grant an applicant registration, renewal or reinstatement of registration or an amendment to registration, as the case may be, unless

- the executive director considers that the applicant is not suitable for
- (a) registration in the capacity applied for, or that the proposed registration is objectionable, or

the applicant has not paid the prescribed fee.

(b)

If an applicant or partner, director or officer of an applicant is not a resident of

(2) British Columbia on the date of application, the executive director may refuse to register the applicant unless, at the time of application, the applicant meets the

requirements of subsection (1) and, in addition, the applicant or the applicant's partner, director or officer

- is registered in a capacity corresponding to that of a dealer, underwriter,
- (a) adviser, salesperson, advising employee, partner, director or officer under the law of the jurisdiction respecting trading in securities or derivatives, as the case may be, in which the applicant last resided, and
- has been so registered for at least one year immediately before the date
- (b) of application.

The executive director must not refuse to grant, renew, reinstate or amend a
(3) registration without giving the applicant an opportunity to be heard.

Conditions imposed on registration and registrants

36 (1) The executive director may restrict a registration or a renewal or reinstatement of registration and may impose conditions of registration on the registrant and, without limiting these powers, may

- restrict the duration of the registration,
- (a) restrict the registration to trades in specified securities or derivatives or a
- (b) specified class of securities or class of derivatives, and
- direct that any or all of the registration exemptions set out in the
- (c) regulations do not apply to the registrant.

The executive director acting under subsection (1) must not restrict a registration
(2) or impose a condition of registration on a registrant without giving the registrant or intended registrant an opportunity to be heard.

A registrant must comply with a restriction or condition imposed
(3) under the regulations, or

- (a) by the executive director under subsection (1).
- (b)

Repealed

37 [Repealed 2006-32-11.]

Further information may be required from applicant

38 The executive director may require

- within a specified time, further information or records to be submitted by
- (a) an applicant,
 - (i) a partner, an officer, a director, a governor or a trustee of, or any
 - (ii) person performing a similar function for, an applicant,
- an employee of an applicant, or
- (iii) a person who beneficially owns, directly or indirectly, or exercises
- (iv) control or direction over, 10 percent or more of the voting

- securities of an applicant,
- at any time, verification by affidavit or otherwise of any information or
- (b) records submitted by an applicant, or
- an examination under oath, to be conducted by a person designated in
- (c) writing by the executive director, of
- the applicant,
- (i) a partner, officer, director, governor or trustee of, or any person
- (ii) performing a similar function for, the applicant,
- an employee of the applicant, or
- (iii) a person who beneficially owns, directly or indirectly, or exercises
- (iv) control or direction over, 10 percent or more of the voting securities of an applicant.

Repealed

39 [Repealed 2007-37-9.]

Termination or suspension of employment

40 If the employment of an individual registrant is terminated or suspended, the registration of the individual registrant is immediately suspended until the executive director reinstates the registration.

Suspension of registration

40.1 (1) After giving a registrant an opportunity to be heard, if the executive director considers it in the public interest to do so, the executive director may suspend the registration or impose conditions or restrictions on the registration.

If the executive director considers that the length of time required to provide an

(2) opportunity to be heard under subsection (1) could be prejudicial to the public interest, the executive director may, without providing an opportunity to be heard, suspend a registration, or impose conditions or restrictions on the registration, to have effect for not longer than 15 days.

Surrender of registration

41 (1) If a registrant applies to surrender registration, the executive director must accept the surrender unless the executive director considers it prejudicial to the public interest to do so.

On receiving an application under subsection (1), the executive director may,

(2) without providing an opportunity to be heard, suspend the registration or impose conditions or restrictions on the registration.

Repealed

42 [Repealed 2002-32-18.]

Part 6 — Exemption from Registration Requirements

Repealed

43-47 [Repealed 2006-32-14.]

Exemption order by commission or executive director

48 (1) If the commission or the executive director considers that to do so would not be prejudicial to the public interest, the commission or the executive director may order that

- a trade, intended trade, security, derivative or person, or
- (a) a class of trades, intended trades, securities, derivatives or persons
- (b) is exempt from one or more of the requirements of Part 5 or the regulations related to Part 5.

An order under subsection (1) may be made on application by an interested person

- (2) or on the commission's or the executive director's own motion.

Part 7 — Trading in Securities Generally

Calling at or telephoning residence

49 (1) In this section, "**residence**" includes a building or part of a building in which the occupant resides permanently or temporarily and any appurtenant premises.

A person must not

- (2)
- attend at any residence, or
 - (a) telephone from inside British Columbia to any residence inside or outside
 - (b) British Columbia

for the purpose of trading in a security or derivative.

Subsection (2) does not apply if

- (3)
- the person calls at or telephones the residence
 - (a)
 - of a close personal friend, a business associate or a client with
 - (i) whom or on whose behalf the person calling or telephoning has been in the habit of trading in securities or derivatives, or
 - of a person who
 - (ii)
 - has received a copy of a prospectus filed under this Act, and
 - (A) has requested that information respecting a security offered
 - (B) in that prospectus be provided to that person by the person calling or telephoning,
- and the person calling or telephoning refers only to the request for

information respecting that security.

[Repealed 2006-32-15.]

- (b) For purposes of this section, a person is conclusively deemed to have called or
(4) telephoned if a salesperson, advising employee, partner, director, officer or agent of the person calls or telephones on that person's behalf.

- The commission may exempt from subsection (2) a person or class of persons
(5) trading in

- securities or derivatives generally,
- (a) a specific security or derivative, or
- (b) a class of securities or a class of derivatives.
- (c)

Representations prohibited

50 (1) A person must not do any of the following:

- represent that the person or another person will
- (a) resell or repurchase a security, or
 - (i) refund all or any of the purchase price of a security;
 - (ii) represent that the person or another person will
- (b) refund any amount paid in respect of a derivative, or
 - (i) assume all or part of an obligation under a derivative;
 - (ii) while engaged in a promotional activity, represent the future value or
- (c) price of a security or derivative;
- while engaged in a promotional activity, without obtaining the prior
- (d) written permission of the executive director, represent the following:
 - that a security will be listed, posted or quoted on an exchange or
 - (i) another trading system;
 - that an application has been or will be made to list, post or quote a
 - (ii) security on an exchange or another trading system;
 - that a derivative will be listed, posted or quoted on an exchange or
 - (iii) another trading system;
 - that an application has been or will be made to list, post or quote a
 - (iv) derivative on an exchange or another trading system.

- A person must not make a statement that the person knows, or reasonably should
(2) know, is a misrepresentation.

- A person engaged in a promotional activity must not make a statement or provide
(3) information

- that a reasonable investor would consider important in determining
- (a) whether to purchase, not purchase, trade or not trade a security if the statement or information, at the time and in light of the circumstances in

which the statement is made or the information is provided,

is false or misleading, or

- (i) omits a fact necessary to make the statement or information not
- (ii) false or misleading, or

that a reasonable person would consider important in determining

- (b) whether to trade or not trade a derivative if the statement or information, at the time and in light of the circumstances in which the statement is made or the information is provided,

is false or misleading, or

- (i) omits a fact necessary to make the statement or information not
- (ii) false or misleading.

A person engaged in a promotional activity must not engage in an unfair practice.

- (4) Subsection (1) (a) and (b) does not apply to a representation

- (5) in respect of a security that carries an obligation of the issuer to redeem
 - (a) or purchase, or a right of the owner to require redemption or purchase, contained in a written agreement if the security involved has an
 - (b) aggregate acquisition cost in excess of a prescribed amount,in respect of a derivative if the terms of the derivative provide for a
 - (c) refund of any amount paid in respect of the derivative or provide a right to a party to require a refund, or
 - (d) in respect of a derivative if the terms of the derivative provide a right to a party to assume all or part of an obligation under the derivative.

In this section, "**unfair practice**" includes any of the following:

- (6) putting unreasonable pressure on a person to purchase, not purchase,
 - (a) trade or not trade a security or trade or not trade a derivative;taking advantage of a person's inability or incapacity to reasonably
 - (b) protect the person's own interest because of physical or mental infirmity, ignorance, illiteracy, age or inability to understand the character, nature or language of any matter relating to a decision to purchase, not purchase, trade or not trade a security or trade or not trade a derivative;
 - (c) imposing terms or conditions that make a transaction inequitable.

Registered dealer acting as principal

51 (1) [Repealed 2006-32-14.]

If a registered dealer

- (2) intends, as principal, to effect a trade in a security with a person who is
 - (a) not a registered dealer, and
 - (b) issues, publishes or sends a notice, circular, pamphlet, letter,

advertisement, telegram or some other record to that person to effect that trade,

the registered dealer must not contract for the sale or purchase of the security unless, before contracting and before accepting payment or receiving any security or other consideration under or in anticipation of the contract, the registered dealer has stated in the record referred to in paragraph (b) that the registered dealer proposes to act as principal in the trade.

- A statement made in compliance with this section or the regulations that a
- (3) registered dealer proposes to act or has acted as principal in respect of a trade in a security does not prevent that dealer from acting as agent in respect of a trade of that security.

Disclosure of investor relations activities

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

the fact of the engagement, and

- (a) on whose behalf the person is engaged.

(b)

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

Use of name of another registrant, etc.

- 53** A registrant must not use a word, name, trademark, logo or advertisement or other commercial symbol in connection with the business of the registrant in a way likely to

deceive or mislead a person about the registrant's identity, or

- (a) give a false impression that the registrant is affiliated with another
- (b) person or otherwise doing business with that other person.

Representation or holding out of registration

- 54** (1) A person must not represent that the person is registered under this Act unless

the representation is true, and

- (a) in making the representation, the person specifies the person's category
- (b) of registration under this Act.

- A person must not make a statement or provide information about something that
- (2) a reasonable investor would consider important in determining whether to enter or maintain a trading or advising relationship with the person if the statement or information, at the time and in light of the circumstances in which the statement is

made or the information is provided,

- is false or misleading, or
- (a) omits a fact necessary to make the statement or information not false or
- (b) misleading.

Approval of commission or executive director not to be represented

55 A person must not represent that the commission or the executive director has in any manner approved or passed on the merits or the accuracy of

- the financial standing, suitability for registration or conduct of any
- (a) registrant,
- any security, derivative, underlying interest of a derivative or issuer,
- (b) any disclosure in relation to a security or derivative,
- (c) a credit rating organization or a credit rating, or
- (d) a benchmark administrator or a benchmark.
- (e)

Declaration as to short position

56 (1) A person who places an order for the sale of a security through a registered dealer acting on the person's behalf and who

- does not own the security, or
- (a) if the person is acting as agent knows that the person's principal does
- (b) not own the security,

must, at the time of placing the order to sell, declare to the registered dealer that the person or the person's principal, as the case may be, does not own the security, and that fact must be disclosed by the dealer in the written confirmation of sale.

Subject to the regulations, for the purposes of subsection (1), a person does not

(2) own a security that

- has been borrowed by that person,
- (a) is subject to any restriction on its sale, or
- (b) may be acquired by that person on the exercise of a right to acquire the
- (c) security by purchase, conversion, exchange or any other means.

Manipulation and fraud

57 (1) A person must not, directly or indirectly, engage in or participate in conduct relating to a security, derivative or underlying interest of a derivative if the person knows, or reasonably should know, that the conduct

- results in or contributes to a misleading appearance of trading activity in,
- (a) or an artificial price for, a security,

- (b) contributes to a fraud perpetrated by another person, or contributes to another person's attempt to commit a fraud, relating to a security, derivative or underlying interest, or
- results in or contributes to a misleading appearance of trading activity in,
- (c) or an artificial price for, a derivative or an underlying interest of a derivative.

- A person must not, in relation to a security, derivative or benchmark,
- (2) perpetrate a fraud, or
 - (a) attempt to perpetrate a fraud.

- (b)
- A person must not, directly or indirectly, engage in or participate in conduct
- (3) relating to a benchmark if

- the person knows, or reasonably should know, that the conduct results in
- (a) or contributes to a false benchmark, or
- the conduct is intended to mislead a benchmark administrator.
- (b)

Repealed

57.1 [Repealed 2007-37-14.]

Insider trading, tipping and recommending

57.2 (1) In this section, "**issuer**" means

- a reporting issuer, or
- (a) any other issuer whose securities are publicly traded.
- (b)

- A person must not enter into a transaction involving a security of an issuer, or a
- (2) related financial instrument of a security of an issuer, if the person

- is in a special relationship with the issuer, and
- (a) knows of a material fact or material change with respect to the issuer,
- (b) which material fact or material change has not been generally disclosed.

- An issuer or a person in a special relationship with an issuer must not inform
- (3) another person of a material fact or material change with respect to the issuer unless

- the material fact or material change has been generally disclosed, or
- (a) informing the person is necessary in the course of business of the issuer
- (b) or of the person in the special relationship with the issuer.

- A person that is considering or proposing to
- (4) make a take over bid, as defined in section 92, for the securities of an
 - (a) issuer,
 - become a party to a reorganization, amalgamation, merger,
 - (b)

arrangement or similar business combination with an issuer, or
acquire a substantial portion of the property of an issuer,
(c) must not inform another person of a material fact or material change with respect to the issuer unless

- the material fact or material change has been generally disclosed, or
- (d) informing the person is necessary in the course of business relating to a
- (e) take over bid, business combination or acquisition.

If a material fact relating to securities of an issuer or a material change with
(5) respect to an issuer has not been generally disclosed,

- the issuer, or
- (a) a person that has knowledge of the fact or change and
- (b) is in a special relationship with the issuer, or
 - (i) is considering whether to take, or proposes to take, one or more of
 - (ii) the actions in subsection (4) (a), (b) or (c)

must not recommend or encourage another person to enter into a transaction involving a security of the issuer or a related financial instrument of a security of the issuer.

Front running

57.3 (1) In this section:

"investor" means a person

- that has indicated an intention to
- (a) purchase or trade a security,
 - (i) trade a derivative, or
 - (ii) enter into a transaction involving an underlying interest of a
 - (iii) derivative, or

for whose account an order is or would be placed;

(b) **"material order information"** means information that relates to

- the intention of an investor to purchase or trade a security, trade a
- (a) derivative or purchase or sell an underlying interest of a derivative, or
- one or more unexecuted orders,
- (b) if the execution of one or more orders, the placement of one or more orders to carry out the intention, or the disclosure of any of the information, would reasonably be expected to affect the market price of the security, the market price or value of the derivative or the market price or value of the underlying interest of a derivative;

"order" means an order to purchase or trade a security, trade a derivative or purchase or sell an underlying interest of a derivative.

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

- (2)
- is an insider, affiliate or associate of the investor,
 - (a) is an investment fund manager of the investor,
 - (b) has engaged in, is engaging in, is considering whether to engage in or
 - (c) proposes to engage in a trading or advising relationship with or on behalf of the investor or a person referred to in paragraph (a) or (b),
 - is a director, officer or employee of the investor or of a person described
 - (d) in paragraph (a), (b) or (c),
 - knows of material order information relating to the investor, having
 - (e) acquired the knowledge while in a relationship described in paragraph (a), (b), (c) or (d), or
 - knows of material order information relating to the investor, having
 - (f) acquired the knowledge from another person at a time when
 - that other person was connected to the investor, whether under
 - (i) this paragraph or any of paragraphs (a) to (e), and
 - the person that acquired knowledge of the material order
 - (ii) information from that other person knew or reasonably ought to have known of the connection referred to in subparagraph (i).

A person that is connected to an investor and knows of material order information

- (3) relating to the investor must not enter into a transaction involving
- a security that is the subject of the material order information,
 - (a) a related financial instrument of a security referred to in paragraph (a),
 - (b) a derivative that is the subject of the material order information, or
 - (c) a derivative that has an underlying interest that is the subject of the
 - (d) material order information.

A person that is connected to an investor must not inform another person of

- (4) material order information relating to the investor unless it is necessary in the course of the business of the person or the investor.

A person that is connected to an investor and knows of material order information

- (5) relating to the investor must not recommend or encourage another person to enter into a transaction involving
- a security that is the subject of the material order information,
 - (a) a related financial instrument of a security referred to in paragraph (a),
 - (b) a derivative that is the subject of the material order information, or
 - (c) a derivative that has an underlying interest that is the subject of the
 - (d)

material order information.

Defences

- 57.4** (1) A person does not contravene section 57.2 (2) if, at the time the person enters into the transaction involving the security or related financial instrument, the person reasonably believes that the other party to the transaction knows of the material fact or material change.

- A person does not contravene section 57.2 (3) or (4) if, at the time the person
- (2) informs the other person of the material fact or material change, the person reasonably believes that the other person knows of the material fact or material change.

- A person does not contravene section 57.2 (2) or 57.3 (3) if the person
- (3)
- enters into the transaction under a written automatic dividend
 - (a) reinvestment plan, written automatic purchase plan or other similar written automatic plan, in which the person agreed to participate before obtaining knowledge of the material fact, material change or material order information, or
 - enters into the transaction as a result of a written legal obligation
 - (b)
 - imposed on the person, or
 - (i) that the person entered into before obtaining knowledge of the
 - (ii) material fact, material change or material order information.

- A person does not contravene section 57.2 (2) or 57.3 (3) if the person entered into
- (4) the transaction
- as agent under the specific unsolicited instructions of the principal,
 - (a) as agent under specific instructions that the agent solicited from the
 - (b) principal before obtaining knowledge of the material fact, material change or material order information,
 - as agent or trustee for another person because of that other person's
 - (c) participation in a written automatic dividend reinvestment plan, written automatic purchase plan or other similar written automatic plan, or
 - as agent or trustee for another person to fulfill a written legal obligation
 - (d) of the other person.

- A person that is not an individual does not contravene section 57.2 (2) or (5) or 57.3
- (5) (3) or (5) if no individual involved in making the decision to enter into the transaction or make the recommendation on behalf of the person
- has knowledge of the material fact, material change or material order
 - (a) information, and
 - is acting on the recommendation or encouragement of an individual who
 - (b) has that information.

(6) A person does not contravene section 57.3 (3) if, at the time the person enters into the transaction, the person reasonably believes that

- (a) the investor has consented to the person entering into the transaction, and
- (b) the other party to the transaction knows of the material order information.

A person does not contravene section 57.3 (4) if, at the time the person informs the
(7) other person of the material order information,

- (a) the person reasonably believes that the investor has consented to the person informing the other person, and
- (b) the person informs the other person that both the person and the other person are connected to the investor for the purposes of section 57.3.

A person does not contravene section 57.3 (5) if, at the time the person
(8) recommends or encourages the other person to enter into a transaction,

- (a) the person reasonably believes that the investor has consented to the person recommending or encouraging, and
- (b) the person informs 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 57.3.

Obstruction of justice

57.5 (1) A person must not

- (a) refuse to give any information or produce any record or thing, or
- (b) destroy, conceal or withhold, or attempt to destroy, conceal or withhold, any information, record or thing

reasonably required for a hearing, review, investigation, examination or inspection under this Act.

A person contravenes subsection (1) if the person knows or reasonably should
(2) know that a hearing, review, investigation, examination or inspection is being conducted or is likely to be conducted and the person takes any action referred to in subsection (1).

Duty to comply with undertaking

57.6 A person that gives a written undertaking to the commission or the executive director must comply with the undertaking.

Records

57.7 (1) Subject to the regulations, a person referred to in section 141 (2) must keep the

following:

- records of the person's business transactions and financial affairs and
- (a) the transactions that the person executes on behalf of others;
- records that enable the determination of the person's compliance with
- (b) this Act, the regulations and any decision that applies to the person.

A record required to be kept under subsection (1) must be kept for a period
(2) of 7 years from the date the record is created or the date the record is obtained, whichever is later.

Part 8 — Trading in Derivatives

Disclosure documents

58 (1) A person must not enter into a transaction for a prescribed derivative unless a disclosure document has been prepared, filed and sent in accordance with the regulations.

A person must not enter into a prescribed transaction for a derivative unless a
(2) disclosure document has been prepared, filed and sent in accordance with the regulations.

Effect of failure to comply

58.1 For greater certainty, a derivative is not void, voidable or unenforceable, and a party to a trade in a derivative is not entitled to rescind the trade, as a result of another party's failure to comply with this Act or the regulations unless

- the terms or conditions of the derivative provide otherwise, or
- (a) the parties to the derivative agree otherwise.
- (b)

Repealed

59 [Repealed 2019-38-34.]

Exemption order by commission or executive director

60 (1) If the commission or the executive director considers that to do so would not be prejudicial to the public interest, the commission or executive director may order that

- a trade, intended trade, derivative or person, or
 - (a) a class of trades, intended trades, derivatives or persons
 - (b)
- is exempt from one or more of the requirements of this Part or the regulations relating to this Part.

An order under subsection (1) may be made on application by an interested person
(2) or on the commission's or the executive director's own motion.

Part 9 — Prospectus

Prospectus required

- 61** (1) Unless exempted under this Act, a person must not distribute a security unless
- a preliminary prospectus and a prospectus respecting the security have
 - (a) been filed with the executive director, and
 - the executive director has issued receipts for the preliminary prospectus
 - (b) and prospectus.

A preliminary prospectus and a prospectus must be in the required form.

(2)

Voluntary filing of prospectus

- 62** Even though a person is not distributing securities, a preliminary prospectus and a prospectus that are in the required form may be filed for
- the purpose of enabling the issuer to become a reporting issuer, or
 - (a) any other prescribed purpose.
 - (b)

Contents of prospectus

- 63** (1) A prospectus must provide full, true and plain disclosure of all material facts relating to the securities issued or proposed to be distributed.

A preliminary prospectus must substantially comply with the requirements of this

(2) Act and the regulations respecting the content of a prospectus.

[Repealed 2006-32-18.]

(3) and (4)

Executive director's discretion

- 64** (1) Before issuing a receipt for a preliminary prospectus or for a prospectus, the executive director may impose additional filing requirements and conditions if the executive director considers that it is in the public interest to do so.

The executive director may accept a form of prospectus or preliminary prospectus

(2) that is in accordance with the law of another jurisdiction if it contains full, true and plain disclosure of all material facts relating to the security to be distributed.

Receipts for prospectus

- 65** (1) Subject to section 64 (1), the executive director must issue a receipt for a preliminary prospectus as soon as practicable after it has been filed under this Part.

Subject to the regulations, the executive director must issue a receipt for a

(2) prospectus filed under this Part unless the executive director considers it to be prejudicial to the public interest to do so.

- (3) The executive director must not refuse to issue a receipt for a prospectus without giving the person who filed the prospectus an opportunity to be heard.

Repealed

66-71 [Repealed 2006-32-18.]

Order to provide information regarding distribution

- 72** (1) If a person proposing to make a distribution of previously issued securities of an issuer is unable to obtain from the issuer information or material that is necessary to enable the person to comply with this Part or the regulations, the executive director may order the issuer to provide to that person the information and material that the executive director considers necessary.

The information and material supplied under subsection (1) may be used by the
(2) person to whom it is provided for the purpose of complying with this Part and the regulations.

If a person proposing to make a distribution of previously issued securities of an
(3) issuer is unable

to obtain any or all of the signatures to the certificates required by this
(a) Part and the regulations, or

to comply otherwise with this Part and the regulations,
(b)
the executive director may make an order exempting that person from any of the provisions of this Part or the regulations, on being satisfied that

the person has made all reasonable efforts to comply, and
(c)
(d) no person is likely to be prejudicially affected by the failure to comply.

Part 10 — Exemptions from Prospectus Requirements

Repealed

73-75 [Repealed 2006-32-18.]

Exemption order by commission or executive director

- 76** (1) If the commission or the executive director considers that to do so would not be prejudicial to the public interest, the commission or the executive director may order that

a trade, intended trade, security or person or class of trades, intended
(a) trades, securities or persons is exempt from one or more of the requirements of Part 9 or the regulations related to Part 9, and

a trade or intended trade or class of trades or intended trades is deemed
(b) to be a distribution.

- (2) An order under subsection (1) may be made on application by an interested person or on the commission's or the executive director's own motion.

- On application of an interested person, the commission or the executive director
- (3) may determine whether the distribution of a security has been concluded or is currently in progress.

List of defaulting reporting issuers

- 77 The commission may publish a list of defaulting reporting issuers.

Part 11 — Circulation of Materials

Waiting period

- 78 (1) In this section, "**waiting period**" means the interval between the issue of a receipt by the executive director for a preliminary prospectus and the issue of a receipt by the executive director for the prospectus in respect of the same distribution.

- Despite section 61, but subject to Part 7, during the waiting period for the
- (2) distribution of a security, a dealer or the issuer of the security may

communicate with a person

- (a) identifying the security proposed to be distributed,
- (i) stating the price of the security, if determined,
- (ii) stating the name and address of a person from whom purchases
- (iii) of the security may be made, and
- stating further information permitted or required by the
- (iv) regulations,

so long as the dealer or issuer states the name and address of a person from whom a preliminary prospectus may be obtained,

give out a preliminary prospectus, and

- (b) solicit expressions of interest from a prospective purchaser, so long as
- (c) before the solicitation, or as soon as practicable after the prospective purchaser indicates an interest in purchasing the security, a copy of the preliminary prospectus is sent to the prospective purchaser.

Repealed

79-80 [Repealed 2006-32-20.]

Defective preliminary prospectus

- 81 If the executive director considers that a preliminary prospectus does not substantially comply with section 63 (1), the executive director may, without giving notice, order that trading that is permitted by section 78 (2) in the security to which the preliminary prospectus relates cease until a revised preliminary prospectus satisfactory to the

executive director is filed and sent to each recipient of the defective preliminary prospectus in accordance with the regulations.

Material given on distribution

82 From the date of issue of a receipt for a prospectus relating to a security, a person distributing the security may give out

- the prospectus,
- (a) any record filed with or referred to in the prospectus, and
- (b) any record used in section 78 (2) (a).
- (c)

Obligation to send prospectus

83 (1) A dealer, not acting as agent of the purchaser, who receives an order or subscription for a security offered in a distribution to which section 61 applies must, subject to the regulations, send to the purchaser,

- before entering into the written confirmation of the agreement of
- (a) purchase and sale resulting from the order or subscription, or
- not later than midnight on the second business day after entering into
- (b) the agreement,

the latest prospectus filed or required to be filed, with respect to the security, and any amendment to that prospectus, filed or required to be filed, under this Act.

Despite subsection (1), a dealer is not required to send an amendment to a

- (2) prospectus to a purchaser if the agreement of purchase and sale of the security has been entered into before the obligation to file the amendment arises under section 67.

An agreement of purchase and sale referred to in subsection (1) is not binding on

- (3) the purchaser if the dealer from whom the purchaser purchases the security receives, not later than 2 business days after receipt by the purchaser of the latest prospectus, any amendment to the prospectus or another prescribed document, that the purchaser is entitled to receive under this Act, written notice sent by the purchaser, evidencing the intention of the purchaser not to be bound by the agreement.

Subsection (3) does not apply if the purchaser

- (4) is a registrant, or
- (a) disposes of the beneficial ownership of the security referred to in
 - (b) subsection (3), otherwise than to secure indebtedness, before the end of the time referred to in subsection (3).

For the purposes of this section, subject to subsection (7), receipt of the latest

- (5) prospectus, any amendment to the prospectus or another prescribed document, that the purchaser is entitled to receive under this Act, by a dealer who

(a) is acting as agent of the purchaser, or

after receipt begins to act as agent of the purchaser,

(b)

with respect to the purchase of a security referred to in subsection (1), is deemed to be receipt by the purchaser on the date on which the dealer received that prospectus, amendment or other prescribed document.

For the purposes of this section, receipt of the notice referred to in subsection (3)

(6) by a dealer who acted as agent of the seller with respect to the sale of the security referred to in subsection (1) is deemed to be receipt by the seller on the date on which the dealer received the notice.

For the purposes of this section, a dealer does not act as agent of the purchaser

(7) unless the dealer is acting solely as agent of the purchaser with respect to the sale in question and has not received and has no agreement to receive compensation from or on behalf of the seller with respect to that sale.

The onus of proving that the time for giving notice under subsection (3) has ended

(8) is on the dealer from whom the purchaser has agreed to purchase the security.

If the issuer acts as the issuer's own dealer in respect of a trade, this section

(9) applies to the issuer as if the issuer were a dealer.

Exemption order by commission or executive director

84 (1) If the commission or the executive director considers that to do so would not be prejudicial to the public interest, the commission or the executive director may order that a person or class of persons is exempt from one or more of the requirements of this Part or of the regulations relating to this Part.

An order under subsection (1) may be made on application by an interested person

(2) or on the commission's or the executive director's own motion.

Part 12 — Continuous Disclosure

Repealed

84.1 [Repealed 2006-32-22.]

Continuous disclosure

85 A reporting issuer must, in accordance with the regulations,

provide prescribed periodic disclosure about its business and affairs,

(a)

provide disclosure of a material change, and

(b)

provide other prescribed disclosure.

(c)

Repealed

86 [Repealed 2006-32-24.]

Initial and subsequent insider report

87 (1) In this section, "**reporting issuer**" does not include a mutual fund.

- An insider of a reporting issuer must, in accordance with the regulations,
- (2) file reports disclosing the insider's
- (a) beneficial ownership of, or control or direction over, directly or
 - (i) indirectly, securities of the issuer, and
 - (ii) interest in, or right or obligation associated with, a related financial instrument of a security of the issuer, and
 - (b) make other prescribed disclosure.

Repealed

87.1 [Repealed 2006-32-26.]

Order relieving reporting issuer

88 If the commission or the executive director considers that it would not be prejudicial to the public interest to do so, the commission or the executive director may, on the application of a reporting issuer, order that the reporting issuer is deemed to have ceased to be a reporting issuer.

Halt trading order

- 89** (1) If
- the commission or the executive director
- (a) considers that there are unexplained and unusual fluctuations in
 - (i) the volume of trading in, or market price of, a security,
 - (i.1) considers that there are unexplained and unusual fluctuations in the volume of trading in, or market price or value of, a derivative or an underlying interest of a derivative,
 - (ii) becomes aware of information, other than information filed under this Act, that when disclosed to the public may cause or is likely to cause unusual fluctuations in the volume of trading in, or market price of, a security,
 - (ii.1) becomes aware of information, other than information filed under this Act, that when disclosed to the public may cause or is likely to cause unusual fluctuations in the volume of trading in, or market price or value of, a derivative or an underlying interest of a derivative,
 - (iii) considers that there may have been a material change in the business or operations of an issuer that, when disclosed to the public, could significantly affect the market price of a security issued by it,

- in the case of a derivative that is a related financial instrument,
- (iii.1) considers that there may have been a material change in the business or operations of the issuer of the security that is the underlying interest of the derivative that, when disclosed to the public, could significantly affect the market price of the security, or
- considers that circumstances exist or are about to occur that could
- (iv) result in other than an orderly trading of a security, a derivative or an underlying interest of a derivative, and

(b) the commission or the executive director considers it to be in the public interest,

the commission or executive director may, without providing an opportunity to be heard, order that all trading in that security or derivative be halted for a specified period not longer than 15 business days.

If an order is made under subsection (1)

- (2) with respect to a security, notice of the order must be sent immediately
- (a) to the issuer of the security, or
- with respect to a derivative, notice of the order must be posted
- (b) immediately to a publicly accessible website maintained by the commission.

If

- (3) a security affected by an order made under subsection (1) is listed and
- (a) posted for trading on an exchange in British Columbia, or
- a derivative affected by an order made under subsection (1) is traded on
- (b) an exchange in British Columbia,

the commission or executive director must immediately send written notice of the order to the exchange, and the order becomes effective, for all purposes and in respect of all persons, as soon as the exchange receives the notice.

- (4) If the commission or the executive director considers it necessary and in the public interest, the commission or the executive director may,

- in the case of a security, after providing the issuer whose securities are
- (a) affected by the order with an opportunity to be heard, or
- in the case of a derivative, after providing a person directly affected by
- (b) the order with an opportunity to be heard,

make an order extending the order made under subsection (1) until a hearing is held and a decision is rendered.

For the purpose of subsection (4) (b), notice of an opportunity to be heard is

- (5) considered to be provided to a person on the date the notice is posted to a publicly accessible website maintained by the commission.

Further information from directors, officers, promoters or control persons

- 90** (1) The commission or the executive director may require a director, an officer, a promoter or a control person of an issuer, within the time the commission or executive director specifies, to submit information.

Information submitted under subsection (1) must be in the required form.
(2)

Exemption order by commission or executive director

- 91** (1) The commission or the executive director may order that a person or class of persons is exempt from one or more of the requirements of this Part or the regulations related to this Part if

- the requirement in respect of which an exemption is to be granted
- (a) conflicts with a similar requirement of the law of the jurisdiction in which the reporting issuer is incorporated, organized or continued, or
- the commission or the executive director considers that to do so would
- (b) not be prejudicial to the public interest.

An order under subsection (1) may be made on application by an interested person
(2) or on the commission's or the executive director's own motion.

Part 13 — Take Over Bids, Issuer Bids, Business Combinations and Related Party Transactions

Division 1 — Interpretation

Definitions

- 92** In this Part:

"interested person" means

- an issuer that is, or whose securities are, the subject of a take over bid,
- (a) issuer bid or other offer to acquire, business combination or related party transaction, or an issuer whose securities are the subject of a proxy solicitation,
- a security holder, director or officer of an issuer referred to in paragraph
- (b) (a),
- an offeror,
- (c) the executive director, and
- (d) any person not referred to in paragraphs (a) to (d) who, in the opinion of
- (e) the commission or the Supreme Court, as the case may be, is a proper person to make an application under section 114 or 115;

"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 issuer of the security, and

(a) within a prescribed class of offers, acquisitions or redemptions;

(b)

"take over bid" means a direct or indirect offer to acquire a security that is

made by a person other than the issuer of the security, and

(a) within a prescribed class of offers to acquire.

(b)

Repealed

93-97 [Repealed 2006-32-28.]

Division 2 — General

Making a bid

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

Recommendation relating to bid

99 (1) When a take over bid has been made, the directors of the issuer whose securities are the subject of the take over bid must

determine whether to recommend acceptance or rejection of the take

(a) over bid or determine not to make a recommendation, and

make the recommendation, or a statement that they are not making a

(b) recommendation, in accordance with the regulations.

An individual director or officer of the issuer whose securities are the subject of a
(2) take over bid may recommend acceptance or rejection of the take over bid if the recommendation is made in accordance with the regulations.

Repealed

100 [Repealed 2006-32-30.]

Division 3 - 6

Repealed

101-113 [Repealed 2006-32-30.]

Division 7 — Special Applications

Applications to the commission

114 (1) On application by an interested person, if the commission considers that a person has not complied with or is not complying with a requirement under this Part, Part

14 or the regulations related to this Part or Part 14, or that a person is acting contrary to the public interest, the commission may make an order

- (a) restraining the distribution of any record used or issued in connection with a take over bid, issuer bid, business combination, related party transaction or proxy solicitation,
- (b) requiring an amendment to or variation of any record used or issued in connection with a take over bid, issuer bid, business combination, related party transaction or proxy solicitation, and requiring the distribution of amended, varied or corrected information,
- (c) requiring the distribution of any record relating to a take over bid, issuer bid, business combination, related party transaction or proxy solicitation that the commission considers must be distributed,
- (d) directing any person to comply with a requirement under this Part, Part 14 or the regulations related to this Part or Part 14,
- (e) restraining any person from contravening a requirement under this Part, Part 14 or the regulations related to this Part or Part 14,
- (f) directing the directors and officers of any person to cause the person to comply with or cease contravening a requirement under this Part, Part 14 or the regulations related to this Part or Part 14,
- (g) varying a period prescribed under a regulation related to this Part or Part 14,
- (h) rescinding a transaction with any interested person, including the issue of a security or an acquisition and sale of a security,
- (i) requiring any person to dispose of any securities acquired in connection with a take over bid, issuer bid, business combination, related party transaction or transaction in relation to which proxies are being or were solicited,
- (j) prohibiting any person from exercising a voting right attaching to a security,
- (k) prohibiting any person from exercising a right attaching to a derivative, requiring that
 - (l) all persons,
 - (i) the person or persons named in the order, or
 - (ii) one or more classes of persons
 - (iii) cease trading in, or are prohibited from purchasing, any securities or derivatives relating to a take over bid, issuer bid, business combination, related party transaction or proxy solicitation, or
- (m) providing that any or all of the exemptions set out in this Act, the regulations or a decision do not apply to a person.

- (2) On application by an interested person or on the commission's own motion, the commission may order that a person is exempt from any requirement under this Part, Part 14 or the regulations relating to this Part or Part 14 if the commission considers that it would not be prejudicial to the public interest to do so.

Applications to the court

- 115** (1) On application by an interested person, if the Supreme Court is satisfied that a person has not complied with a requirement under this Part, Part 14 or the regulations relating to this Part or Part 14, the Supreme Court may make whatever interim or final order the Supreme Court thinks fit, including, without limitation, an order

- (a) compensating any interested person who is a party to the application for damages suffered as a result of a contravention of a requirement of this Part, Part 14 or the regulations relating to this Part or Part 14,
- (b) rescinding a transaction with any interested person, including the issue of a security or an acquisition and sale of a security,
- (c) requiring any person to dispose of any securities acquired in connection with a take over bid, issuer bid, business combination, related party transaction or transaction in relation to which proxies are being or were solicited,
- (d) prohibiting any person from exercising a voting right attaching to a security,
- (d.1) prohibiting any person from exercising a right attaching to a derivative, or
- (e) requiring the trial of an issue.

- If, in a proceeding under subsection (1), the executive director is not the applicant,
(2) the executive director

- must be given notice of the application, and
- (a) may appear at the proceeding as a party.
- (b)

Part 14 — Proxies

Definitions

- 116** In this Part:

"form of proxy" means a written or printed form that, on completion and execution by or on behalf of a security holder, becomes a proxy;

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

"security holder" means a holder in British Columbia of a voting security of a reporting issuer.

Repealed

117 [Repealed 2003-24-10.]

Voting if proxies provided

118 (1) The chair at a meeting has the right not to conduct a vote by way of ballot on a matter if the form of proxy used at the meeting provides for a means by which the security holder whose proxy is solicited may specify how the securities registered in the security holder's name are to be voted.

Subsection (1) does not apply if

- (2) a poll is demanded by a security holder present at the meeting in person
 - (a) or represented at it by proxy, or
 - more than 5% of all voting rights attached to all the securities, that are
 - (b) entitled to be voted and to be represented at the meeting, are represented by proxies who are required to vote against what would otherwise be the meeting's decision on the matters referred to in subsection (1).

Voting securities of an issuer that are

- (3) registered in the name of
 - (a) a registrant or the registrant's nominee, or
 - (i) a custodian or the custodian's nominee, and
 - (ii) not beneficially owned by the registrant or the custodian, as the case
 - (b) may be,

must not be voted by the registrant or custodian at any meeting of the issuer's security holders except in accordance with the regulations.

Subsection (3) does not apply to a registrant or custodian who is a trustee of

- (4) securities held under a trust instrument that regulates how those securities are to be voted.

Exemptions

119 (1) This Part does not apply to a reporting issuer who complies with the requirements of the law of the jurisdiction in which the reporting issuer carries on business or is incorporated, organized or continued, so long as those requirements are substantially similar to the requirements of this Part.

The commission may order that a person or class of persons is exempt from one or

- (2) more of the requirements of this Part or the regulations related to this Part if
 - the requirement in respect of which an exemption is to be granted
 - (a)

- conflicts with a similar requirement of the law of the jurisdiction in which the reporting issuer is incorporated, organized or continued, or
- the commission considers that to do so would not be prejudicial to the
- (b) public interest.

An order under subsection (2) may be made on application by an interested person

(3) or on the commission's own motion.

Part 15 — Self Dealing

Repealed

120-122 [Repealed 2006-32-33.]

Repealed

123 [Repealed 2006-32-34.]

Repealed

124 [Repealed 2006-32-33.]

Standard of care for investment fund manager

125 Every investment fund manager must

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

Repealed

126-127 [Repealed 2006-32-33.]

Repealed

128 [Repealed 2006-32-36.]

Repealed

129 [Repealed 2006-32-33.]

Exemptions

130 On application by an interested person or on the commission's own motion, the commission may order that a person or transaction or a class of persons or transactions is exempt from one or more of the requirements of this Part or the regulations related to this Part if

- the requirement in respect of which an exemption is to be granted
- (a)

- conflicts with a similar requirement of the law of the jurisdiction in which the reporting issuer is incorporated, organized or continued, or
- the commission considers that to do so would not be prejudicial to the
- (b) public interest.

Independent committee for mutual funds

130.1 A prescribed requirement of this Part does not apply to a mutual fund or a class of mutual funds, or a responsible person, with respect to a transaction or a class of transactions if, in accordance with the regulations, the mutual fund has established an independent committee and

- the independent committee has approved the transaction, or
- (a) the transaction is within a class of transactions approved by the
- (b) independent committee.

Part 16 — Civil Liability

Liability for misrepresentation in prospectus

131 (1) If a prospectus contains a misrepresentation, a person who purchases a security offered by the prospectus during the period of distribution

- is deemed to have relied on the misrepresentation if it was a
- (a) misrepresentation at the time of purchase, and
- has a right of action for damages against
- (b) the issuer or a selling security holder on whose behalf the
 - (i) distribution is made,
 - every underwriter that is in a contractual relationship with the
 - (ii) issuer or selling security holder on whose behalf the distribution is made,
 - every director of the issuer at the time the prospectus was filed,
 - (iii) every person whose consent to disclosure of information in the
 - (iv) prospectus has been filed, and
 - every person who signed the prospectus.
- (v)

A person referred to in subsection (1) (b) (iv) is liable only with respect to a

(2) misrepresentation contained in a report, opinion or statement made by the person.

If the person referred to in subsection (1) purchased the security from a person or

(3) underwriter referred to in subsection (1) (b) (i) or (ii) or from another underwriter of the securities, the purchaser may elect to exercise a right of rescission against that person or underwriter, in which case the purchaser has no right of action for damages against that person under subsection (1).

- (4) A person is not liable under subsection (1) if the person proves that the purchaser had knowledge of the misrepresentation.

A person is not liable under subsection (1) if the person proves that

- (5) the prospectus was filed without the person's knowledge or consent and
- (a) that, on becoming aware of its filing, the person gave reasonable general notice that it was so filed,
- after the issue of a receipt for the prospectus and before the purchase of
- (b) the securities by the purchaser, on becoming aware of any misrepresentation in the prospectus, the person withdrew the person's consent to it and gave reasonable general notice of the withdrawal and the reason for it,
- with respect to any part of the prospectus purporting
- (c) to be made on the authority of an expert, or
- (i) to be a copy of, or an extract from, a report, opinion or statement
- (ii) of an expert,
- the person had no reasonable grounds to believe and did not believe that
- there had been a misrepresentation, or
- (iii) the relevant part of the prospectus
- (iv) did not fairly represent the report, opinion or statement of
- (A) the expert, or
- was not a fair copy of, or an extract from, the report, opinion
- (B) or statement of the expert,
- with respect to any part of the prospectus purporting
- (d) to be made on the person's own authority as an expert, or
- (i) to be a copy of, or an extract from, the person's own report,
- (ii) opinion or statement as an expert,
- but that contained a misrepresentation attributable to failure to fairly represent the person's report, opinion or statement as an expert,
- the person had, after reasonable investigation, reasonable
- (iii) grounds to believe and did believe that the relevant part of the prospectus fairly represented the person's report, opinion or statement as an expert, or
- on becoming aware that the relevant part of the prospectus did
- (iv) not fairly represent the person's report, opinion or statement as an expert, the person, as soon as practicable, advised the commission and gave reasonable general notice that
- the person's report, opinion or statement was not fairly
- (A) represented, and
- the person would not be responsible for that part of the

prospectus, or

with respect to a false statement

- (e) purporting to be a statement made by an official person, or
 - (i) contained in what purports to be a copy of, or an extract from, a
 - (ii) public official document,

it was a correct and fair representation of the statement or copy of, or an extract from, the document, and the person had reasonable grounds to believe and did believe that the statement was true.

A person is not liable under subsection (1) if the person proves that, with respect to
(6) any part of the prospectus purporting

- to be made on the person's own authority as an expert, or
- (a) to be a copy of, or an extract from, the person's own report, opinion or
- (b) statement as an expert,

the person had, after reasonable investigation, reasonable grounds to believe and did believe that there had been no misrepresentation.

A person is not liable under subsection (1) if the person proves that, with respect to
(7) any part of the prospectus not purporting

- to be made on the authority of an expert, and
- (a) to be a copy of, or an extract from, a report, opinion or statement of an
- (b) expert,

the person had, after reasonable investigation, reasonable grounds to believe and did believe that there had been no misrepresentation.

Subsections (5) to (7) do not apply to the issuer or a selling security holder.

(8) A person is not liable for a misrepresentation in forward-looking information if the

(8.1) person proves that

- the document containing the forward-looking information contained,
- (a) proximate to that information,
 - reasonable cautionary language identifying the forward-looking
 - (i) 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
 - a statement of the material factors or assumptions that were
 - (ii) applied in drawing a conclusion or making a forecast or projection set out in the forward-looking information, and

- the person had a reasonable basis for drawing the conclusions or making
- (b) the forecasts and projections set out in the forward-looking information.

Subsection (8.1) does not relieve a person of liability respecting forward-looking
(8.2) information in a financial statement or forward-looking information in a document

released in connection with an initial public offering.

- An underwriter is not liable for more than the total public offering price
(9) represented by the portion of the distribution underwritten by the underwriter.

- In an action for damages under subsection (1), the defendant is not liable for all or
(10) any part of the damages that the defendant proves does not represent the depreciation in value of the security resulting from the misrepresentation.

- The liability of all persons referred to in subsection (1) (b) is joint and several as
(11) between themselves with respect to the same cause of action.

- A defendant who is found liable to pay a sum in damages may recover a
(12) contribution, in whole or in part, from a person who is jointly and severally liable under this section to make the same payment in the same cause of action unless, in all the circumstances of the case, the court is satisfied that it would not be just and equitable.

- The amount recoverable by a plaintiff under this section must not exceed the price
(13) at which the securities purchased by the plaintiff were offered to the public.

- The right of action for rescission or damages conferred by this section is in
(14) addition to and not in derogation from any other right the purchaser may have.

- If a misrepresentation is contained in a record incorporated by reference in, or
(15) deemed incorporated into, a prospectus, the misrepresentation is deemed to be contained in the prospectus.

[Repealed 1999-20-23.]

(16)

Liability for misrepresentation in circular or notice

- 132** (1) If a take over bid circular, issuer bid circular, notice of change or notice of variation is required to be sent under the regulations and that document contains a misrepresentation, a person to whom the circular or notice was sent is deemed to have relied on the misrepresentation, and has a right of action for

- rescission against the offeror, or
(a) damages against
(b) each person who signed the certificate in the circular or notice,
(i) every director of the offeror at the time the circular or notice was
(ii) signed,
every person whose consent has been filed as prescribed, and
(iii) the offeror.
(iv)

- A person referred to in subsection (1) (b) (iii) is liable only with respect to a
(2) misrepresentation contained in a report, opinion or statement made by the person.

- If a directors' circular or a director's or officer's circular or a notice of change in
(3)

respect of a directors' circular or a director's or officer's circular is required to be sent under the regulations and that document contains a misrepresentation, a person to whom the circular or notice was sent is deemed to have relied on the misrepresentation and has a right of action for damages against every director or officer who signed the circular or notice.

A person is not liable under subsection (1) or (3) if the person proves that the
(4) person exercising the right of action had knowledge of the misrepresentation.

A person is not liable under subsection (1) or (3) if the person proves that
(5) the circular or notice was sent without the person's knowledge or
(a) consent and that, on becoming aware of that fact, the person gave, as soon as practicable, reasonable general notice that it was so sent,
after sending of the circular or notice and on becoming aware of any
(b) misrepresentation in the circular or notice, the person withdrew the person's consent to it and gave reasonable general notice of the withdrawal and the reason for it,
with respect to any part of the circular or notice purporting
(c) to be made on the authority of an expert, or
(i) to be a copy of, or an extract from, a report, opinion or statement
(ii) of an expert,
the person had no reasonable grounds to believe and did not believe that
(iii) there had been a misrepresentation, or
(iv) the relevant part of the circular or notice
(A) did not fairly represent the report, opinion or statement of the expert, or
(B) was not a fair copy of, or extract from, the report, opinion or statement of the expert,
with respect to any part of the circular or notice purporting
(d) to be made on the person's own authority as an expert, or
(i) to be a copy of, or an extract from, the person's own report,
(ii) opinion or statement as an expert,
but that contained a misrepresentation attributable to failure to fairly represent the person's report, opinion or statement as an expert
(iii) the person had, after reasonable investigation, reasonable grounds to believe and did believe that the relevant part of the circular or notice fairly represented his report, opinion or statement as an expert, or
(iv) on becoming aware that the relevant part of the circular or notice did not fairly represent the person's report, opinion or statement

as an expert, the person, as soon as practicable, advised the commission and gave reasonable general notice that

- the person's report, opinion or statement was not fairly
- (A) represented, and
- the person would not be responsible for that part of the
- (B) circular or notice, or

with respect to a false statement,

- (e) purporting to be a statement made by an official person, or
 - (i) contained in what purports to be a copy of, or extract from, a
 - (ii) public official document,

it was a correct and fair representation of the statement or copy of, or extract from, the document, and the person had reasonable grounds to believe and did believe that the statement was true.

- A person is not liable under subsection (1) or (3) if the person proves that, with
- (6) respect to any part of the circular or notice purporting

- to be made on the person's own authority as an expert, or
- (a) to be a copy of, or an extract from, the person's own report, opinion or
- (b) statement as an expert,

the person had, after reasonable investigation, reasonable grounds to believe and did believe that there had been no misrepresentation.

- A person is not liable under subsection (1) or (3) if the person proves that, with
- (7) respect to any part of the circular or notice not purporting

- to be made on the authority of an expert, and
- (a) to be a copy of, or an extract from, a report, opinion or statement of an
- (b) expert,

the person had, after reasonable investigation, reasonable grounds to believe and did believe that there had been no misrepresentation.

Subsections (5) to (7) do not apply to the offeror.

- (8) A person is not liable for a misrepresentation in forward-looking information if the
- (8.1) person proves that

- the document containing the forward-looking information contained,
- (a) proximate to that information,
 - reasonable cautionary language identifying the forward-looking
 - (i) 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
 - a statement of the material factors or assumptions that were
 - (ii) applied in drawing a conclusion or making a forecast or projection

set out in the forward-looking information, and

- the person had a reasonable basis for drawing the conclusions or making
- (b) the forecasts and projections set out in the forward-looking information.

The liability of

- (9) all persons referred to in subsection (1) (b), or
- (a) all directors and officers referred to in subsection (3),
- (b) is joint and several as between themselves with respect to the same cause of action.

- A defendant who is found liable to pay a sum in damages may recover a
- (10) contribution, in whole or in part, from a person who is jointly and severally liable under this section to make the same payment in the same cause of action unless, in all the circumstances of the case, the court is satisfied that it would not be just and equitable.

- In an action for damages under subsection (1) or (3) based on a misrepresentation
- (11) 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 does not represent the depreciation in value of the security resulting from the misrepresentation.

[Repealed 2006-32-40.]

- (12) The right of action for rescission or damages conferred by this section is in
- (13) addition to and not in derogation from any other right available.

Liability for misrepresentation in prescribed disclosure document

- 132.1** (1) If a prescribed disclosure document contains a misrepresentation, a purchaser who purchases a security offered by the disclosure document

- is deemed to have relied on the misrepresentation if it was a
- (a) misrepresentation at the time of purchase, and
- has a right of action for damages against
- (b) the issuer,
- (i) every director of the issuer at the date of the disclosure document,
- (ii) every person whose consent to the disclosure of information in the
- (ii.1) disclosure document was filed, and
- every person who signed the disclosure document.
- (iii)

- The purchaser may elect to exercise a right of rescission against the issuer, in
- (2) which case the purchaser has no right of action for damages against the issuer.

- A person referred to in subsection (1) (b) (ii.1) is liable only with respect to a
- (2.1) misrepresentation contained in a report, opinion or statement made by the person.

- (3) A person is not liable under subsection (1) if the person proves that the purchaser had knowledge of the misrepresentation.

A person is not liable under subsection (1) if the person proves that

- (4) the disclosure document was delivered to purchasers without the
- (a) person's knowledge or consent and that, on becoming aware of its delivery, the person gave written notice to the issuer that it was delivered without the person's knowledge or consent,
 - on becoming aware of any misrepresentation in the disclosure
 - (b) document, the person withdrew the person's consent to the disclosure document and gave written notice to the issuer of the withdrawal and the reason for it,
 - with respect to any part of the disclosure document purporting
 - (c) to be made on the authority of an expert, or
 - (i) to be a copy of, or an extract from, a report, an opinion or a
 - (ii) statement of an expert,
 - the person had no reasonable grounds to believe and did not believe that
 - there had been a misrepresentation, or
 - (iii) the relevant part of the disclosure document
 - (iv) did not fairly represent the report, opinion or statement of
 - (A) the expert, or
 - was not a fair copy of, or an extract from, the report, opinion
 - (B) or statement of the expert, or
 - with respect to any part of the disclosure document purporting
 - (d) to be made on the person's own authority as an expert, or
 - (i) to be a copy of, or an extract from, the person's own report,
 - (ii) opinion, or statement as an expert,
 - but that contained a misrepresentation attributable to a failure to fairly represent the person's report, opinion or statement as an expert,
 - the person had, after reasonable investigation, reasonable
 - (iii) grounds to believe and did believe that the relevant part of the disclosure document fairly represented the person's report, opinion or statement as an expert, or
 - on becoming aware that the relevant part of the disclosure
 - (iv) document did not fairly represent the person's report, opinion or statement as an expert, the person, as soon as practicable, advised the commission and the issuer that
 - the person's report, opinion or statement was not fairly
 - (A) represented, and
 - the person would not be responsible for that part of the

disclosure document.

A person is not liable under subsection (1) if the person proves that, with respect to
(4.1) any part of the disclosure document purporting

- to be made on the person's own authority as an expert, or
- (a) to be a copy of, or an extract from, the person's own report, opinion or
- (b) statement as an expert,

the person had, after reasonable investigation, reasonable grounds to believe and did believe that there had been no misrepresentation.

A person is not liable under subsection (1) if the person proves that, with respect to
(5) any part of a disclosure document not purporting

- to be made on the authority of an expert, or
- (a) to be a copy of, or an extract from, a report, opinion or statement of an
- (b) expert,

the person had, after reasonable investigation, reasonable grounds to believe and did believe that there had been no misrepresentation.

Subsections (4) and (5) do not apply to the issuer.

(6) In an action for damages under subsection (1), the defendant is not liable for all or

(7) any part of the damages that the defendant proves does not represent the depreciation in value of the security resulting from the misrepresentation.

A person is not liable for a misrepresentation in forward-looking information if the
(7.1) person proves that

- the document containing the forward-looking information contained,
- (a) proximate to that information,
 - reasonable cautionary language identifying the forward-looking
 - (i) 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
 - a statement of the material factors or assumptions that were
 - (ii) applied in drawing a conclusion or making a forecast or projection set out in the forward-looking information, and

- the person had a reasonable basis for drawing the conclusions or making
- (b) the forecasts and projections set out in the forward-looking information.

The liability of all persons referred to in subsection (1) (b) is joint and several as
(8) between themselves with respect to the same cause of action.

A defendant who is found liable to pay a sum in damages may recover a
(9) contribution, in whole or in part, from a person who is jointly and severally liable under this section to make the same payment in the same cause of action unless, in all the circumstances of the case, the court is satisfied that it would not be just

and equitable.

(10) The amount recoverable by a plaintiff under this section must not exceed the price at which the securities were offered under the disclosure document.

(11) The right of action for rescission or damages conferred by this section is in addition to and not in derogation from any other right the purchaser may have.

(12) If a misrepresentation is contained in a record incorporated by reference in, or deemed incorporated into, a disclosure document, the misrepresentation is deemed to be contained in the disclosure document.

Liability for misrepresentation in prescribed disclosure document — derivatives

132.2 (1) In this section, "**purchaser**" means a person that

- enters into a transaction for a derivative, and
- (a) with respect to the transaction, is entitled to receive a prescribed
- (b) disclosure document.

(2) If a prescribed disclosure document contains a misrepresentation, a purchaser that receives the disclosure document

- is deemed to have relied on the misrepresentation if it was a
- (a) misrepresentation at the time of the transaction, and
- has a right of action for damages against the person that was required to
- (b) prepare and send the disclosure document.

(3) A person that was required to prepare and send the prescribed disclosure document is not liable under subsection (2) if the person proves that the purchaser had knowledge of the misrepresentation.

(4) The right of action for damages conferred by this section is in addition to and not in derogation from any other right the purchaser may have.

(5) If a misrepresentation is contained in a record incorporated by reference in, or deemed incorporated into, a prescribed disclosure document, the misrepresentation is deemed to be contained in the document.

Standard of reasonableness

133 In determining what is a reasonable investigation or what are reasonable grounds for belief for the purposes of sections 131 and 132, the standard of reasonableness must be that required of a prudent person in the circumstances of the particular case.

Liability in margin contracts

134 (1) If a registered dealer makes a contract with a client to buy and carry on margin the securities of any issuer, and

- while the contract continues, the dealer sells securities of the same issuer
- (a) for any account in which the dealer, the dealer's director, the dealer's

- firm, or a partner in the dealer's firm has a direct or indirect interest, and
- the effect of the sale is to reduce the amount of those securities in the
- (b) hands of the dealer or under the dealer's control in the ordinary course of business to below the amount of those securities that the dealer should be carrying for all the dealer's clients,

the dealer must immediately disclose those facts to the client, and the contract with the client is voidable at the election of the client.

- If a client elects under subsection (1) to void the contract, the client may, in respect
- (2) of that contract, recover from the dealer

- all money paid by the client to the dealer with interest, and
- (a) any securities deposited by the client with the dealer.
- (b)

- If a client elects under subsection (1), the client must send written notice to the
- (3) registered dealer within 30 days after the disclosure made to the client under that subsection.

- A dealer is not liable under subsection (1) if the dealer proves that the reduction of
- (4) the amount of securities to below the amount the dealer should be carrying was unintentional.

Right of action for failure to deliver documents

135 A person who is

- a purchaser of a security to whom a prospectus, any amendment to a
- (a) prospectus or other prescribed document was required under section 83 to be sent but which prospectus, amendment to a prospectus or other prescribed document was not sent or was not filed under the Act, or
- a person to whom a take over bid circular, issuer bid circular, notice of
- (b) change or notice of variation was required under the regulations to be sent but which circular or notice was not sent,

has a right of action for damages or rescission against the dealer or offeror who failed to comply with the applicable requirement.

Right of action for failure to deliver prescribed disclosure documents

135.1 A person who is a purchaser of a security distributed under a prescribed disclosure document has a right of action for damages or rescission against the issuer if the person did not receive the disclosure document within the prescribed time.

Liability for insider trading, tipping and recommending

136 (1) If an issuer, or a person in a special relationship with an issuer, contravenes section 57.2, a person referred to in subsection (2) of this section has a right of action against the issuer or the person in a special relationship with the issuer.

- (2) A person may recover losses incurred in relation to a transaction involving a security of the issuer, or a related financial instrument of a security of the issuer, if the transaction was entered into during the period

starting when the contravention occurred, and

- (a) ending at the time the material fact or material change is generally
- (b) disclosed.

If a court finds a person liable in an action under subsection (1), the amount

- (3) payable to the plaintiff by the person is the lesser of

the losses incurred by the plaintiff, and

- (a) an amount determined in accordance with the regulations.
- (b)

For the purposes of subsection (1), in determining the losses incurred by a plaintiff,

- (4) a court must not include an amount that the defendant proves is attributable to a change in the market price of the security that is unrelated to the material change or the material fact.

Accounting for benefits

- 136.1** (1) If a person is an insider, affiliate or associate of an issuer, and if the person contravenes section 57.2, the person must pay to the issuer an amount equal to

the benefit that the person received as a result of the contravention, and

- (a) the benefit that all persons received as a result of the contravention.
- (b)

If a person contravenes section 57.3, the person must pay to the investor, as

- (2) defined in that section, an amount equal to

the benefit that the person received as a result of the contravention, and

- (a) the benefit that all persons received as a result of the contravention.
- (b)

Due diligence defence for insider trading

- 136.2** A person is not liable under section 136 or 136.1 (1) if, after a reasonable investigation occurring before the person

entered into the transaction,

- (a) informed another person of the material fact or material change, or
- (b) recommended or encouraged a transaction,
- (c)

the person had no reasonable grounds to believe that the material fact or material change had not been generally disclosed.

Action by commission on behalf of issuer

- 137** (1) On application by

the commission, or

- (a) any person who

.. .

was, at the time of a transaction referred to in section 136, or

- (i) is, at the time of the application,
- (ii) a security holder of the issuer,

the Supreme Court may, if satisfied that

- (c) the applicant has reasonable grounds for believing that the issuer has a cause of action under section 136.1 (1), and

the issuer has

- (d) refused or failed to commence an action under section 136.1 (1)
 - (i) within 60 days after receipt of a written request from the applicant to do so, or
 - (ii) failed to prosecute diligently an action commenced by it under section 136.1 (1),

make an order, on any terms as to security for costs or otherwise that it considers proper, requiring the commission or authorizing the person or the commission to commence or continue an action in the name of, and on behalf of, the issuer to enforce the liability created by section 136.1 (1).

On application by

- (2) the commission, or
 - (a) any person who
 - (b) was, at the time of a transaction referred to in section 136.1 (2), or
 - (i) is, at the time of the application,
 - (ii) a security holder of the investor,

the Supreme Court may, if satisfied that

- (c) the applicant has reasonable grounds for believing that the investor has a cause of action under section 136.1 (2), and

the investor has

- (d) refused or failed to commence an action under section 136.1 (2)
 - (i) within 60 days after receipt of a written request from the applicant to do so, or
 - (ii) failed to prosecute diligently an action commenced by it under section 136.1 (2),

make an order, on any terms as to security for costs or otherwise that it considers proper, requiring the commission or authorizing the person or the commission to commence or continue an action in the name of, and on behalf of, the investor to enforce the liability created by section 136.1 (2).

- (3) If an action under section 136.1 (1) or (2) is commenced or continued by the directors of the issuer, the Supreme Court may order the issuer to pay all costs

properly incurred by the directors in commencing or continuing the action, as the case may be, if it is satisfied that the action is in the best interests of the issuer and its security holders.

- If an action under section 136.1 (1) or (2) is commenced or continued by a person
- (4) who is a security holder of the issuer, the Supreme Court may order the issuer to pay all costs properly incurred by the security holder in commencing or continuing the action, as the case may be, if it is satisfied that

- the issuer refused or failed to commence the action or, having
- (a) commenced it, failed to prosecute it diligently, and

the action is in the best interests of the issuer and its security holders.

(b)

- If an action under section 136.1 (1) or (2) is commenced or continued by the
- (5) commission, the Supreme Court must order the issuer to pay all costs properly incurred by the commission in commencing or continuing the action, as the case may be.

- In determining whether an action or its continuance is in the best interests of an
- (6) issuer 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 and the cost involved in the prosecution of the action.

- Notice of every application under subsection (1) or (2) must be sent to the
- (7) commission and the issuer, or the investor, as the case may be, and each of them may appear and be heard.

- An order made under subsection (1) or (2) requiring or authorizing the commission
- (8) to commence or continue an action must provide that the issuer or investor, as the case may be,

- cooperate fully with the commission in the commencement or
- (a) continuation of the action, and

- make available to the commission all records and other material or
- (b) information relevant to the action and known to, or reasonably ascertainable by, the issuer or investor.

Rescission of contract

- 138** (1) If section 51 (2) applies to a contract and is not complied with, a person who has entered into the contract may rescind it by sending a written notice of rescission to the registered dealer within 60 days of the date of the delivery of the security to the person or by the person if the person is, at the time the notice of rescission is given, the beneficial owner of the security purchased.

If a registered dealer

- (2)
- is required by the regulations to give to a client a written confirmation of
- (a) a trade in a security setting out that the registered dealer has acted as principal in the transaction, and

has failed to comply with that requirement,

(b) a person who has entered into the contract may rescind it by sending a written notice of rescission to the registered dealer within 7 days of the date of the delivery of the written confirmation of the contract.

In an action for rescission to which this section applies, the onus of proving
(3) compliance with section 51 or the regulations is on the registered dealer.

An action for rescission must not be commenced under this section after the end
(4) of 90 days from the date of sending the notice under subsection (1) or (2).

Rescission of purchase of security under prescribed disclosure document

138.1 A purchaser of a security may rescind the purchase if

- the security is acquired under an exemption from section 61,
- (a) the exemption requires the delivery of a prescribed disclosure document,
- (b) and
- the purchaser delivers a notice to the issuer not later than midnight on
- (c) the second business day after the purchaser signs the agreement to purchase the securities.

Rescission of purchase of mutual fund security

139 (1) Every purchaser of a security of a mutual fund in British Columbia may, if the amount of the purchase does not exceed a prescribed amount, rescind the purchase by sending a written notice to the registered dealer from whom the purchase was made,

- in the case of a lump sum purchase, within 48 hours after receipt of the
- (a) confirmation, or
- in the case of a contractual plan, within 60 days after receipt of the
- (b) confirmation of the initial payment.

Subject to subsection (4), the amount a purchaser may recover on exercise of a
(2) right to rescind under subsection (1) must not exceed the net asset value, at the time the right is exercised, of the securities purchased.

The right to rescind a purchase made under a contractual plan may be exercised
(3) only with respect to payments scheduled to be made within the time specified in subsection (1) for rescinding a purchase made under a contractual plan.

Every registered dealer from whom the purchase of a security of a mutual fund
(4) was made must reimburse the purchaser who has exercised the purchaser's right of rescission in accordance with this section for the amount of sales charges and fees relevant to the investment of the purchaser in the mutual fund in respect of the securities for which the written notice of rescission was given.

Limitation period

140 Unless otherwise provided in this Act or in the regulations, an action to enforce a civil remedy created by this Part or by the regulations must not be commenced

- in the case of an action for rescission, more than 180 days after the date
- (a) of the transaction that gave rise to the cause of action, or
- in the case of an action other than for rescission, more than the earlier of
- (b) 180 days after the plaintiff first had knowledge of the facts giving
 - (i) rise to the cause of action, or
 - 3 years after the date of the transaction that gave rise to the cause
 - (ii) of action.

Part 16.1 — Civil Liability for Secondary Market Disclosure

Division 1 — Interpretation and Application

Definitions

140.1 In this Part:

"compensation" means compensation received during the 12-month period immediately preceding the day on which the misrepresentation was made or on which the failure to make timely disclosure first occurred, together with the fair market value of all deferred compensation including, without limitation, options, pension benefits and stock appreciation rights, granted during the same period, valued as of the date that the compensation is awarded;

"core document" means

- a prospectus, a take over bid circular, an issuer bid circular, a directors' circular, a notice of change or variation in respect of a take over bid circular, issuer bid circular or directors' circular, a rights offering circular, management's discussion and analysis, an annual information form, an information circular, annual financial statements and an interim financial report of the responsible issuer, where used in relation to
 - a director of a responsible issuer who is not also an officer of the
 - (i) responsible issuer,
 - an influential person, other than an officer of the responsible
 - (ii) issuer or an investment fund manager where the responsible issuer is an investment fund, or
 - a director or officer of an influential person who is not also an
 - (iii) officer of the responsible issuer, other than an officer of an investment fund manager,
- (b) a prospectus, a take over bid circular, an issuer bid circular, a directors' circular, a notice of change or variation in respect of a take over bid circular, issuer bid circular or directors' circular, a rights offering circular,

management's discussion and analysis, an annual information form, an information circular, annual financial statements, an interim financial report and disclosure required under section 85 (b) of the responsible issuer, where used in relation to

- a responsible issuer or an officer of the responsible issuer,
 - (i) an investment fund manager, where the responsible issuer is an
 - (ii) investment fund, or
 - an officer of an investment fund manager, where the responsible
 - (iii) issuer is an investment fund, or
- (c) any other document that is within a class of documents prescribed for the purpose of this definition;

"document" means a written communication, including a communication prepared and transmitted only in electronic form,

- that is required to be filed with the commission, or
- (a) that is not required to be filed with the commission and
- (b) that is filed with the commission,
 - (i) that is filed or required to be filed with a government or an agency
 - (ii) of a government under applicable securities or corporate law or with an exchange or quotation and trade reporting system under its bylaws, rules or regulations, or
- that is any other communication the content of which would
- (iii) reasonably be expected to affect the market price or value of a security of the responsible issuer;

"expert" means a person whose profession gives authority to a statement made in a professional capacity by the person, including, without limitation, an accountant, actuary, appraiser, auditor, engineer, financial analyst, geologist or lawyer, but does not include an entity prescribed for the purposes of this section;

"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" means, in respect of a responsible issuer,

- a control person,
- (a) a promoter,
- (b) an insider who is not a director or officer of the responsible issuer, or
- (c) an investment fund manager, if the responsible issuer is an investment
- (d) fund;

"issuer's security" means a security of a responsible issuer and includes a security the market price or value of which, or payment obligations under which,

(a)

- are derived from or based on a security of the responsible issuer, and
- which is created by a person on behalf of the responsible issuer or is
- (b) guaranteed by the responsible issuer;

"liability limit" means,

- in the case of a responsible issuer, the greater of
 - (a) 5% of its market capitalization, and
 - (i) \$1 million,
 - (ii) in the case of a director or officer of a responsible issuer, the greater of
 - (b) \$25 000, and
 - (i) 50% of the aggregate of the director's or officer's compensation
 - (ii) from the responsible issuer and its affiliates,
- in the case of an influential person who is not an individual, the greater
 - (c) of
 - 5% of its market capitalization, and
 - (i) \$1 million,
 - (ii) in the case of an influential person who is an individual, the greater of
 - (d) \$25 000, and
 - (i) 50% of the aggregate of the influential person's compensation
 - (ii) from the responsible issuer and its affiliates,
 - in the case of a director or officer of an influential person, the greater of
 - (e) \$25 000, and
 - (i) 50% of the aggregate of the director's or officer's compensation
 - (ii) from the influential person and its affiliates,
 - in the case of an expert, the greater of
 - (f) \$1 million, and
 - (i) the revenue that the expert and the affiliates of the expert have
 - (ii) earned from the responsible issuer and its affiliates during the 12 months preceding the misrepresentation, and
 - in the case of each person who made a public oral statement, other than
 - (g) an individual referred to in paragraph (d), (e) or (f), the greater of
 - \$25 000, and
 - (i) 50% of the aggregate of the person's compensation from the
 - (ii) responsible issuer and its affiliates;

"management's discussion and analysis" means the section of an annual information form, annual report or other document that contains management's discussion and analysis of the financial condition and financial performance of a responsible issuer as required under this Act;

"public oral statement" means an oral statement made in circumstances in which a reasonable person would believe that information contained in the statement will become generally disclosed;

"release" means, with respect to information or a document, to file with the commission or any other securities regulatory authority or an exchange or to otherwise make available to the public;

"responsible issuer" means

- a reporting issuer, or
- (a) any other issuer with a real and substantial connection to British Columbia, any securities of which are publicly traded;
- (b)

"trading day" means a day during which the principal market for the security is open for trading.

Application

140.2 This Part does not apply to

- the purchase of a security offered by a prospectus during the period of
- (a) distribution,
- the acquisition of an issuer's security pursuant to a distribution that is
- (b) exempt from section 61, unless the acquisition is within a class of prescribed acquisitions,
- the acquisition or disposition of an issuer's security in connection with or
- (c) pursuant to a take over bid or issuer bid, unless the acquisition or disposition is within a prescribed class of acquisitions or dispositions, or
- a prescribed transaction or class of transactions.
- (d)

Division 2 — Liability

Liability for secondary market disclosure

140.3 (1) Where a responsible issuer or a person with actual, implied or apparent authority to act on behalf of a responsible issuer releases a document that contains a misrepresentation, a person who acquires or disposes of the issuer's security during the period between the time when the document was released and the time when the misrepresentation contained in the document was publicly corrected has, without regard to whether the person relied on the misrepresentation, a right of action for damages against

- the responsible issuer,
- (a) each director of the responsible issuer at the time the document was released,
- (b) each officer of the responsible issuer who authorized, permitted or
- (c)

- acquiesced in the release of the document,
- each influential person, and each director and officer of an influential
- (d) person, who knowingly influenced
 - the responsible issuer or any person acting on behalf of the
 - (i) responsible issuer to release the document, or
 - a director or officer of the responsible issuer to authorize, permit
 - (ii) or acquiesce in the release of the document, and
- each expert where
- (e)
 - the misrepresentation is also contained in a report, statement or
 - (i) opinion made by the expert,
 - the document includes, summarizes or quotes from the report,
 - (ii) statement or opinion of the expert, and
 - if the document was released by a person other than the expert,
 - (iii) the expert consented in writing to the use of the report, statement or opinion in the document.

(2) 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 business or affairs of the responsible issuer and that contains a misrepresentation, a person who acquires or disposes of the issuer's security during the period between the time when the public oral statement was made and the time when the misrepresentation contained in the public oral statement was publicly corrected has, without regard to whether the person relied on the misrepresentation, a right of action for damages against

- the responsible issuer,
- (a) the person who made the public oral statement,
- (b) each director and officer of the responsible issuer who authorized,
- (c) permitted or acquiesced in the making of the public oral statement,
- each influential person, and each director and officer of the influential
- (d) person, who knowingly influenced
 - the person who made the public oral statement to make the public
 - (i) oral statement, or
 - a director or officer of the responsible issuer to authorize, permit
 - (ii) or acquiesce in the making of the public oral statement, and
- each expert where
- (e)
 - the misrepresentation is also contained in a report, statement or
 - (i) opinion made by the expert,
 - the person making the public oral statement includes, summarizes
 - (ii) or quotes from the report, statement or opinion of the expert, and
 - if the public oral statement was made by a person other than the
 - (iii)

expert, the expert consented in writing to the use of the report, statement or opinion in the public oral statement.

If an influential person or a person with actual, implied or apparent authority to act (3) 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 issuer's security during the period between the time when the document was released or the public oral statement was made and the time when the misrepresentation contained in the document or public oral statement was publicly corrected has, without regard to whether the person relied on the misrepresentation, a right of action for damages against

- the responsible issuer if a director or officer of the responsible issuer, or
- (a) where the responsible issuer is an investment fund, the investment fund manager, authorized, permitted or acquiesced in the release of the document or the making of the public oral statement,
- the person who made the public oral statement,
- (b) each director and officer of the responsible issuer who authorized,
- (c) permitted or acquiesced in the release of the document or the making of the public oral statement,
- the influential person,
- (d) each director and officer of the influential person who authorized,
- (e) permitted or acquiesced in the release of the document or the making of the public oral statement, and
- each expert where
- (f) the misrepresentation is also contained in a report, statement or
- (i) opinion made by the expert,
- the document or public oral statement includes, summarizes or
- (ii) quotes from the report, statement or opinion of the expert, and
- if the document was released or the public oral statement was
- (iii) made by a person other than the expert, the expert consented in writing to the use of the report, statement or opinion in the document or public oral statement.

Where a responsible issuer fails to make a timely disclosure, a person who acquires (4) or disposes of the issuer's security between the time when the material change was required to be disclosed in the manner required under this Act 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

- the responsible issuer,
- (a) each director and officer of the responsible issuer who authorized,
- (b)

- permitted or acquiesced in the failure to make timely disclosure, and
- each influential person, and each director and officer of an influential
- (c) person, who knowingly influenced
 - the responsible issuer or any person acting on behalf of the
 - (i) responsible issuer in the failure to make timely disclosure, or
 - a director or officer of the responsible issuer to authorize, permit
 - (ii) or acquiesce in the failure to make timely disclosure.

In an action under this section, a person who is a director or officer of an influential

(5) person is not liable in that capacity if the person is liable as a director or officer of the responsible issuer.

- In an action under this section,
- (6) multiple misrepresentations having common subject matter or content
- (a) may, in the discretion of the court, be treated as a single misrepresentation, and
- multiple instances of failure to make timely disclosure of a material
- (b) change or material changes concerning common subject matter may, in the discretion of the court, be treated as a single failure to make timely disclosure.

In an action under subsection (2) or (3), if the person who made the public oral

(7) statement had apparent authority, but not implied or actual authority, to speak on behalf of the 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.

Burden of proof and defences

140.4 (1) In an action under section 140.3 in relation to a misrepresentation in a document that is not a core document, or a misrepresentation in a public oral statement, a person is not liable, subject to subsection (2), unless the plaintiff proves that the person

- knew, at the time that the document was released or public oral
- (a) statement was made, that the document or public oral statement contained the misrepresentation,
- at or before the time that the document was released or public oral
- (b) statement was made, deliberately avoided acquiring knowledge that the document or public oral statement contained the misrepresentation, or
- was, through action or failure to act, guilty of gross misconduct in
- (c) connection with the release of the document or the making of the public oral statement that contained the misrepresentation.

A plaintiff is not required to prove any of the matters set out in subsection (1) in an

(2) action under section 140.3 in relation to an expert.

In an action under section 140.3 in relation to a failure to make timely disclosure, a
(3) person is not liable, subject to subsection (4), unless the plaintiff proves that the person

- (a) knew, at the time that the failure to make timely disclosure first occurred, of the change and that the change was a material change,
- (b) at the time or before the failure to make timely disclosure first occurred, deliberately avoided acquiring knowledge of the change or that the change was a material change, or
- (c) was, through action or failure to act, guilty of gross misconduct in connection with the failure to make timely disclosure.

A plaintiff is not required to prove a matter set out in subsection (3) in an action
(4) under section 140.3 in relation to

- a responsible issuer,
- (a) an officer of a responsible issuer,
- (b) an investment fund manager, or
- (c) an officer of an investment fund manager.
- (d)

A person is not liable in an action under section 140.3 in relation to a
(5) misrepresentation or a failure to make timely disclosure if that person proves that the plaintiff acquired or disposed of the issuer's security

- with knowledge that the document or public oral statement contained a
- (a) misrepresentation, or
- with knowledge of the material change.
- (b)

A person is not liable in an action under section 140.3 in relation to
(6)

- a misrepresentation if that person proves that
- (a) before the release of the document or the making of the public
 - (i) oral statement containing the misrepresentation, the person conducted or caused to be conducted a reasonable investigation, and
 - (ii) at the time of the release of the document or the making of the public oral statement, the person had no reasonable grounds to believe that the document or public oral statement contained the misrepresentation, or
- a failure to make timely disclosure if that person proves that
- (b) before the failure to make timely disclosure first occurred, the
 - (i) person conducted or caused to be conducted a reasonable investigation, and
 - (ii) the person had no reasonable grounds to believe that the failure to make timely disclosure would occur.

(7) In determining whether an investigation was reasonable under subsection (6), or whether any person is guilty of gross misconduct under subsection (1) or (3), the court must consider all relevant circumstances, including

- the nature of the responsible issuer,
- (a) the knowledge, experience and function of the person,
- (b) the office held, if the person was an officer,
- (c) the presence or absence of another relationship with the responsible
- (d) issuer, if the person was a director,
- the existence, if any, and the nature of any system designed to ensure
- (e) that the responsible issuer meets its continuous disclosure obligations,
- the reasonableness of reliance by the person on the responsible issuer's
- (f) disclosure compliance system and on the responsible issuer's officers, employees and others whose duties would in the ordinary course have given them knowledge of the relevant facts,
- the period within which disclosure was required to be made under the
- (g) applicable law,
- in respect of a report, statement or opinion of an expert, any professional
- (h) standards applicable to the expert,
- the extent to which the person knew, or should reasonably have known,
- (i) the content and medium of dissemination of the document or public oral statement,
- in the case of a misrepresentation, the role and responsibility of the
- (j) person in the preparation and release of the document or the making of the public oral statement containing the misrepresentation or the ascertaining of the facts contained in that document or public oral statement, and
- in the case of a failure to make timely disclosure, the role and
- (k) responsibility of the person involved in a decision not to disclose the material change.

A person is not liable in an action under section 140.3 in respect of a failure to
(8) make timely disclosure if

- the person proves that the material change was disclosed by the
- (a) responsible issuer in a report filed on a confidential basis with the commission under section 85 (b),
- the responsible issuer had a reasonable basis for making the disclosure
- (b) on a confidential basis,
- in the case where the information contained in the report filed on a
- (c) confidential basis remains material, disclosure of the material change was made public promptly when 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) where the material change became publicly known in a manner other than the manner required under this Act, the responsible issuer promptly disclosed the material change in the manner required under this Act.

A person is not liable in an action under section 140.3 for a misrepresentation in (9) forward-looking information if the person proves that

- (a) the document or public oral statement containing the forward-looking information contained, proximate to that information,
 - (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.

The person is deemed to have satisfied the requirements of subsection (9) (a) with (10) respect to a public oral statement containing forward-looking information if the person who made the public oral 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 as reflected in the forward-looking information, and

- (c) stated that additional information about
 - (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 as reflected in the forward-looking information,

is contained in a readily available document or in a portion of such a

document and has identified that document or that portion of the document.

(11) For the purposes of subsection (10) (c), a document filed or otherwise generally disclosed is deemed to be readily available.

(12) Subsection (9) does not relieve a person of liability respecting forward-looking information in a financial statement required to be filed or forward-looking information in a document released in connection with an initial public offering.

(13) A person, other than an expert, is not liable in an action under section 140.3 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 in respect of which the responsible issuer obtained the written consent of the expert to the use of the report, statement or opinion, if the consent had not been withdrawn in writing before the document was released or the public oral statement was made, 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 oral public statement fairly represented the report, statement or opinion made by the expert.

(14) An expert is not liable in an action under section 140.3 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 written consent previously provided was withdrawn in writing before the document was released or the public oral statement was made.

(15) A person is not liable in an action under section 140.3 in respect of a misrepresentation in a document, other than a document required to be filed, if the person proves that, at the time of release of the document, the person did not know and had no reasonable grounds to believe that the document would be released.

(16) A person is not liable in an action under section 140.3 for a misrepresentation in a document or a public oral statement, if the person proves that

(a) the misrepresentation was also contained in a document filed by or on behalf of another person, other than the responsible issuer, with the commission or any other securities regulatory authority or an exchange and was not corrected in another document filed by or on behalf of that other person with the commission or that other securities regulatory authority or exchange before the release of the document or the public oral statement made by or on behalf of the responsible issuer,

(b) the document or public oral statement contained a reference identifying the document that was the source of the misrepresentation, and

- (c) when the document was released or the public oral statement was made, the person did not know and had no reasonable grounds to believe that the document or public oral statement contained a misrepresentation.

A person, other than the responsible issuer, is not liable in an action under section (17) 140.3 if the misrepresentation or failure to make timely disclosure was made without the knowledge or consent of the person and if, after the person became aware of the misrepresentation before it was corrected, or the failure to make timely disclosure before it was disclosed in the manner required under this Act,

- the person promptly notified the board of directors of the responsible
- (a) issuer or other persons acting in a similar capacity of the misrepresentation or the failure to make timely disclosure, and
- no correction of the misrepresentation or no subsequent disclosure of
- (b) the material change in the manner required under this Act was made by the responsible issuer within 2 business days after the notification under paragraph (a), the person, unless prohibited by law or by professional confidentiality rules, promptly and in writing notified the commission of the misrepresentation or failure to make timely disclosure.

Division 3 — Damages

Assessment of damages

140.5 (1) Damages must be assessed in favour of a person that acquired an issuer's securities after the release of a document or the making of a public oral statement containing a misrepresentation or after a failure to make timely disclosure as follows:

- in respect of any of the securities of the responsible issuer that the
- (a) person subsequently 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 this Act, assessed damages must equal the difference between the average price paid for those securities (including any commissions) and the price received upon the disposition of those securities (without deducting any commissions paid in respect of the disposition), calculated taking into account the results of hedging or other risk limitation transactions;
- in respect of any of the securities of the responsible issuer that the
- (b) person subsequently disposed of after the 10th trading day after the public correction of the misrepresentation or the disclosure of the material change in the manner required under this Act, assessed damages must equal the lesser of
 - an amount equal to the difference between the average price paid
 - (i) for those securities (including any commissions) and the price received upon the disposition of those securities (without

- deducting any commissions paid in respect of the disposition),
calculated taking into account the results of hedging or other risk
limitation transactions, and
- an amount equal to the number of securities that the person
- (ii) disposed of, multiplied by the difference between the average
price per security paid for those securities (including any
commissions) and,
- if the issuer's securities trade on a published market, the
- (A) trading price of the issuer's securities on the principal
market for the 10 trading days following the public
correction of the misrepresentation or the disclosure of the
material change in the manner required under this Act, or
if there is no published market, the amount that the court
- (B) considers just;
- in respect of any of the securities of the responsible issuer that the
- (c) person has not disposed of, assessed damages must equal the number
of securities acquired, multiplied by the difference between the average
price per security paid for those securities (including any commissions)
and,
- if the issuer's securities trade on a published market, the trading
- (i) price of the issuer's securities on the principal market for the 10
trading days following the public correction of the
misrepresentation or the disclosure of the material change in the
manner required under this Act, or
- if there is no published market, the amount that the court
- (ii) considers just.

Damages must be assessed in favour of a person that disposed of securities after a

(2) document was released or a public oral statement was made containing a
misrepresentation or after a failure to make timely disclosure as follows:

- in respect of any of the securities of the responsible issuer that the
- (a) person subsequently acquired 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 this Act, assessed
damages must equal the difference between the average price received
upon the disposition of those securities (deducting any commissions paid
in respect of the disposition) and the price paid for those securities
(without including any commissions paid in respect thereof), calculated
taking into account the results of hedging or other risk limitation
transactions;
- in respect of any of the securities of the responsible issuer that the
- (b) person subsequently acquired after the 10th trading day after the public
correction of the misrepresentation or the disclosure of the material

change in the manner required under this Act, assessed damages must equal the lesser of

- an amount equal to the difference between the average price
 - (i) received upon the disposition of those securities (deducting any commissions paid in respect of the disposition) and the price paid for those securities (without including any commissions paid in respect thereof), calculated taking into account the result of hedging or other risk limitation transactions, and
 - an amount equal to the number of securities that the person
 - (ii) disposed of, multiplied by the difference between the average price per security received upon the disposition of those securities (deducting any commissions paid in respect of the disposition determined on a per security basis) and,
 - if the issuer's securities trade on a published market, the
 - (A) trading price of the issuer's securities on the principal market (as those terms are defined in the regulations) for the 10 trading days following the public correction of the misrepresentation or the disclosure of the material change in the manner required under this Act, or
 - if there is no published market, the amount that the court
 - (B) considers just;
- in respect of any of the securities of the responsible issuer that the
- (c) person has not acquired, assessed damages must equal the number of securities that the person disposed of, multiplied by the difference between the average price per security received upon the disposition of those securities (deducting any commissions paid in respect of the disposition determined on a per security basis) and,
 - if the issuer's securities trade on a published market, the trading
 - (i) price of the issuer's securities on the principal market for the 10 trading days following the public correction of the misrepresentation or the disclosure of the material change in the manner required under this Act, or
 - if there is no published market, the amount that the court
 - (ii) considers just.

Despite subsections (1) and (2), assessed damages must not include any amount

(3) 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.

Proportionate liability

140.6 (1) In an action under section 140.3, the court must determine, in respect of each defendant found liable in the action, the defendant's responsibility for the

damages assessed in favour of all plaintiffs in the action, and each such defendant must be liable, subject to the limits set out in section 140.7 (1), to the plaintiffs for only that portion of the aggregate amount of damages assessed in favour of the plaintiffs that corresponds to that defendant's responsibility for the damages.

- Despite subsection (1), where, in an action under section 140.3 in respect of a
- (2) misrepresentation or a failure to make timely disclosure, a court determines that a particular defendant, other than the responsible issuer, authorized, permitted or acquiesced in 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.

- Each defendant in respect of whom the court has made a determination under
- (3) subsection (2) is jointly and severally liable with each other defendant in respect of whom the court has made a determination under subsection (2).

- Any defendant against whom recovery is obtained under subsection (2) is entitled
- (4) to claim contribution from any other defendant who is found liable in the action.

Limits on damages

140.7 (1) Despite section 140.5, the damages payable by a person in an action under section 140.3 is the lesser of

- the aggregate damages assessed against the person in the action, and
- (a) the liability limit for the person less the aggregate of all damages
- (b) assessed after appeals, if any, against the person in all other actions brought under section 140.3, and under comparable legislation in other provinces in respect of that misrepresentation or failure to make timely disclosure, and less any amount paid in settlement of any such actions.

- Subsection (1) does not apply to a person, other than the responsible issuer, if the
- (2) plaintiff proves that the person authorized, permitted or acquiesced in the making of the misrepresentation or the failure to make timely disclosure while knowing that it was a misrepresentation or a failure to make timely disclosure, or influenced the making of the misrepresentation or the failure to make timely disclosure while knowing that it was a misrepresentation or a failure to make timely disclosure.

Division 4 — Procedural Matters

Leave to proceed

140.8 (1) No action may be commenced under section 140.3 without leave of the court granted upon motion with notice to each defendant.

- The court may grant leave only where it is satisfied that
- (2) the action is being brought in good faith, and
- (a) there is a reasonable possibility that the action will be resolved at trial in

favour of the plaintiff.

- Upon an application under this section, the plaintiff and each defendant must
- (3) serve and file with the court one or more affidavits setting forth the material facts upon which each intends to rely.

- If an affidavit is filed with the court, a person who made the affidavit may be
- (4) examined on it in accordance with the Supreme Court Civil Rules.

- A copy of the application for leave to proceed and any affidavits filed with the court
- (5) must be sent to the commission when filed.

Notice

140.9 A person that has been granted leave to commence an action under section 140.3 must

- promptly issue a news release disclosing that leave has been granted to
- (a) commence an action under section 140.3,
- send a written notice to the commission within 7 days, together with a
- (b) copy of the news release, and
- send a copy of the notice of civil claim or other originating document to
- (c) the commission when filed with the court.

Restriction on discontinuation, etc., of action

140.91 An action under section 140.3 must not be discontinued, abandoned or settled without the approval of the court given on such terms as the court thinks fit, including, without limitation, terms as to costs, and in determining whether to approve the settlement of the action, the court must consider, among other things, whether there are any other actions outstanding under section 140.3 or under comparable legislation in other provinces in respect of the same misrepresentation or failure to make timely disclosure.

Power of the commission

140.92 The commission may intervene in an action under section 140.3 and in an application for leave under section 140.8.

No derogation from other rights

140.93 The right of action for damages and the defences to an action under section 140.3 are in addition to, and without derogation from, any other rights or defences the plaintiff or defendant may have in an action brought otherwise than under this Part.

Limitation period

- 140.94** (1) No action may be commenced under section 140.3,
- (a) in the case of a misrepresentation in a document, later than the earlier of
- 3 years after the date on which the document containing the

misrepresentation was first released, and

6 months after the issuance of a news release disclosing that leave

- (ii) has been granted to commence an action under section 140.3 or under comparable legislation in the other provinces in respect of the same misrepresentation,

in the case of a misrepresentation in a public oral statement, later than

- (b) the earlier of

3 years after the date on which the public oral statement

- (i) containing the misrepresentation was made, and

6 months after the issuance of a news release disclosing that leave

- (ii) has been granted to commence an action under section 140.3 or under comparable legislation in other provinces in respect of the same misrepresentation, and

in the case of a failure to make timely disclosure, later than the earlier of

- (c)

3 years after the date on which the requisite disclosure was

- (i) required to be made, and

6 months after the issuance of a news release disclosing that leave

- (ii) has been granted to commence an action under section 140.3 or under comparable legislation in another province in respect of the same failure to make timely disclosure.

If an application is filed with a court under section 140.8, the limitation period

- (2) under subsection (1) of this section is suspended on the date of the filing and resumes running,

if the court grants leave or dismisses the application and

- (a) an appeal of the court's decision has been filed, on the latest date
 - (i) that any appeals of the matter have been disposed of, or
 - an appeal of the court's decision is not filed, on the date that the
- (ii) time to file an appeal of the decision expires, or

on the date that the application is abandoned or discontinued.

- (b)

Part 17 — Investigations and Audits

Definitions

140.95 In this Part:

"computer data" means representations, including signs, signals or symbols, that are in a form suitable for processing in a computer system;

"computer program" means computer data representing instructions or statements that, when executed in a computer system, cause the computer system to perform a function;

"computer system" means a device that, or a group of interconnected or related devices one or more of which,

contains a computer program or other computer data, and

- (a) by means of a computer program, performs a function;
- (b)

"data" means representations, including signs, signals or symbols, that are capable of being understood by an individual or processed by a computer system or other device;

"financial institution" means

a savings institution,

- (a) a corporation or unincorporated association to which the *Cooperative Credit Associations Act* (Canada) applies,
- (b)

an insurance company or a fraternal benefit society incorporated or

- (c) formed under the *Insurance Companies Act* (Canada),
- (d)

a person that controls a savings institution,

- (d) a registrant or a person that is required to be registered,
- (e)

a person engaged in the business of foreign exchange dealing, of

- (f) 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,
- (g)

a person holding itself out to be a casino, or

- (g) the British Columbia Lottery Corporation;
- (h)

"judge" means a judge of the Supreme Court;

"tracking data" means data that relate to the location of a transaction, individual or thing;

"transmission data" means data that

relate to the telecommunication function of dialling, routing, addressing

- (a) or signalling,
- (b)

are transmitted to identify, activate or configure a device, including a

- (b) computer program, in order to establish or maintain access to a telecommunication service for the purpose of enabling a communication, or are generated during the creation, transmission or reception of a communication and identify or purport to identify the type, direction, date, time, duration, size, origin, destination or termination of the communication, and
- (c)

do not reveal the substance, meaning or purpose of the communication.

- (c)

Provision of information to executive director

141 (1) The executive director may make an order under subsection (2)

- for the administration of this Act,
- (a) to assist in the administration of the securities or derivatives laws of
- (b) another jurisdiction,
- in respect of matters relating to trading in securities or derivatives in
- (c) British Columbia, or
- in respect of matters in British Columbia relating to trading in securities
- (d) or derivatives in another jurisdiction.

By an order applicable generally or to one or more persons named or otherwise
(2) described in the order, the executive director may require any of the following persons to provide information or to produce records or classes of records specified or otherwise described in the order within the time or at the intervals specified in the order:

[Repealed 2011-29-128.]

- (a) a registrant;
- (b) a person exempted from the requirement to be registered under section
- (c) 34;
- a reporting issuer;
- (d) a custodian of assets, shares or units of an investment fund;
- (e) a general partner of a person referred to in this subsection;
- (f) a person purporting to distribute securities in reliance on
- (g) an exemption from section 61, or
 - (i) an order issued under section 76;
 - (ii) a transfer agent or registrar for securities of an issuer;
- (h) a director or officer of a reporting issuer;
 - (i) a promoter or control person of a reporting issuer;
- (j) a person engaged in promotional activities
- (k) by or on behalf of
 - (i) an issuer, security holder or party to a derivative, or
 - (A) another person that is reasonably expected to benefit from
 - (B) the promotional activity, or
 - on the person's own behalf in respect of circumstances that would
 - (ii) reasonably be expected to benefit the person;
- a person that manages a compensation, contingency or similar fund
- (l) formed to compensate clients of dealers or advisers;

- (m) a person providing record keeping services to a registrant;
 - a person recognized under section 24 or required to be recognized under
- (n) section 25;
 - a credit rating organization;
- (o) an information processor;
- (p) a benchmark administrator;
- (q) a benchmark contributor;
- (r) a trade repository;
- (s) a trustee or custodian of assets of a reporting issuer or of the assets of
- (t) an investment fund or of securities held by an investment fund;
 - a director, officer, control person or promoter of a person purporting to
- (u) distribute securities in reliance on
 - an exemption from section 61, or
 - (i) an order issued under section 76;
 - (ii) a person exempted, in an order issued under section 33, from the
- (v) requirement to be recognized;
 - a member of a committee referred to in section 130.1 or another
- (w) committee established by an investment fund;
 - any person who was formerly a person described in this subsection;
- (x) a prescribed person or a person within a class of prescribed persons.
- (y)

The executive director may require verification by affidavit of information provided
 (3) or records or classes of records produced pursuant to an order under subsection
 (2).

The executive director may require that the information that is provided or the
 (4) records that are produced under an order made under subsection (2) be delivered
 in an electronic form or in any other form that facilitates the electronic storage of
 the information or records.

Compliance review for SRO or exchange

- 141.1** (1) The executive director may appoint in writing a person to review the business and conduct of a self-regulatory body, exchange, quotation and trade reporting system, clearing agency, trade repository, benchmark administrator or information processor for the purpose of determining if the person under review is
- complying, or has complied, with
 - (a) this Act and the regulations,
 - (i) any decision, or
 - (ii) the charter, as defined in section 1 of the *Financial Institutions Act*,
 - (iii) of the person under review, or

- enforcing or administering its bylaws, rules, other regulatory instruments
- (b) or policies.

On production of the appointment, a person conducting a review under this
(2) section may

- enter any business premises of a person under review during business
- (a) hours,
- examine the records referred to in section 26 (2) (b),
- (b) examine property of a person under review or assets or things on the
- (c) business premises,
- use, or cause to be used, any means of communication in the business
- (c.1) premises,
- use, or cause to be used, any electronic device or other system in the
- (c.2) business premises in order to examine information contained in, or
- available to, the electronic device or system,
- make copies of the records referred to in section 26 (2) (b), and
- (d) make inquiries of a person under review or its employees and agents
- (e) concerning business or conduct that reasonably relates to the review.

A person conducting the review under this section may, for the purposes of the
(2.1) review, require that a person under review

- provide the person conducting the review with any information, record or
- (a) thing in the possession or control of the person under review, and
- prepare and produce a record containing the information required by the
- (b) person conducting the review in the form and at the time or intervals
- determined by the person conducting the review.

In exercising the power to make copies under subsection (2) (d), the person
(3) conducting the review under this section may

- carry out the copying at the business premises of the person under
- (a) review, or
- on giving an appropriate receipt, remove records for the purpose of
- (b) copying them at other premises specified in the receipt.

In exercising the power to examine under subsection (2) (c), the person conducting
(3.1) the review under this section may, on giving a receipt, remove the property, assets

or things for the purpose of examining or copying them at other premises

specified in the receipt.

Records removed under subsection (3) (b) for copying, or property, assets or things
(4) removed under subsection (3.1) for examination, must be promptly returned to the

person from which they were received.

The executive director may require a person that is the subject of a review under
(5)

this section to pay prescribed fees or prescribed charges for the costs of the review.

Compliance review of registrant or custodian

141.2 (1) The executive director may appoint in writing a person to review the business and conduct of a registrant or custodian of assets of an investment fund, for the purpose of determining if the person under review is complying, or has complied, with

- this Act and the regulations,
- (a) any decision,
- (b) the bylaws, rules, other regulatory instruments or policies of the self-
- (c) regulatory body, exchange, quotation and trade reporting system, clearing agency or trade repository, if any, of which or in which the person under review is a member or participant, or
- the bylaws, rules, other regulatory instruments or policies of an
- (d) information processor or benchmark administrator if the person has provided or was required to provide information to the information processor or benchmark administrator.

On production of the appointment, a person conducting a review under this (2) section may

- enter any business premises of a person under review during business
- (a) hours,
- examine the records of a person under review that are required to be
- (b) kept under this Act,
- examine property of a person under review or assets or things on the
- (c) business premises,
- use, or cause to be used, any means of communication in the business
- (c.1) premises,
- use, or cause to be used, any electronic device or other system in the
- (c.2) business premises in order to examine information contained in, or available to, the electronic device or system,
- make copies of the records referred to in paragraph (b), and
- (d)
- make inquiries of a person under review or its employees and agents
- (e) concerning business or conduct that reasonably relates to the review.

A person conducting the review under this section may, for the purposes of the (2.1) review, require that a person under review

- provide the person conducting the review with any information, record or
- (a) thing in the possession or control of the person under review, and
- prepare and produce a record containing the information required by the

person conducting the review in the form and at the time or intervals determined by the person conducting the review.

In exercising the power to make copies under subsection (2) (d), the person
(3) conducting the review under this section may

- (a) carry out the copying at the business premises of the person under review, or
- (b) on giving an appropriate receipt, remove records for the purpose of copying them at other premises specified in the receipt.

In exercising the power to examine under subsection (2) (c), the person conducting
(3.1) the review under this section may, on giving a receipt, remove the property, assets or things for the purpose of examining or copying them at other premises specified in the receipt.

Records removed under subsection (3) (b) for copying, or property, assets or things
(4) removed under subsection (3.1) for examination, must be promptly returned to the person from which they were received.

The executive director may require a person that is the subject of a review under
(5) this section to pay prescribed fees or prescribed charges for the costs of the review.

Compliance review of reporting issuer

141.3 (1) The executive director may review, or appoint a person in writing to review, the business and conduct of a reporting issuer for the purpose of determining if the reporting issuer is complying, or has complied, with

- this Act and the regulations,
- (a) any decision, or
- (b) the bylaws, rules, other regulatory instruments or policies of the
- (c) exchange or quotation and trade reporting system, if any, on which the person under review is listed or quoted.

[Repealed 2019-38-52.]

(2) The executive director or, on the production of the appointment, a person

(2.1) appointed under subsection (1) may do any of the following:

- (a) enter, during business hours, any business premises of a reporting issuer under review;
- (b) examine the records of a reporting issuer under review that are required to be kept under this Act;
- (c) examine property of a reporting issuer under review or assets or things on the business premises;
- (d) use, or cause to be used, any means of communication in the business

premises;

- use, or cause to be used, any electronic device or other system in the
- (e) business premises in order to examine information contained in, or available to, the electronic device or system;
- make copies of the records referred to in paragraph (b);
- (f) make inquiries of a reporting issuer under review, or its employees and
- (g) agents, concerning business or conduct that reasonably relates to the review.

The executive director or, on the production of the appointment, a person
(2.2) appointed under subsection (1) may, for the purposes of the review, require that a reporting issuer under review

- provide the person conducting the review with any information, record or
- (a) thing in the possession or control of the reporting issuer under review, and
- prepare and produce a record containing the information required by the
- (b) person conducting the review in the form and at the time or intervals determined by the person conducting the review.

In exercising the power to make copies under subsection (2.1) (f), the executive
(2.3) director or a person appointed under subsection (1) may

- carry out the copying at the business premises of the reporting issuer
- (a) under review, or
- on giving a receipt, remove records for the purpose of copying them at
- (b) other premises specified in the receipt.

In exercising the power to examine under subsection (2.1) (c), the executive
(2.4) director or a person appointed under subsection (1) may, on giving a receipt, remove the property, assets or things for the purpose of examining or copying them at other premises specified in the receipt.

Records removed under subsection (2.3) (b) for copying or property, assets or
(2.5) things removed under subsection (2.4) for examination must be promptly returned to the person from which they were received.

The executive director may require a reporting issuer that is the subject of a review
(3) under this section to pay prescribed fees or prescribed charges for the costs of the review.

Compliance review of other market participants

141.4 (1) The executive director may appoint in writing a person to review the business and conduct of a person referred to in section 141 (2) (c), (f), (g), (h), (i), (j), (k), (l), (m), (o), (r), (t), (u), (v), (w), (x) or (y) for the purpose of determining if the person under review is complying, or has complied, with

(a) this Act and the regulations, or

any decision.

(b)

On production of the appointment, a person conducting a review under this

(2) section may

enter any business premises of a person under review during business

(a) hours,

examine the records required to be kept under this Act,

(b)

examine property of a person under review or assets or things on the

(b.1) business premises,

use, or cause to be used, any means of communication in the business

(b.2) premises,

use, or cause to be used, any electronic device or other system in the

(b.3) business premises in order to examine information contained in, or available to, the electronic device or system,

make copies of the records referred to in paragraph (b), and

(c)

make inquiries of a person under review or its employees and agents

(d) concerning business or conduct that reasonably relates to the review.

A person conducting the review under this section may, for the purposes of the

(2.1) review, require that a person under review

provide the person conducting the review with any information, record or

(a) thing in the possession or control of the person under review, and

prepare and produce a record containing the information required by the

(b) person conducting the review in the form and at the time or intervals determined by the person conducting the review.

In exercising the power to make copies under subsection (2) (c), the person

(3) conducting the review under this section may

carry out the copying at the business premises of the person under

(a) review, or

on giving an appropriate receipt, remove records for the purpose of

(b) copying them at other premises specified in the receipt.

In exercising the power to examine under subsection (2) (b.1), the person

(3.1) conducting the review under this section may, on giving a receipt, remove the property, assets or things for the purpose of examining or copying them at other premises specified in the receipt.

Records removed under subsection (3) (b) for copying, or property, assets or things

(4) removed under subsection (3.1) for examination, must be promptly returned to the person from which they were received.

The executive director may require a person that is the subject of a review under

this section to pay prescribed fees or prescribed charges for the costs of the review.

Warrant for private residence

- 141.5** (1) Despite section 141.1 (2) (a), 141.2 (2) (a), 141.3 (2.1) (a), 141.4 (2) (a), 143 (2) or 143.1 (3), if the business premises is a residence, the person conducting the review may enter the residence only with the consent of the occupant or under the authority granted under subsection (2).

On application by the commission, the Supreme Court may make an order

- (2) authorizing a person named in the order to enter into a residence at any reasonable time, for the purpose of carrying out a review under section 141.1, 141.2, 141.3 or 141.4, or an investigation under section 142, 143.1 or 147, if the Court is satisfied by information on oath that

there are reasonable grounds to believe that records that reasonably

- (a) relate to a review or investigation are present in the residence, and

entry into the residence is necessary for the purpose of verifying

- (b) compliance with this Act, the regulations or a decision.

[Repealed 2019-38-54.]

(c)

An application for an order under subsection (2) must be made in the prescribed

- (3) manner and, unless the Supreme Court otherwise directs, may be

made without notice, and

- (a) heard in the absence of the public.

(b)

Investigation order by commission

- 142** (1) The commission may, by order, appoint a person to make an investigation the commission considers expedient

for the administration of this Act,

- (a) to assist in the administration of the securities or derivatives laws of

- (b) another jurisdiction,

in respect of matters relating to trading in securities or derivatives in

- (c) British Columbia, or

in respect of matters in British Columbia relating to trading in securities

- (d) or derivatives in another jurisdiction.

In its order, the commission must specify the matter to be investigated under

- (2) subsection (1).

Power of investigator

- 143** (1) An investigator appointed under section 142 or 147 may, with respect to the person who is the subject of the investigation, investigate, inquire into, inspect and

examine

- the affairs of that person,
- (a) any records, negotiations, transactions, investigations, investments,
- (b) loans, borrowings and payments to, by, on behalf of, in relation to or connected with that person,
- any property owned, acquired or disposed of in whole or in part by that
- (c) person or by a person acting on behalf of or as agent for that person,
- the property, assets or things at any time held, possessed or controlled
- (d) by, the liabilities, debts, undertakings and obligations at any time existing and the financial or other conditions at any time prevailing in respect of that person,
- the relationship that may at any time exist or have existed between that
- (e) person and any other person by reason of
 - investments made,
 - (i) commissions promised, secured or paid,
 - (ii) interests held or acquired,
 - (iii) the lending or borrowing of money, securities or other property,
 - (iv) the transfer, negotiation or holding of securities or the trading of
 - (v) or holding of derivatives,
 - interlocking directorates,
 - (vi) common control,
 - (vii) undue influence or control, or
 - (viii) any other relationship, and
 - (ix)
- the relationship that may at any time exist or have existed between the
- (f) person and any other person to whom the person transferred property, assets or things, or from whom the person received property, assets or things.

- A person appointed under section 142 or 147 to make an investigation may, on
- (2) production of an order made under section 142 (1) or 147 (1), enter the business premises of any person named in the order between the hours of 6 a.m. and 9 p.m. and inspect any records, property, assets or things that are used in the business of that person and that relate to the order.

- A person appointed under section 142 or 147 to make an investigation may, with
- (2.1) respect to the person that is under investigation, require the person to

- provide the person conducting the investigation with any information,
- (a) records, property, assets or things that are in the possession or control of the person and that relate to the order, and
- prepare and produce a record containing the information required by the
- (b) person conducting the investigation in the form and at the time or

intervals determined by the person conducting the investigation.

- On being satisfied by information on oath in writing that there are reasonable
- (3) grounds to believe that a place contains anything that is related to an investigation under section 142, the commission or the Supreme Court may make an order authorizing a person conducting the investigation to enter the place and do the following:

- examine records, property, assets or things in the place;
- (a) use, or cause to be used, any means of communication in the place;
- (b) use, or cause to be used, any electronic device or other system in the
- (c) place in order to examine information contained in, or available to, the electronic device or system;
- use, or cause to be used, any copying equipment at the place to make
- (d) copies of any record;
- require the production of records, property, assets or things referred to
- (e) in paragraph (a) and inspect, examine or analyze them;
- remove any record, property, asset or thing referred to in paragraph (a)
- (f) from the place for inspection, examination or copying.

- If the commission makes an order under subsection (3), the authority conferred
- (3.1) under the order to enter a place may be exercised only between the hours of 6 a.m. and 9 p.m.

- An application to the Supreme Court for an order under subsection (3) must be
- (4) made in the prescribed manner and, unless the Supreme Court otherwise directs, may be

- made without notice, and
- (a) heard in the absence of the public.
- (b)

- Inspection, examination or analysis under this section must be completed as soon
- (5) as practical and the records, property, assets or things must be returned promptly to the person who produced them.

- On an inspection, examination or analysis under this section, an investigator
- (6) appointed under section 142 or a person acting under the direction of that person may

- mark the records, property, assets or things for identification,
- (a) use or alter the records, property, assets or things to the extent
- (b) reasonably necessary to facilitate the inspection, examination or analysis,
- or
- use, or cause to be used, any electronic device or system in the place in
- (c) order to examine information contained in, or available to, the electronic device or system

and does not incur any liability because of doing so.

[Repealed 2007-37-22.]

- (7) For greater certainty, a power under subsection (1) may be exercised in relation to
- (8) any matter relevant to obtaining an order under Part 18.1 in respect of a person under investigation.

Investigation for purposes of Part 18.1

143.1 (1) If any of the circumstances referred to in section 164.04 (3) exist, the commission may, by order, appoint a person to make an investigation the commission considers expedient for the purpose of identifying or investigating property of a person referred to in section 164.04 (2) or identifying or investigating property of a family member or third-party recipient referred to in section 164.04 (3), including the financial affairs of that person, family member or third-party recipient relating to property or a transfer of property.

A person appointed under subsection (1) may, with respect to the person under

(2) investigation, investigate, inquire into, inspect and examine any of the following:

- the financial affairs of that person that relate to property;
- (a) any records, negotiations, transactions, investigations, investments,
- (b) loans, borrowings and payments to, by, on behalf of, in relation to or connected with property of that person or previously owned by that person;
- any property owned, acquired or disposed of in whole or in part by that
- (c) person or by a person acting on behalf of or as agent for that person;
- the property, assets or things at any time held by, the liabilities, debts,
- (d) undertakings and obligations at any time existing and the financial or other conditions at any time prevailing in respect of that person and that relate to or are connected with other property of that person or other property previously owned by that person;
- the relationship that may at any time exist or have existed between that
- (e) person and any other person to whom the person transferred property or from whom the person received property.

A person appointed under subsection (1) may, on production of the order, enter

(3) the business premises of any person named in the order between the hours of 6 a.m. and 9 p.m. and inspect any records, property, assets or things that relate to property owned, acquired or disposed of in whole or in part by the person under investigation.

A person appointed under subsection (1) may, with respect to the person under

(4) investigation, require the person to

- provide the person conducting the investigation with any information,
- (a) records, property, assets or things in the possession or control of the

person under investigation, or

- (b) prepare and produce a record containing the information required by the person conducting the investigation in the form and at the time or intervals determined by the person conducting the investigation.

On being satisfied by information on oath in writing that there are reasonable
(5) grounds to believe that a place contains anything that is related to an investigation under subsection (1), the commission or the Supreme Court may make an order authorizing a person conducting an investigation to enter the place and do the following:

- examine records, property, assets or things in the place;
- (a) use, or cause to be used, any means of communication in the place;
- (b) use, or cause to be used, any electronic device or other system in the
- (c) place in order to examine information contained in, or available to, the electronic device or system;
- use, or cause to be used, any copying equipment at the place to make
- (d) copies of any record;
- require the production of records, property, assets or things referred to
- (e) in paragraph (a) and inspect, examine or analyze them;
- remove any record, property, assets or things referred to in paragraph (a)
- (f) from the place for inspection, examination or copying.

An application to the Supreme Court for an order under subsection (5) must be
(6) made in the prescribed manner and, unless the Supreme Court otherwise directs, may be

- made without notice, and
- (a) heard in the absence of the public.
- (b)

If the commission makes an order under subsection (5), the authority conferred
(7) under the order to enter a place may be exercised only between the hours of 6 a.m. and 9 p.m.

On an inspection, examination or analysis under this section, a person appointed
(8) under subsection (1), or a person acting under the direction of that person, may

- mark the records, property, assets or things for identification,
- (a) use or alter the records, property, assets or things to the extent
- (b) reasonably necessary to facilitate the inspection, examination or analysis,
- or
- use, or cause to be used, any electronic device or system in the place in
- (c) order to examine information contained in, or available to, the electronic device or system

and does not incur any liability because of doing so.

Duty to assist

143.2 An owner or person in charge of a place that is entered under section 141.1 (2), 141.2 (2), 141.3 (2.1), 141.4 (2), 141.5 (2), 143 (2) or (3) or 143.1 (3) or (5), and every person that is in the place, must give all assistance that is reasonably required to enable the person conducting the review or the investigation to conduct the review or investigation.

Entry on private property

143.3 (1) A person conducting a review under section 141.1, 141.2, 141.3 or 141.4 or a person appointed under section 142 or 143.1 may enter on or pass through any premises for the purpose of gaining entry to a premises referred to in section 141.1 (2), 141.2 (2), 141.3 (2.1), 141.4 (2), 141.5 (2), 143 (2) or (3) or 143.1 (3) or (5).

Despite subsection (1), if the premises is a residence, the person may enter the (2) residence only with the consent of the occupant or on the authority granted under section 141.5 (2).

A person may, at the request of a person conducting a review under section 141.1, (3) 141.2, 141.3 or 141.4 or a person appointed under section 142 or 143.1, accompany the person conducting the review or investigation to assist them in gaining entry to a place referred to in section 141.1 (2), 141.2 (2), 141.3 (2.1), 141.4 (2), 141.5 (2), 143 (2) or (3) or 143.1 (3) or (5).

Contempt — obstructing entry

143.4 The failure or refusal of a person to permit entry under section 143 (2) or (3), 143.1 (3) or (5) or 143.2 makes the person, on application to the Supreme Court, liable to be committed for contempt as if in breach of an order or judgment of the Supreme Court.

Investigator's power to compel evidence

144 (1) An investigator appointed under section 142, 143.1 or 147 has the same power

- to summon and enforce the attendance of witnesses,
- (a) to compel witnesses to give evidence on oath or in any other manner,
- (b) to compel witnesses to preserve records and things or classes of records
- (b.1) and things, and
- to compel witnesses to provide information or to produce records and
- (c) things and classes of records and things

as the Supreme Court has for the trial of civil actions.

A summons under subsection (1), or a demand under that subsection to produce (1.1) records, property, assets or things or a class of records, property, assets or things, must be served personally on the witness or, if the witness cannot be conveniently found, may be left for the witness at the individual's last or usual residence with an

occupant of the residence who appears to be at least 16 years of age.

Despite subsection (1.1), if

- (1.2) the person to be served by personal service is evading service, or
- (a) after a diligent search,
 - (b) the person to be served by personal service cannot be found, or
 - (i) the last or usual residence of the person cannot be found or is
 - (ii) unoccupied,

the commission may make an order that the document may be served by substituted service in accordance with the order.

If a document is to be served by substituted service permitted under subsection

(1.3) (1.2), a copy of the substituted service order that granted permission to use that substituted method must be served with the document unless

- the commission orders otherwise, or
- (a) the substituted service permitted under subsection (1.2) is service by
- (b) advertisement.

The failure or refusal of a witness

- (2) to attend,
- (a) to take an oath,
 - (b) to answer questions,
 - (c) to preserve records and things or classes of records and things in the
- (c.1) custody, possession or control of the witness, or
- (d) to provide information or to produce the records and things or classes of records and things in the custody, possession or control of the witness

makes the witness, on application to the Supreme Court, liable to be committed for contempt as if in breach of an order or judgment of the Supreme Court.

Section 34 of the [Evidence Act](#) does not exempt any financial institution, as defined

- (3) in that section of that Act, or any officer or employee of the institution from the operation of this section.

A witness giving evidence at an investigation conducted under section 142, 143.1

- (4) or 147 may be represented by counsel.

Appointment of expert

- 145** If an investigation is ordered under section 142 or 143.1, the commission may appoint an expert to examine the affairs, records and properties of the person being investigated.

Report to commission

- 146** A person appointed under section 142, 143.1 or 145 must provide, at the request of the commission or a member of the commission involved in making the appointment, a complete report of the investigation, examination or analysis made, including any transcript of evidence and material in the person's possession relating to the investigation or examination.

Preservation demand

- 146.01** (1) A peace officer may make a demand to a person requiring the person to preserve computer data that are in the person's possession or control when the demand is made.

- A peace officer may make a demand under subsection (1) only if the officer has
- (2) reasonable grounds to suspect that
- an offence under this Act has been or will be committed, and
 - (a) the computer data are in the person's possession or control and will
 - (b) assist in the investigation of the offence.

- A demand under subsection (1) may not be made of a person that is under
- (3) investigation for an offence referred to in subsection (2).

- A peace officer may, by written notice given to the person at any time,
- (4)
- revoke a demand made under subsection (1), or
 - (a) revoke a restriction, requirement or prohibition referred to in subsection
 - (b) (6).

- Unless a demand made under subsection (1) is revoked earlier, the demand expires
- (5) 21 days after the date on which it is made.

- A peace officer who makes a demand under subsection (1) may, in the demand,
- (6) impose any restrictions or requirements that the officer considers appropriate and may prohibit the disclosure of the demand's existence or some or all of its contents.

- If a peace officer makes a demand under subsection (1), the officer may not make
- (7) another demand requiring the person to preserve the same computer data in connection with the investigation.

Order to preserve information, records or things

- 146.02** (1) On application by a peace officer, a judge or justice may order that a person preserve information or a record or thing that is in the person's possession or control when the person receives the order.

- Before making an order under subsection (1), the judge or justice must be satisfied
- (2) by information on oath
- that there are reasonable grounds to suspect that
 - (a) an offence under this Act has been or will be committed,
 - (i)

- (ii) the information, record or thing that is to be preserved will assist in the investigation of the offence, and
- the person that is the subject of the order has possession or
- (iii) control of the information, record or thing that is to be preserved, and

- (b) that a peace officer intends to apply or has applied for a warrant or an order in connection with the investigation to seize or require the production of the information, record or thing, or other property containing the information or record, and to inspect, examine or analyze them.

A person that is under investigation for an offence referred to in subsection (2)

(3) may not be made subject to an order under subsection (1).

Unless an order made under subsection (1) is revoked earlier, the order expires 90

(4) days after the date on which it is made.

Preservation order — computer data

146.03 (1) On application by a peace officer, a judge or justice may order that a person preserve computer data that are in the person's possession or control when the person receives the order.

Before making an order under subsection (1), the judge or justice must be satisfied

(2) 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
 - (i) the computer data are in the person's possession or control and
 - (ii) will assist in the investigation of the offence, and

- (b) that a peace officer 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.

A person that is under investigation for an offence referred to in subsection (2)

(3) may not be made subject to an order under subsection (1).

Unless an order made under subsection (1) is revoked earlier, the order expires 90

(4) days after the date on which it is made.

Order for production of information, etc.

146.04 (1) On application by a peace officer, a judge or justice may order a dealer, a party to a derivative that is not an individual, or an issuer whose securities are publicly traded to do any of the following within a specified period and at a specified place:

- (a) produce to the peace officer a copy of a record, certified by affidavit to be a true copy, that is specified in the order;

- (b) prepare and produce to the peace officer a written statement setting out in detail the information that is required by the order;
- prepare and produce to the peace officer a record containing the
- (c) information that is required by the order.

An order under subsection (1) may not be made in respect of an individual.

- (2) Before making the order, the judge or justice must be satisfied by information on
- (3) oath that there are reasonable grounds to believe that
 - an offence under this Act has been or will be committed,
 - (a) the record or statement that is to be produced will assist in the
 - (b) investigation of the offence, and
 - the person that is the subject of the order has knowledge, possession or
 - (c) control of the information that is to be produced.

A person that is under investigation for an offence referred to in subsection (3)

- (4) may not be made subject to an order under subsection (1).

General production order

- 146.05** (1) Despite sections 146.06 to 146.10, on application by a peace officer, a judge or justice may order a person to produce a document that is a copy of a document that is in the possession or control of the person when the person receives the order, or to prepare and produce a document containing data that are in the possession or control of the person at that time.

Before making the order, the judge or justice must be satisfied by information on

- (2) oath that there are reasonable grounds to believe that
 - an offence under this Act has been or will be committed, and
 - (a) the document or data are in the person's possession or control and will
 - (b) afford evidence respecting the commission of the offence.

A person that is under investigation for an offence referred to in subsection (2)

- (3) may not be made subject to an order under subsection (1).

Production order to trace specified communication

- 146.06** (1) On application by a peace officer for the purpose of identifying a device or person involved in the transmission of a communication, a judge or justice may order a person to prepare and produce a document containing transmission data that are related to that purpose and that are, when the person is served with the order, in the person's possession or control.

Before making the order, the judge or justice must be satisfied by information on

- (2) oath that there are reasonable grounds to suspect that
 - an offence under this Act has been or will be committed,
 - (a) the identification of a device or person involved in the transmission of a
 - ..

- communication will assist in the investigation of the offence, and
- transmission data that are in the possession or control of one or more
- (c) persons whose identity is unknown when the application is made will enable that identification.

- A peace officer may, within 60 days after the date on which the order is made,
- (3) serve the order on any person that was involved in the transmission of a communication, including, for greater certainty, a person whose identity was unknown when the application was made.

- A person that is under investigation for an offence referred to in subsection (2)
- (4) may not be made subject to an order under subsection (1).

- A peace officer named in the order must provide a written report to the judge or
- (5) justice who made the order as soon as feasible after the person from which the communication originated is identified or after the expiry of the period referred to in subsection (3), whichever occurs first.

- A report under subsection (5) must state the name and address of each person on
- (6) which the order was served and the date of service.

Production order — transmission data

- 146.07** (1) On application by a peace officer, a judge or justice may order a person to prepare and produce a document containing transmission data that are in the person's possession or control when the person receives the order.

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

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

- A person that is under investigation for an offence referred to in subsection (2)
- (3) may not be made subject to an order under subsection (1).

Production order — tracking data

- 146.08** (1) On application by a peace officer, a judge or justice may order a person to prepare and produce a document containing tracking data that are in the person's possession or control when the person receives the order.

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

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

- A person that is under investigation for an offence referred to in subsection (2)
- (3) may not be made subject to an order under subsection (1).

may not be made subject to an order under subsection (1).

Production order — financial data

146.09 (1) On application by a peace officer, a judge or justice may order a financial institution to prepare and produce a document containing the following information if that information is in the institution's possession or control when the institution receives the order:

- (a) the account number of a person named in the order or the name of a person whose account number is specified in the order;
- (b) the type of account;
- (b) the status of the account;
- (c) the date on which the account was opened or closed.
- (d)

For the purpose of confirming the identity of a person named, or whose account number is specified in the order, an order under subsection (1) may require the financial institution to prepare and produce a document containing the following information that is in the institution's possession or control:

- (a) the date of birth of the person named, or whose account number is specified, in the order;
- (b) that person's current address;
- (b) any previous addresses of that person.
- (c)

Before making the order, the judge or 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
- (a) the information is in the possession or control of the financial institution
- (b) and will assist in the investigation of the offence.

A financial institution that is under investigation for an offence referred to in subsection (3) may not be made subject to an order under subsection (1).

Order for production of names

146.10 (1) On application by a peace officer, a judge or justice may order one or more of the following:

- (a) that a clearing agency, exchange or self-regulatory body prepare and produce a document, in the form specified in the order, containing the names of all dealers, other than those who are individuals, that acquired or traded a specified security or derivative during a specified period;
- (b) that a trade repository prepare and produce a document, 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;

- that a dealer, other than a dealer who is an individual, prepare and
- (c) produce a document, 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.

Before making an order under subsection (1), the judge or justice must be satisfied

- (2) by information on oath that there are reasonable grounds to suspect that

- an offence under this Act has been or will be committed,
- (a) the information that is to be produced will assist in the investigation of
- (b) the offence, and
- the clearing agency, exchange, self-regulatory body, trade repository or
- (c) dealer that is the subject of the order has possession or control of the information that is to be produced.

A person that is under investigation for an offence referred to in subsection (2)

- (3) may not be made subject to an order under subsection (1).

Conditions in preservation and production orders

146.11 (1) An order made under sections 146.02 to 146.10 may contain any conditions, restrictions or requirements that the judge or justice considers appropriate, including, for greater certainty, a requirement to protect a communication that is subject to solicitor-client privilege.

On application by a peace officer, the judge or justice who made the order, or a

- (2) judge in the judicial district where the order was made, may, on the basis of information on oath, revoke or vary the order.

If an order is revoked or varied under subsection (2), the peace officer must give

- (3) notice of the revocation or variation to the person that is subject to the order as soon as feasible.

Order prohibiting disclosure

146.12 (1) On application by a peace officer, a judge or 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 146.01, or a preservation or production order made under sections 146.02 to 146.10, during the period set out in the order.

Before making the order, the judge or justice must be satisfied by information on

- (2) oath that there are reasonable grounds to believe that the disclosure during that period would jeopardize the investigation of the offence to which the preservation demand or the preservation or production order relates.

A peace officer or a person or financial institution that is subject to an order made

- (3) under subsection (1) may apply in writing to the judge or justice who made the

order, or to a judge in the judicial district where the order was made, to revoke or vary the order.

Particulars — production orders

146.13 (1) An order made under sections 146.04, 146.05 and 146.07 to 146.10 may require a financial institution or other person to produce the document to a peace officer named in the order within the time, at the place and in the form specified in the order.

An order made under section 146.06 may require a person to produce the
(2) document to a peace officer named in the order as soon as feasible after the person is served with the order at the place and in the form specified in the order.

For greater certainty, an order under sections 146.04 to 146.10 may specify that a
(3) document may be produced or transmitted in electronic form.

Application for review of production order

146.14 (1) Before a financial institution or other person is required by an order made under sections 146.04 to 146.10 to produce a document, the financial institution or other person may, subject to subsection (2) of this section, apply in writing to the judge or justice who made the order, or to a judge in the judicial district where the order was made, to revoke or vary the order.

A financial institution or other person may not make an application under
(2) subsection (1) unless the financial institution or other person gives notice of their intention to do so to the peace officer named in the order within 30 days after the date on which the order is made.

A financial institution or other person is not required to prepare or produce the
(3) document until a final decision is made with respect to the application to revoke or vary the order.

A judge or justice may revoke or vary the order if satisfied that
(4) it is unreasonable in the circumstances to require the applicant to
(a) prepare or produce the document, or
production of the document would disclose information that is privileged
(b) or otherwise protected from disclosure by law.

Requests to preserve data

146.15 (1) For greater certainty, no preservation demand, preservation order or production order is necessary for a peace officer to ask a person to

voluntarily preserve data or information that the person is not prohibited
(a) by law from preserving, or

voluntarily provide a document to the officer that the person is not
(b) prohibited by law from disclosing.

- (2) For greater certainty, a person that, under subsection (1), preserves data or information or provides a document as described in subsection (1) does not incur any liability for doing so.

Self-incrimination

- 146.16** (1) No person may be excused from complying with an order made under sections 146.04 to 146.10 on the grounds that the document the person is required to produce may tend to incriminate the person or subject the person to a proceeding or penalty.

- A document that an individual is required to prepare may not be used or received
- (2) in evidence against the individual in a proceeding relating to a contravention of this Act or the regulations that is subsequently instituted against the individual, other than a prosecution for a contravention of section 168.1.

Procedure

- 146.17** Unless a judge or justice otherwise directs, an application for an order under sections 146.02 to 146.12 may be

- made without notice, and
- (a) heard in the absence of the public.
- (b)

Investigation order by minister

- 147** (1) The minister may, by order, appoint a person to make an investigation the minister considers expedient

- for the administration of this Act,
- (a) to assist in the administration of the securities or derivatives laws of
- (b) another jurisdiction,
- in respect of matters relating to trading in securities or derivatives in
- (c) British Columbia, or
- in respect of matters in British Columbia relating to trading in securities
- (d) or derivatives in another jurisdiction.

- In the order, the minister must specify the matter to be investigated under
- (2) subsection (1).

Evidence not to be disclosed

- 148** (1) For the purpose of protecting the integrity of an investigation authorized under section 142, the commission may make an order, that applies for the duration of the investigation, prohibiting a person from disclosing to any person the existence of the investigation, the inquiries made by persons appointed under section 142, or the name of any witness examined or sought to be examined in the course of the investigation.

- (1.01) For the purpose of protecting the integrity of an investigation authorized under section 143.1, the commission may make an order, which applies for the duration of the investigation, prohibiting a person from disclosing to any person the existence of the investigation, the inquiries made by persons appointed under section 143.1, or the name of any witness examined or sought to be examined in the course of the investigation.

- An order made under subsection (1) or (1.01) does not apply to the disclosure of
(1.1) information between a person and the person's lawyer.

- An order made under subsection (1) applies despite any provision of the [Freedom of Information and Protection of Privacy Act](#) other than section 44 (1) (b), (2), (2.1) and (3) of that Act.

- [Repealed 2010-4-61.]
(3)

Report to minister

- 149** (1) If an investigation has been made under section 142, 143.1 or 147, then, if requested to do so by the minister, the commission or the investigator, as the case may be, must make a complete report to the minister including, if so requested, the evidence, findings, comments, recommendations and any material in the possession of the commission or investigator relating to the investigation.

- The minister may publish all or part of a report under subsection (1) in any way the
(2) minister considers proper.

Costs payable by person investigated

- 150** The commission may require a person whose affairs are investigated under this Part to pay prescribed fees or charges for the costs of the investigation.

Repealed

- 151** [Repealed 2019-38-65.]

Repealed

- 152** [Repealed 2019-38-65.]

Examination of financial affairs

- 153** (1) Despite sections 31 and 32, if the commission considers it to be in the public interest, the commission may appoint in writing a person to
- conduct an examination or inspection of the financial affairs and records
- (a) of
- a self-regulatory body or an exchange, as the case may be, which
- (i) has been recognized by the commission under section 24,
- a clearing agency, quotation and trade reporting system or trade
- (ii) repository,

- (iii) a registrant,
 - a reporting issuer,
 - (iv) a custodian of assets of an investment fund,
 - (v) a custodian of securities issued by an investment fund and held
 - (vi) under a custodial agreement or other arrangement with a person engaged in the distribution of those securities,
 - a credit rating organization,
 - (vii) an information processor, or
 - (viii) a benchmark administrator, and
 - (ix) prepare financial or other statements and reports required by the
- (b) commission.

A person appointed under subsection (1) may inquire into, examine or inspect all
(2) trades, securities, derivatives, cash and records of every description of the person whose financial affairs are being examined or inspected.

[Repealed 2007-37-26.]

- (3) The commission may require the person whose affairs are examined or inspected
- (4) under this section to pay prescribed fees or charges for the examination or inspection.

Repealed

154 [Repealed 2002-32-30.]

Part 18 — Enforcement

Offences generally

155 (1) A person who does any of the following commits an offence:

- fails to file, provide, deliver or send a record that
 - (a) is required to be filed, provided, delivered or sent under this Act, or
 - (i) is required to be filed, provided, delivered or sent under this Act
 - (ii) within the time required under this Act;
- contravenes any of sections 34, 49 to 57, 57.2, 57.3, 57.5, 57.6, 58, 61,
(b) 85 (b), 87, 125, 143.2, 148 or 168.1 (1) of this Act;
- fails to comply with a decision made under this Act;
- (c) fails to comply with a demand made under section 146.01;
- (c.1) fails to comply with an order made under sections 146.02 to 146.10;
- (c.2) contravenes any of the provisions of the regulations that are specified by
- (d) regulation for the purpose of this paragraph;

- (e) contravenes any of the provisions of the commission rules that are specified by regulation for the purpose of this paragraph.

A person that commits an offence under this Act is liable to a fine of not more than (2) \$5 million, or to imprisonment for not more than 5 years, or both.

Despite subsection (2),

- (2.1) a person that commits an offence referred to in subsection (1) (c.1) is
 - (a) liable to a fine of not more than \$5 000, and
 - a person that commits an offence referred to in subsection (1) (c.2) is
 - (b) liable to a fine of not more than \$250 000, or to imprisonment for not more than 6 months, or both.

[Repealed 1999-20-27.]

- (3) If a person, other than an individual, commits an offence under subsection (1), an
- (4) employee, officer, director or agent of that person who authorizes, permits or acquiesces in the offence commits the same offence whether or not that person is convicted of the offence.

- (4.1) If an investment fund commits an offence under subsection (1), the investment fund manager commits the same offence whether or not the investment fund is convicted of the offence.

- (5) Despite subsection (2), if a person has contravened section 57, 57.2 or 57.3, the fine to which the person is liable is

- (a) not less than any profit made or loss avoided by all persons because of the contravention of section 57, 57.2 or 57.3, and
- (b) not more than the greater of
 - \$5 million, and
 - (i) an amount equal to triple any profit made or loss avoided by all
 - (ii) persons because of the contravention of section 57, 57.2 or 57.3.

- (5.1) If, under subsection (5), the court finds that the profit made or loss avoided by all persons because of the contravention cannot be determined based on the facts before it, the fine to which the person is liable is that set out in subsection (2).

- (5.2) Despite subsection (2), if a person has contravened section 57 (2) (a), the person is liable to imprisonment for not less than one year if

- (a) the total value of the subject matter of the offence and related offences exceeds \$1 million, or
- (b) the person has previously been convicted of contravening section 57 (2) (a) or (b) and the most recent contravention of section 57 (2) (a) or (b) occurred after the previous conviction.

- (5.3) Despite section 89 of the [Offence Act](#), if a person is convicted of an offence to which subsection (5.2) applies, the court must not suspend the passing of sentence.

(5.4) Subsection (5.2) does not apply if

- the person that contravened section 57 (2) (a) is Indigenous and there is a
 - (a) unique systemic or background factor that contributed to the person's contravention,
- the person's moral culpability in contravening section 57 (2) (a) is
 - (b) diminished due to
 - mental infirmity,
 - (i) cognitive impairment, or
 - (ii) duress caused by, or undue influence of, a spouse, other family
 - (iii) member or other person that is in a relationship with the person that is similar to that of a spouse or other family member, or
- another circumstance exists, or existed at the time of the contravention,
 - (c) that would make a sentence under subsection (5.2) grossly disproportionate.

[Repealed 2007-37-29.]

(6) and (7)

Additional remedies

155.1 If the court finds that a person has committed an offence under section 155, the court may make an order that

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

Enforcement of court orders

155.2 (1) A person to whom the court awards compensation or restitution under section 155.1 (a) may file the order with the Supreme Court.

The commission may file an order made under section 155.1 (a) or (b) with the

(2) Supreme Court.

An order filed with the Supreme Court under subsection (1) or (2) has the same

(3) force and effect, and all proceedings may be taken on it, as if it were a judgment of that court.

Execution of warrant issued in another province

156 (1) If a court of another province issues a warrant for the arrest of a person on a charge of contravening the provisions of an Act or regulations of that province that are similar to the provisions of this Act or the regulations, a British Columbia court within whose territorial jurisdiction that person is or is suspected to be, may, on satisfactory proof of the handwriting of the person who issued the warrant, make an endorsement on the warrant in the required form.

A warrant endorsed under subsection (1) is sufficient authority to

- the person bringing the warrant,
- (a) all other persons to whom it was originally directed, and
- (b) all peace officers within the territorial jurisdiction of the British Columbia
- (c) court endorsing the warrant,

to execute the warrant within that jurisdiction, to take the person arrested under the warrant out of, or anywhere in, British Columbia and to re-arrest that person anywhere in British Columbia.

A peace officer

- (3) of British Columbia, or
- (a) of any other province who is passing through British Columbia,
- (b) having in the peace officer's custody a person arrested in another province under a warrant endorsed under subsection (1), is entitled to hold, take and re-arrest the person anywhere in British Columbia under the warrant without proof of the warrant or the endorsement.

Order for compliance

157 (1) In addition to any other powers it may have, if the commission considers that a person has contravened or is contravening a provision of this Act or of the regulations, or has failed to comply or is not complying with a decision, and the commission considers it in the public interest to do so, the commission may apply to the Supreme Court for one or more of the following:

- an order that
- (a) the person comply with or cease contravening the provision or
- (i) decision, and
- the directors and officers of the person cause the person to
- (ii) comply with or to cease contravening the provision or decision;
- an order that the person pay to the commission any amount obtained, or
- (b) payment or loss avoided, directly or indirectly, as a result of the failure to comply or the contravention;
- an order setting aside a transaction relating to trading in securities or
- (c) derivatives;
- an order that a security or derivative be issued or cancelled;
- (d) an order that a security or derivative be purchased, disposed of or
- (e) exchanged;
- an order prohibiting the voting of a security or the exercise of a right
- (f) attaching to a security or derivative;
- an order appointing a director of the person that is the subject of the
- (g) application;

- (h) an order that the person repay a holder of a security or a derivative money paid by the holder for the security or derivative;
 - an order that the person compensate or make restitution to any other
- (i) person;
- an order that the person pay general or punitive damages to any other
- (j) person;
- an order that the person correct a record;
- (k) an order that the person rectify any contravention of this Act, or the
- (l) regulations, to the extent that rectification is possible.

On an application under subsection (1), the Supreme Court may make the order
(2) applied for and any other order the court considers appropriate.

An order may be made under this section even though a penalty has already been
(3) imposed on that person in respect of the same non-compliance or contravention.

Section 5 of the *Offence Act*

158 Section 5 of the *Offence Act* does not apply to this Act or the regulations.

Limitation period

159 (1) Proceedings under this Act, other than an action referred to in section 140 or 140.94, must not be commenced more than 6 years after the date of the events that give rise to the proceedings.

If an application, motion or notice is filed with a court in respect of an investigation
(2) under section 142, 143.1 or 147 or a substantially similar matter, the running of the limitation period under subsection (1) is suspended on the date of the filing and resumes when

- (a) the court decides the matter that is the subject of the application, motion or notice and,
 - if an appeal of the decision has been filed, any appeals of the
 - (i) matter have been disposed of, or
 - if an appeal of the decision is not filed, the time to file an appeal of
 - (ii) the decision expires, or
- (b) the matter that is the subject of the application, motion, notice or appeal is abandoned or discontinued and the commission has been notified of that fact.

Costs of investigation

160 (1) A person convicted of an offence against this Act or the regulations is liable, after the review and filing of a certificate under this section, for the costs of the investigation of the offence.

The executive director may prepare a certificate setting out the costs of the

investigation of an offence including the cost of the time spent by the executive director and the staff of the executive director and any fees paid to an expert, investigator or witness.

- The executive director may apply to a master or registrar of a court to review the
- (3) certificate under the Supreme Court Civil Rules as if the certificate were a bill of costs, and on the review the master or registrar must review the costs and may vary them if the master or registrar considers that they are unreasonable or not related to the investigation.

- The tariff of costs in the Supreme Court Civil Rules does not apply to a certificate
- (4) reviewed under this section.

- On the review, the master or registrar must take into account any fees already paid
- (5) by the defendant under sections 13 (3) and 150 in respect of the same investigation.

- After review the certificate may be filed in the court in which the proceedings were
- (6) heard and may be enforced against the person convicted as if it were an order of the court.

Enforcement orders

- 161** (1) If the commission or the executive director considers it to be in the public interest, the commission or the executive director, after a hearing, may order one or more of the following:

- that a person comply with or cease contravening, and that the directors
- (a) and officers of the person cause the person to comply with or cease contravening,

- a provision of this Act or the regulations,
- (i) a decision, whether or not the decision has been filed under
- (ii) section 163,
- a bylaw, rule, or other regulatory instrument or policy or a
- (iii) direction, decision or similar determination made by a clearing agency, exchange, quotation and trade reporting system, self-regulatory body or trade repository, as the case may be, that has been recognized by the commission under section 24, or
- a bylaw, rule, or other regulatory instrument or policy or a
- (iv) direction, decision or similar determination made by
- a benchmark administrator that has been designated for the
- (A) purposes of a regulation referred to in section 183 (2.2), or
- an information processor that has been designated for the
- (B) purposes of a regulation referred to in section 183 (2.3);

- that
- (b) all persons,
- (i)

- (ii) the person or persons named in the order, or
one or more classes of persons
- (iii) cease trading in, or be prohibited from purchasing, any securities or derivatives, a specified security or derivative or a specified class of securities or class of derivatives;
- that any or all of the exemptions set out in this Act, the regulations or a
- (c) decision do not apply to a person;
- that a person
- (d) resign any position that the person holds as a director or officer of
 - (i) an issuer or registrant,
is prohibited from becoming or acting as a director or officer of
 - (ii) any issuer or registrant,
is prohibited from becoming or acting as a registrant or promoter,
 - (iii) is prohibited from advising or otherwise acting in a management
 - (iv) or consultative capacity in connection with activities in the securities or derivatives markets,
is prohibited from engaging in promotional activities by or on
 - (v) behalf of
 - an issuer, security holder or party to a derivative, or
 - (A) another person that is reasonably expected to benefit from
 - (B) the promotional activity,
 - is prohibited from engaging in promotional activities on the
 - (vi) person's own behalf in respect of circumstances that would reasonably be expected to benefit the person,
is prohibited from voting a security or exercising a right attaching
 - (vii) to a security or a derivative, or
is prohibited from engaging in any activity in relation to the
 - (viii) administration of a benchmark or the provision of information to a benchmark administrator in relation to the determination of a benchmark;
- that a person
- (e) is prohibited from disseminating to the public, or authorizing the
 - (i) dissemination to the public, of any information or record of any kind that is described in the order,
is required to disseminate to the public, by the method described
 - (ii) in the order, any information or record relating to the affairs of the registrant or issuer that the commission or the executive director considers must be disseminated, or
is required to amend, in the manner specified in the order, any
 - (iii) information or record of any kind described in the order before

disseminating the information or record to the public or
authorizing its dissemination to the public;

that a registration or recognition be suspended, cancelled or restricted or
(f) that conditions, restrictions or requirements be imposed on a
registration or recognition;

if a person has not complied with this Act, the regulations or a decision of
(g) the commission or the executive director, that the person pay to the
commission any amount obtained, or payment or loss avoided, directly
or indirectly, as a result of the failure to comply or the contravention;

that a person referred to in subsection (7) submit to a review of its
(h) practices and procedures;

that a person referred to in subsection (7) make changes to its practices
(i) and procedures;

that a person be reprimanded.

(j)
(1.1) If the commission makes an order under subsection (1) (g) in respect of a
contravention of section 57 (1) or (2), and more than one person participated in the
contravention, the commission may order that

the amount payable is the amount obtained, or payment or loss avoided,
(a) directly or indirectly, by all persons as a result of the contravention, and
each person that participated in the contravention is liable for the
(b) payment on a joint and several basis.

If the commission or the executive director considers that the length of time
(2) required to hold a hearing under subsection (1), other than under subsection (1) (e)
(ii) or (iii), could be prejudicial to the public interest, the commission or the
executive director may make a temporary order, without providing an opportunity
to be heard, to have effect for not longer than 15 days after the date the temporary
order is made.

If the commission or the executive director considers it necessary and in the public
(3) interest, the commission or the executive director may, without providing an
opportunity to be heard, make an order extending a temporary order until a
hearing is held and a decision is rendered.

The commission or the executive director, as the case may be, must send written
(4) notice of every order made under this section to any person that is directly affected
by the order.

[Repealed 2019-38-71.]

(5) The commission or the executive director may, after providing an opportunity to be
(6) heard, make an order under subsection (1) in respect of a person if the person

has been convicted in Canada or elsewhere of an offence
(a) arising from a transaction, business or course of conduct related to

securities or derivatives, or
under the laws of the jurisdiction respecting trading in securities or
(ii) derivatives,

- has been found by a court in Canada or elsewhere to have contravened
(b) the laws of the jurisdiction respecting trading in securities or derivatives,
is subject to an order made by a securities regulatory authority, a self-
(c) regulatory body or an exchange, in Canada or elsewhere, imposing
sanctions, conditions, restrictions or requirements on the person, or
has agreed with a securities regulatory authority, a self-regulatory body
(d) or an exchange, in Canada or elsewhere, to be subject to sanctions,
conditions, restrictions or requirements.

An order under subsection (1) (h) or (i) may be made against
(7)

- an exchange, quotation and trade reporting system or any other person
(a) that constitutes, maintains or provides a market for transactions in
securities or derivatives,
a self-regulatory body,
(b) a clearing agency,
(c) a credit rating organization,
(c.1) a trade repository,
(c.2) a benchmark administrator,
(c.3) a benchmark contributor,
(c.4) a person exempted, in an order made under section 33, from the
(c.5) requirement to be recognized,
a member of a committee established by an investment fund for the
(c.6) purpose of section 130.1 or for a similar purpose under the regulations,
a registrant or a person exempted from the requirement to be registered
(d) under section 34,
a partner, director, officer, insider or control person of a registrant,
(e) a person providing record keeping services to a registrant,
(f) a person that manages a compensation, contingency or similar fund
(g) formed to compensate clients of dealers or advisers,
an issuer,
(h) a custodian of assets or securities of an investment fund,
(i) a transfer agent or registrar for securities of an issuer,
(j) a director, officer, insider, promoter or control person of an issuer,
(k) a general partner of a person referred to in this subsection,
(l)

- (m) a person that the commission has ordered is exempt from a provision of this Act or the regulations,
- a person engaged in promotional activities by or on behalf of
- (n)
 - an issuer, security holder or party to a derivative, or
 - (i) another person that is reasonably expected to benefit from the
 - (ii) promotional activity,
- a person engaged in promotional activities on the person's own behalf in
- (o) respect of circumstances that would reasonably be expected to benefit the person,
- a trustee of a reporting issuer, or
- (p) an information processor.
- (q)

Administrative penalty

162 (1) If the commission, after a hearing,

determines that a person has contravened

- (a)
 - subject to subsection (2), a provision of this Act or of the
 - (i) regulations, or
 - a decision of the commission, the executive director or a
 - (ii) designated organization, whether or not the decision has been filed under section 163, and

considers it to be in the public interest to make the order,

(b) the commission may order the person to pay the commission an administrative penalty of not more than \$1 million for each contravention.

If the commission, after a hearing,

- (2) determines that a person has contravened section 57.7, and

- (a) considers it to be in the public interest to make the order,

(b) the commission may order the person to pay the commission an administrative penalty of not more than \$5 million for each contravention.

Administrative penalty imposed by notice

162.01 If, based on information obtained from a review, investigation or any other source, the executive director

considers that a person has contravened

- (a)
 - a prescribed provision of this Act,
 - (i) a provision of the regulations, or
 - (ii) a decision of the commission or the executive director, whether or
 - (iii) not the decision has been filed under section 163, and

considers it to be in the public interest,

the executive director may give written notice to a person requiring the person to pay an administrative penalty.

Amount of administrative penalty imposed by notice

162.02 (1) In determining the amount of an administrative penalty imposed on a person by notice under section 162.01, the executive director must consider the following:

- the person's past conduct;
- (a) the seriousness of the conduct;
- (b) factors that mitigate the person's conduct;
- (c) the need to demonstrate the consequences of inappropriate conduct to
- (d) those who access the capital markets;
- the need to deter those who participate in the capital markets from
- (e) engaging in inappropriate conduct;
- orders made by the commission in similar circumstances in the past;
- (f) any other matter relevant to the public interest.
- (g)

An administrative penalty for which a notice has been issued to a person under (2) section 162.01 must not exceed,

- in the case of an individual, \$100 000 for each contravention set out in
- (a) the notice, or
- in the case of a person that is not an individual, \$500 000 for each
- (b) contravention set out in the notice.

Notice of administrative penalty

162.03 A notice of administrative penalty must specify the following:

- each contravention;
- (a) the amount of the administrative penalty for each contravention;
- (b) a person's option under section 162.04 to either pay or request an
- (c) opportunity to be heard to dispute the administrative penalty within the 30-day period referred to in that section or within any longer period that the executive director specifies;
- the date on or before which the administrative penalty must be paid
- (d) under section 162.04 if the person does not exercise the option to request an opportunity to be heard under that section;
- that if the person does either of the following, the person will be deemed
- (e) to have committed the contravention and the administrative penalty set out in the notice will be payable to the commission:
- pays the administrative penalty;
- (i) fails to pay the penalty or request an opportunity to be heard to
- (ii)

dispute the administrative penalty within the 30-day period referred to in that section or within any longer period that the executive director specifies.

Payment or dispute of administrative penalty imposed by notice

162.04 (1) On or before the date set out in a notice of administrative penalty, the person to which the notice was given must do one of the following:

- pay the administrative penalty;
- (a) give written notice to the executive director requesting an opportunity to
- (b) be heard to dispute the contravention or the amount of the administrative penalty.

A person that gives notice under subsection (1) (b) requesting an opportunity to

(2) dispute a contravention or the amount of an administrative penalty must include in the notice particulars of the dispute.

If an opportunity to be heard is requested, the executive director, after providing

(3) an opportunity to be heard,

- must confirm by order whether the person committed each
- (a) contravention set out in the notice of administrative penalty, and
- if commission of a contravention is confirmed under paragraph (a), may,
- (b) by order, with respect to the penalty specified in the notice of administrative penalty,
- confirm the penalty,
- (i) impose a lesser penalty, or
- (ii) revoke the penalty.
- (iii)

An order made under subsection (3) must specify the following with respect to

(4) each contravention that has been confirmed:

- the contravention;
- (a) the amount of the administrative penalty;
- (b) the date on or before which the penalty must be paid;
- (c) the person's right, under section 165, to seek a hearing and review by the
- (d) commission of the executive director's decision.

The executive director may exercise the powers under subsection (3) in the

(5) absence of a person that requests an opportunity to be heard if the person fails to appear at the time scheduled or if the person fails to provide written submissions within the required time.

The executive director must give a copy of an order made under subsection (3) to

(6) the person to which the order relates.

Administrative penalty against officers or directors imposed by notice

162.05 If the executive director considers that a person other than an individual has committed a contravention, an employee, officer, director or agent of that person who authorizes, permits or acquiesces in the contravention is considered to have committed the same contravention, whether or not the executive director has issued to the person a notice of administrative penalty under section 162.01.

Administrative penalty against investment fund manager imposed by notice

162.06 If the executive director considers that an investment fund has committed a contravention, an investment fund manager of that investment fund that authorizes, permits or acquiesces in the contravention is considered to have committed the same contravention, whether or not the executive director has issued to the investment fund a notice of administrative penalty under section 162.01.

Extraprovincial orders

162.07 (1) In this section:

"extraprovincial securities commission" means a securities regulatory authority of a province other than British Columbia;

"extraprovincial securities law" means the laws of a province other than British Columbia respecting trading in securities or derivatives.

A reference to an extraprovincial securities commission includes, unless otherwise
(2) provided,

its delegate, and

- (a) any person that, in respect of the extraprovincial securities commission,
- (b) exercises a power or performs a duty that is substantially similar to a power or duty exercised or performed by the executive director under this Act.

An order made by an extraprovincial securities commission imposing a sanction,
(3) condition, restriction or requirement on a person applies to the person in British Columbia, without notice to the person and without an opportunity to be heard, as if the order were made by the commission with such modifications as the circumstances require, to the extent that the commission has the power to impose the same sanction, condition, restriction or requirement and for so long as the order remains in effect.

If a person is subject to a sanction, condition, restriction or requirement pursuant
(4) to an agreement with an extraprovincial securities commission, the sanction, condition, restriction or requirement applies to the person, without notice to the person and without an opportunity to be heard, as if the agreement had been made with the commission with such modifications as the circumstances require, to the extent that the commission has the power to impose the same sanction, condition, restriction or requirement and for so long as the agreement remains in effect.

Subsections (3) and (4) do not apply unless the order was made or the agreement
(5) was entered into as a result of

- the extraprovincial securities commission making a finding that the
- (a) person contravened extraprovincial securities law, or
- the person making an admission that the person contravened
- (b) extraprovincial securities law.

Subsections (3) and (4) do not apply with respect to a sanction or requirement in an
(6) order requiring the person subject to the order to pay money to the extraprovincial securities commission or another person.

Demand on third party

162.1 (1) If a person owes money to the commission under section 160, 161 (1) (g), 162, 162.01, 162.04 or 174 and the commission receives information that a third party is, or is likely to become, indebted to the person, the commission may demand of the third party that the third party pay the debt to the commission on account of the person's liability to the commission.

The third party must pay the money demanded under subsection (1) to the
(2) commission as soon as practicable after the later of

- the receipt of the demand, and
- (a) the date the money is due to be paid to the person named in the
- (b) demand.

Money paid to the commission under this section discharges the indebtedness of
(3) the third party to the person named in the demand to the extent of the amount of money paid to the commission.

If, after receipt of a demand under this section, a third party
(4) fails to pay the money to the commission as required under subsection
(a) (2), or

- makes a payment to the person named in the demand,
- (b) the third party is liable to the commission for the lesser of
- the third party's indebtedness to the person plus the amount of the
- (c) indebtedness paid by the third party to the person, and
- the amount owed to the commission by the person, including any
- (d) interest and penalty.

If a demand is made on a third party under this section, the commission must, in
(5) the same manner and at the same time, notify the person of the demand and give the person the particulars of it.

Settlements

162.2 The commission or the executive director may proceed to make an order under section

161 or 162, without holding a hearing, if the person that is the subject of the order has agreed to waive the right to a hearing.

Enforcement of commission orders

163 (1) If the commission has made a decision under section 161 or 162, or if the executive director has made a decision under section 161, the commission or the executive director, as applicable, may file the decision at any time in a Supreme Court registry by filing a certified copy of the decision.

If the executive director has issued a notice under section 162.01, or made an
(1.01) order under section 162.04, the executive director may file the notice or the order in a Supreme Court registry at any time by filing,

in the case of a notice under section 162.01, a certified copy of the notice
(a) together with a certificate setting out the unpaid amount of the administrative penalty, or

in the case of an order under section 162.04, a certified copy of the order.
(b)

Subject to subsection (1.3) and the regulations, if a prescribed self-regulatory body
(1.1) has made a decision after a hearing, the self-regulatory body may file the decision at any time in a Supreme Court registry by filing a certified copy of the decision.

If, after a hearing and review under section 28, the commission has made a
(1.2) decision in respect of a decision of a self-regulatory body referred to in subsection (1.1) of this section, the self-regulatory body may file the commission's decision at any time in a Supreme Court registry by filing a certified copy of the decision.

A self-regulatory body referred to in subsection (1.1) must not file a decision under
(1.3) that subsection if

the 30-day period referred to in section 165 (3) has not expired, or
(a) the executive director or a person directly affected by the decision has
(b) applied to the commission under section 28 (1) for a hearing and review of the decision and the application has not been withdrawn.

On being filed under subsection (1), (1.01), (1.1) or (1.2), the decision has the same
(2) force and effect, and all proceedings may be taken on it, as if it were a judgment of the Supreme Court.

Amount owing forms lien

163.1 (1) An amount owing under an order made under section 155.1 (b), 157 (1) (b) or 161 (1) (g) by a person named in the order forms a lien and charge in favour of the commission on the entire property of the person or the estate of the person in the hands of any receiver, receiver manager or trustee and has priority over all other claims of every person, except

claims secured by liens, charges or encumbrances registered before,
(a) if the order is made after a hearing, the date that notice of the

hearing was issued, or

if the order is made in the circumstances contemplated by section

(ii) 162.2,

if notice of a hearing in respect of the matter was issued, the

(A) date of the notice, or

if notice of a hearing in respect of the matter has not been

(B) issued, the date of the order, or

claims arising under the [Employment Standards Act](#) or the [Family](#)

(b) [Maintenance Enforcement Act](#).

A lien and charge created by this section and its priority are not lost or impaired

(2)

by any neglect, omission or error of the commission, a member of the

(a) commission or a servant, agent, officer or employee of the commission,

by taking or failing to take proceedings to recover the amount owing,

(b)

by tender or acceptance of a partial payment of the amount owing, or

(c)

by want of registration.

(d)

Debtor's licences and number plates

163.2 (1) If a person is in default of an order under section 155, 155.1, 157, 161 (1) (g), 162 or 162.04, or is in default of a notice under section 162.01, and the amount owing is \$3 000 or more, the commission or the executive director may do either or both of the following:

forward to the Insurance Corporation of British Columbia a notice stating

(a) that the person is in default and that action under this section is to be taken in relation to the person's driver's licence;

forward to the Insurance Corporation of British Columbia a notice stating

(b) that the person is in default and that action under this section is to be taken in relation to a licence and corresponding number plates for any motor vehicle or trailer owned by the person.

At least 30 days before forwarding a notice to the Insurance Corporation of British

(2) Columbia under subsection (1) (a), the commission or the executive director must, in the manner prescribed by the regulations,

give the person notice that action under this section will be taken in

(a) relation to the person's driver's licence, and

give the person an opportunity to be heard.

(b)

At least 60 days before forwarding a notice to the Insurance Corporation of British

(3) Columbia under subsection (1) (b), and again at least 30 days before forwarding the notice under subsection (1) (b), the commission or the executive director must give the person notice, in the manner prescribed by the regulations, that action under this section will be taken in relation to a licence and corresponding number

plates for any motor vehicle or trailer owned by the person.

- On receipt of a notice under subsection (1) (a), the Insurance Corporation of British Columbia, for the applicable period under subsection (6), must not issue or renew a driver's licence of the person.
- (4)

- On receipt of a notice under subsection (1) (b), the Insurance Corporation of British Columbia, for the applicable period under subsection (6), must not issue or renew a licence and corresponding number plates for a motor vehicle or trailer owned by the person.
- (5)

- Subsections (4) and (5) apply in relation to the person from the date the Insurance Corporation of British Columbia receives the applicable notice under subsection (1) until the earliest of the following:
- (6)

- the date the Insurance Corporation of British Columbia is advised by the
- (a) commission or the executive director that the order
 - has been withdrawn, or
 - (i) is no longer in arrears;
 - (ii) the date the commission or the executive director directs the Insurance
- (b) Corporation of British Columbia under section 163.3 to disregard that notice.

- The commission or the executive director may, as a condition for acting under subsection (6) (a) (ii), enter into a payment arrangement with the person.
- (7)

- If, with respect to a payment arrangement under subsection (7), the person falls into arrears for more than 10 consecutive days under the arrangement, the commission or the executive director may prepare and forward to the Insurance Corporation of British Columbia a further notice under subsection (1) without further notice to the person under subsection (2) or (3), as applicable.
- (8)

- Action by the Insurance Corporation of British Columbia under subsection (4) or (5) is not a bar to the bringing of other proceedings under this Part to enforce payment under the order made under section 155, 155.1, 157, 161 (1) (g), 162 or 162.04 or under a notice under section 162.01.
- (9)

Withdrawing the notice

- 163.3** (1) The commission or the executive director must direct the Insurance Corporation of British Columbia to disregard a notice given under section 163.2 if the person referred to in that section satisfies the commission or the executive director that
- the notice is based on a significant error,
 - (a) the lack of anything referred to in section 163.2 (4) or (5) will significantly
 - (b) reduce the person's ability to pay under the order under section 155, 155.1, 157, 161 (1) (g), 162 or 162.04, or under a notice under section 162.01, and the person has entered into an arrangement that is satisfactory to the commission or the executive director to report the

- person's financial circumstances from time to time, or
- the person has entered into a payment arrangement under section 163.2
- (c) that is satisfactory to the commission or the executive director.

If the commission or the executive director refuses to act under subsection (1), the
(2) court, on application by the person, may summarily determine whether the refusal was unreasonable and, if the refusal is found to be unreasonable, may order the commission or the executive director to act under subsection (1).

Failure to comply with filing requirements

164 (1) For the reasons set out in subsection (2), the commission or the executive director, without providing an opportunity to be heard, may order that all persons, the person or persons named in the order or one or more specified persons or classes of persons cease trading in a specified security or derivative or in a class of securities or derivatives.

The commission or the executive director may make an order under subsection (1)
(2) if the issuer of the security or the person in respect of which the order is made

- fails to file a record required to be filed under this Act, provided that the
- (a) order is revoked as soon as practicable after the record referred to in the order, completed in accordance with this Act and the regulations, is filed, or
- files a record required to be filed under this Act which record has not
- (b) been completed in accordance with this Act or the regulations, provided that the order is revoked as soon as practicable after the record referred to in the order, completed in accordance with this Act and the regulations, is filed.

The commission or the executive director, as the case may be, must send to any
(3) person directly affected by an order made under subsection (1)

- written notice of the order, and
- (a) written notice of a revocation of the order, if any.
- (b)

Part 18.1 — Preservation Orders and Additional Collection Remedies

Division 1 — Interpretation

Definitions

164.01 In this Part:

"claimable property" means,

- with respect to a family member of a person referred to in section 164.04
- (a) (2),

- (i) property that was transferred to the family member, at any time, from the person, and
 - if property referred to in paragraph (a) (i) has been transferred by
 - (ii) the family member to another person, other property of the family member that, as of the valuation date, is equivalent in value to the property referred to in paragraph (a) (i), and
- with respect to a third-party recipient of property from a person referred to in section 164.04 (2),
- the property if the property was transferred to the third-party
 - (i) recipient from the person on or after the specified date, and
 - if the property referred to in paragraph (b) (i) has been transferred
 - (ii) by the third-party recipient to another person, other property of the third-party recipient that, as of the valuation date, is equivalent in value to the property referred to in paragraph (b) (i);

"family member" means

- a spouse, former spouse, parent, grandparent, sibling, child or
- (a) grandchild of a person, and
- if a person has a spouse or former spouse, a parent, grandparent,
- (b) sibling, child or grandchild of the spouse or former spouse;

"forfeiture order" means a court order made under section 164.10 (1) or (2);

"person that contravened securities law" means a person that is subject to an order under section 155.1 (b), 157 (1) (b) or 161 (1) (g);

"person that is subject to an investigation or proceeding" means a person referred to in section 164.04 (2) or (3);

"personal property registry" means the personal property registry established under the [Personal Property Security Act](#);

"preservation order" means an order made under section 164.04 (4);

"security interest" means security interest as defined in the [Personal Property Security Act](#);

"specified date" means,

- in relation to a person that is subject to an order under section 155.1 (b),
- (a) 157 (1) (b) or 161 (1) (g), the date of the unlawful activity, or
- for any other matter referred to in section 164.04 (3), the date referred to
- (b) in 164.04 (5) (a) or (b), as applicable;

"third-party recipient" means a person that, after the specified date, acquired property from a person referred to in section 164.04 (2), but does not include a family member of a person referred to in section 164.04 (2);

"undervalue benefit" means the amount by which the fair market value of a property at the time of its transfer exceeded the consideration given for the property in respect of the transfer;

"unlawful activity" means an omission or conduct that resulted in an order under section 155.1 (b), 157 (1) (b) or 161 (1) (g);

"valuation date" means the date on which a person referred to in section 164.04 (2) transferred property to a family member or a third-party recipient.

Application

164.02 (1) This Part applies to unlawful activity that occurred before, on or after the coming into force of this section, whether or not an order has been made under section 155.1 (b), 157 (1) (b) or 161 (1) (g) in respect of the unlawful activity.

This Part applies to property, whether or not

- (2)
- (a) the acquisition of the whole or the portion of an interest in the property,
 - (b) the increase in the value of the whole or the portion of an interest in the property, or
 - (c) the decrease in the debt obligation,
- as referred to in section 164.16, occurred before, on or after the coming into force of this Part.

Remedies not limited

164.03 A remedy exercised under this Part does not limit any remedy otherwise available to the commission by law.

Division 2 — Preliminary and Interim Preservation Orders

Preservation orders

164.04 (1) In the circumstances set out in subsection (2) or (3), the commission may make one or more orders under subsection (4) in relation to

- (a) the whole or a portion of the interest in property of a person referred to in subsection (2),
- (b) the property in which the whole or a portion of the interest in property of a person referred to in subsection (2) is held,
- (c) the whole or a portion of the interest in claimable property of a family member or third-party recipient, or
- (d) the property in which the whole or a portion of the interest in claimable property of a family member or third-party recipient is held.

The commission may make an order under subsection (4) in respect of a person if

(2) any of the following apply:

- (a) the commission proposes to order an investigation under section 142 in respect of the person;
an investigation under section 142 or 147 has been ordered in respect of
- (b) the person;
the commission or the executive director proposes to make or has made
- (c) an order under section 161, 162 or 162.04 in respect of the person;
the executive director has given a notice under section 162.01 to the
- (d) person;
criminal proceedings or proceedings in respect of a contravention of this
- (e) Act or the regulations are about to be or have been commenced against the person, and the commission considers the proceedings to relate to a security or derivative or a matter relating to trading in securities or derivatives, or to relate to any business conducted by the person relating to securities or derivatives;
the person fails or neglects to comply with financial conditions applicable
- (f) to the person under this Act;
the commission proposes to apply or has applied to the court for an
- (g) order under section 157 in respect of the person, or the court has made an order under section 155.1 or 157 in respect of the person.

The commission may make an order under subsection (4) in respect of a family
(3) member or third-party recipient that received claimable property from a person if any of the following apply:

- (a) the commission proposes to order an investigation under section 142 in respect of the person;
an investigation under section 142 or 147 has been ordered in respect of
- (b) the person;
the commission or the executive director proposes to make or has made
- (c) an order under 161 (1) (g) in respect of the person;
the commission proposes to apply or has applied to the court for an
- (d) order under section 157 in respect of the person, or the court has made an order under section 155.1 or 157 in respect of the person.

In the circumstances set out in subsection (2) or (3), the commission may make one
(4) or more of the following orders relating to the preservation, management or disposition of property or the whole or a portion of an interest in property:

- (a) an order restraining the disposition or transmission of the property or the whole or the portion of the interest in property;
an order for the possession, delivery to the commission or safekeeping
- (b) of the property;
an order for the disposition of the property or the whole or the portion of
- (c)

the interest in property in order to better preserve the value of the property or the whole or the portion of the interest in property;

an order directing that money arising from a disposition of property or
(d) the whole or the portion of the interest in property under paragraph (c) be paid to the commission pending the conclusion of any matter or proceeding;

an order the commission considers appropriate to prevent the property
(e) from being removed from British Columbia;

an order the commission considers appropriate for the preservation of
(f) the property or the whole or the portion of the interest in property,
(i) or
the value of the property or of the whole or the portion of the
(ii) interest in property.

In an order under this section in respect of property of a third-party recipient, with
(5) respect to the conduct or omission that is the subject of the proposed investigation, investigation or proceeding, the commission must specify,

in the case of conduct, the date the conduct first occurred or is suspected
(a) to have first occurred, or

in the case of an omission, the date the person failed to act or is
(b) suspected to have failed to act.

An order of the commission under subsection (4) does not apply to funds,
(6) securities, derivatives or other property in a clearing agency or to securities in process of transfer by a transfer agent unless the order expressly states otherwise.

Preservation order made without notice

164.05 (1) Subject to subsection (2), the commission may make a preservation order without notice to any person.

A preservation order made without notice under subsection (1) in respect of a
(2) family member or third-party recipient may not be made for a period longer than 60 days.

The commission may extend a preservation order referred to in subsection (2)

(3) for any period the commission considers appropriate, if
(a) the family member or third-party recipient has been notified under
(i) section 164.06, or
the commission is satisfied the family member or third-party
(ii) recipient
(A) is unable to be located, despite reasonable efforts having been made to locate the person, or
(B) need not be notified because of exceptional circumstances,

or

- for a period not longer than 90 days if the commission delays giving
- (b) notice under section 164.06 (3).

Notification of order

164.06 (1) Subject to subsection (3) of this section, if the commission makes a preservation order under section 164.05 (1) in respect of property of any person, the commission must, as soon as practicable, notify the person that an order has been made and provide the person with a copy of the order.

If, under subsection (1), the commission must notify a third-party recipient, the

(2) commission must, in the notice,

- state the specified date,
- (a) explain the relevance of the specified date in determining claimable
- (b) property that is subject to the preservation order, and
- include any other information prescribed by regulation.
- (c)

The commission may delay notifying a person under subsection (1) if all of the

(3) following apply:

- the preservation order is made in respect of a proposed investigation or
- (a) investigation under section 142 or 147;
- the existence of the proposed investigation or investigation has not been
- (b) disclosed to the person that is the subject of the proposed investigation or investigation;
- the commission considers that the public interest in keeping the
- (c) proposed investigation or investigation confidential outweighs a person's interest in receiving notice.

Opportunity to be heard

164.07 (1) If a person that is subject to a preservation order requests an opportunity to be heard, the commission, after providing an opportunity to be heard, must revoke the preservation order with respect to an interest in property in either of the following circumstances:

- the person satisfies the commission that
- (a) the beneficial interest in the property is held in trust,
- (i) the beneficiary is not
- (ii) the person that is subject to an investigation or proceeding,
- (A) a family member of that person, or
- (B) a third-party recipient, and
- (C) the beneficial interest was not transferred to the beneficiary from
- (iii) the person that is subject to an investigation or proceeding,
- (A)

- (B) a family member of that person, or
a third-party recipient;
- (C) in the case of a family member or third-party recipient, the family
- (b) member or third-party recipient satisfies the commission that the property was acquired from the person that is subject to an investigation or proceeding for an amount that was equal to or greater than the fair market value of the property on the valuation date.

- If a family member or third-party recipient requests an opportunity to be heard,
- (2) and the family member or third-party recipient satisfies the commission that
 - the current fair market value of all property of the family member or
 - (a) third-party recipient that is subject to the order significantly exceeds the total of all undervalue benefits the person realized in respect of claimable property, and
 - the current fair market value of the property that is to remain subject to
 - (b) the order is unlikely to diminish in value,

the commission must vary the order so that the current fair market value of all property that remains subject to the order does not significantly exceed the total of all undervalue benefits the person realized.

- Before revoking a preservation order under subsection (1) (a), the commission may
- (3) require that the legal interest in the property, or the control, direction or possession of the property, be transferred to another person.

Powers

- 164.08** (1) The commission may file an order made under section 164.04 with the Supreme Court.

- An order filed with the Supreme Court under subsection (1) has the same force and
- (2) effect, and all proceedings may be taken on it, as if it were a judgment of that court.

Division 3 — Civil Actions and Forfeiture Orders

Joint and several liability

- 164.09** (1) If an order is made against a person under section 155.1 (b), 157 (1) (b) or 161 (1) (g), the commission may apply to the Supreme Court for an order under subsection (2) of this section if

- the person transferred property
- (a)
 - to a family member at any time, or
 - (i) to a third-party recipient on or after the date the unlawful activity
 - (ii) occurred, and
- the family member or third-party recipient received an undervalue
- (b)

benefit as a result of the transfer.

- In the circumstances described in subsection (1), the Supreme Court must order
- (2) that the person and the family member, or the person and the third-party recipient, as the case may be, are jointly and severally liable to pay to the commission an amount equal to the lesser of

- the undervalue benefit received by the family member or third-party recipient, and
- (a) the amount specified in the order made under section 155.1 (b), 157 (1) (b) or 161 (1) (g).

- Subsection (2) does not apply in respect of a third-party recipient if the third-party
- (3) recipient proves that, at the time of the transfer of the property to the third-party recipient, the third-party recipient and the person were dealing with each other at arm's length.

Application for forfeiture order

- 164.10** (1) If an order is made against a person under section 155.1 (b), 157 (1) (b), 161 or 162, the commission may apply to the Supreme Court for an order forfeiting to the commission

- the whole of an interest in property of the person, or
- (a) a portion of an interest in property of the person.
- (b)

- If an order is made against a person under section 155.1 (b), 157 (1) (b) or 161 (1)
- (2) (g), the commission may apply to the Supreme Court for an order forfeiting to the commission

- the whole of an interest in property that is claimable property of a family member or third-party recipient, or
- (a) a portion of an interest in property that is claimable property of a family member or third-party recipient.
- (b)

- An application for a forfeiture order under this section applies only with respect to
- (3) property or an interest in property located in British Columbia.

Parties and notification

- 164.11** In a proceeding commenced under section 164.10, the commission must do the following:

- name as a party
- (a) a person that is a registered owner of the whole or the portion of
 - (i) the interest in property that is the subject of the application for forfeiture, and
 - a person that the commission has reason to believe is an
 - (ii) unregistered owner of the whole or the portion of the interest in

- property that is the subject of the application for forfeiture;
- notify a person if required to do so by the court or the regulations;
- (b) notify a person in accordance with the regulations, unless the court
- (c) orders a different manner of notification.

Forfeiture order

164.12 Subject to section 164.13,

- if proceedings are commenced under section 164.10 (1), the court must
- (a) make an order forfeiting to the commission the whole or the portion of an interest in property that the court finds is property of the person, or
- if proceedings are commenced under section 164.10 (2), the court must
- (b) make an order forfeiting to the commission the whole or the portion of an interest in property that the court finds is claimable property.

Relief from forfeiture

164.13 (1) If a court determines that the forfeiture of property or the whole or a portion of an interest in property under this Division is clearly not in the interests of justice, the court may do any of the following:

- refuse to issue a forfeiture order;
- (a) limit the application of the forfeiture order;
- (b) put conditions on the forfeiture order.
- (c)

In the case of claimable property, in addition to the grounds set out under

(2) subsection (1), the court may grant relief from forfeiture, if the family member or third-party recipient proves,

- in the case of a family member or third-party recipient, the family
- (a) member or third-party recipient did not, directly or indirectly, acquire the property from the person that contravened securities law,
- in the case of a family member, the family member acquired the property
- (b) for fair market value, or
- in the case of a third-party recipient,
- (c) the third-party recipient was the rightful owner of the property
- (i) before the unlawful activity occurred,
- the third-party recipient acquired the property for fair market
- (ii) value, or
- at the time of the transfer of the property from the person to the
- (iii) third-party recipient, the third-party recipient and the person were dealing with each other at arm's length.

Effective date of forfeiture order

164.14 (1) A forfeiture order made with respect to property or the whole or a portion of an interest in property, as applicable, is effective,

in the case of real property or an interest in real property registered in
(a) the land title office,

at the time a notice is filed under section 164.18 (1) with respect to

(i) the property or the whole or the portion of the interest in property,
or

at the time the forfeiture order is filed in the land title office with
(ii) respect to the property or the whole or the portion of the interest
in property, if no notice is filed under section 164.18 (1), and

subject to subsection (2), in the case of personal property that is not cash
(b) or the whole or a portion of an interest in personal property that is not
cash, at the time a notice is registered under section 164.18 (2) with
respect to the property or the whole or the portion of the interest in the
property.

A forfeiture order made with respect to personal property, or the whole or a
(2) portion of an interest in personal property, that is cash or is or would be refused
registration in the personal property registry by the registrar under the [Personal
Property Security Act](#), is deemed to be effective on the date that proceedings are
commenced under section 164.10 or on the date that an order is made under
section 164.04, whichever is earlier, and the forfeiture order is retroactive to the
extent necessary to give it force and effect on and after the effective date.

Division 4 — Proceedings, Presumptions and Proof

Proceedings

164.15 The commission may commence proceedings under this Part by

a petition proceeding or, if Rule 17-1 of the Supreme Court Civil Rules
(a) applies, a requisition proceeding, or

an action.
(b)

Determination respecting property

164.16 In a proceeding under this Part, proof that a person

acquired the whole or the portion of an interest in property that is the
(a) subject of the proceedings,

caused an increase in the value of the interest or the portion of the
(b) interest in property that is the subject of the proceedings, or

caused a decrease of a debt obligation secured against the interest or the
(c) portion of the interest in property that is the subject of the proceedings,

is proof, in the absence of evidence to the contrary, that the whole or the portion of

the interest in property that is the subject of the proceedings is property of the person.

Presumption of advancement

164.17 For the purposes of this Part, the presumption of advancement does not apply to a transfer of property or of an interest or a portion of an interest in property.

Filing notice in registries

164.18 (1) After making an order under section 164.04 or commencing a proceeding under section 164.10 that relates to real property or the whole or a portion of an interest in real property registered in the land title office, the commission may file, in the prescribed manner, in the land title office the prescribed form of notice setting out that proceedings under this Act may affect the real property or the whole or a portion of an interest in the real property referred to in the notice.

After making an order under section 164.04 or commencing a proceeding under (2) section 164.10 that relates to personal property or the whole or a portion of an interest in personal property, the commission may register, in the prescribed manner, in the personal property registry the prescribed form of notice setting out that proceedings under this Act may affect the personal property or the whole or a portion of an interest in the personal property referred to in the notice.

The commission may amend, extend or cancel a notice referred to in subsection (1) (3) or (2) by filing or registering, in the same manner as the notice was filed or registered, the amendment, extension or cancellation in the land title office or the personal property registry, as applicable.

The registrar under the [Land Title Act](#) must register a notice referred to in (4) subsection (1), and an amendment, extension or cancellation of the notice, if

the notice, amendment, extension or cancellation is filed in the (a) prescribed manner, and

the prescribed fee, if any, is paid to the registrar. (b)

A notice and an amendment or extension of a notice registered under subsection (5) (4) has the same effect as a certificate of pending litigation registered under the [Land Title Act](#).

Division 5 — General Provisions

Dealing with property

164.19 The commission may administer and dispose of property or the whole or a portion of an interest in property under this Act in accordance with the orders of the court, this Act and the regulations.

Obligations of commission on forfeiture

164.20 If property or the whole or a portion of an interest in property is forfeited under this

Act, the commission does not, as a result of the forfeiture, assume responsibility for any covenants, debts or other obligations under an encumbrance, lien or other security interest to which the property or the whole or the portion of the interest in property is subject.

Part 19 — Reviews and Appeals

Review of decision of executive director

165 (1) [Repealed 2007-37-37.]

The commission may review any decision of the executive director and, if it intends (2) to do so, must, within 30 days of the date of the decision, notify the executive director and any person directly affected by the executive director's decision of its intention.

Except if otherwise expressly provided, any person directly affected by a decision of (3) the executive director may, by a notice in writing sent to the commission within 30 days after the date on which the executive director sent the notice of the decision to the person, request and be entitled to a hearing and a review of the decision of the executive director.

On a hearing and review, the commission may confirm or vary the decision under (4) review or make another decision it considers proper.

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

The executive director is a party to a hearing and review under this section of any (6) decision.

A designated organization is a party to a hearing and review under this section of (7) its decision.

A self-regulatory body, an exchange, a quotation and trade reporting system, trade (8) repository or a clearing agency is a party to a hearing and review under this section of its decision.

On application or on its own motion, the commission may extend the period in (9) subsection (2) or (3) to a date the commission considers appropriate.

Review of decision of person acting under delegated authority

166 (1) Section 165 applies to a decision of a designated organization or a person acting under authority delegated to the person by the commission under section 7.

A person acting under authority delegated to the person by the commission under (2) section 7 must not sit on a hearing and review by the commission of the person's decision.

The executive director may request and is entitled to a hearing and a review of a (3)

decision of a designated organization and section 165 (2) to (5) and (9) applies to that decision.

Appeal of commission decision

167 (1) A person directly affected by a decision of the commission, other than

- a decision under section 48 or 76,
- (a) a decision under section 165 in connection with the review of a decision
- (b) of the executive director under section 48 or 76, or
- a decision by a person acting under authority delegated by the
- (c) commission under section 7,

may appeal to the Court of Appeal with leave of a justice of that court.

The commission or the Court of Appeal may grant a stay of the decision appealed
(2) from until the disposition of the appeal.

If an appeal is taken under this section, the Court of Appeal may direct the
(3) commission to make a decision or to perform an act that the commission is authorized and empowered to do.

Despite an order of the Court of Appeal in a particular matter, the commission may
(4) 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.

The commission is a respondent to an appeal under this section.
(5)

Part 19.1 — Interjurisdictional Cooperation

Definitions

167.1 (1) In this Part:

"British Columbia authority" means a power or duty referred to in section 167.2 (1) (a) or (b);

"extraprovincial authority" means a power or duty of an extraprovincial securities commission under the extraprovincial securities laws under which the extraprovincial securities commission operates;

"extraprovincial securities commission" means a securities regulatory authority of a province other than British Columbia;

"extraprovincial securities laws" means the laws of a province other than British Columbia respecting trading in securities or derivatives.

A reference to an extraprovincial securities commission includes, unless otherwise
(2) provided,

- its delegate, and
- (a)

- (b) any person who in respect of that extraprovincial securities commission exercises a power or performs a duty that is substantially similar to a power or duty exercised or performed by the executive director under this Act.

Delegation and acceptance of authority

167.2 (1) If authorized to do so by regulation, the commission

- may delegate a power or duty under this Act to an extraprovincial
- (a) securities commission,
- may authorize an extraprovincial securities commission to exercise any
- (b) power, or perform any duty, of the executive director under this Act, including, but not limited to, a power referred to in section 184 (2) (e), and
- may accept a delegation of, an authorization to exercise or perform, or
- (c) any other form of transfer of, an extraprovincial authority.

- Subsection (1) does not apply to a power or duty under Part 2 or 3, this Part or
- (2) section 184 or 187.

Subdelegation

167.3 (1) Subject to a restriction or condition imposed by an extraprovincial securities commission with respect to a delegation, authorization or transfer referred to in section 167.2 (1) (c), the commission may delegate or subdelegate an extraprovincial authority in the manner and to the extent that the commission or the executive director may, under this Act, delegate or subdelegate, or authorize another person to exercise, a British Columbia authority.

- Subject to a restriction or condition imposed by the commission with respect to a
- (2) delegation or an authorization under section 167.2 (1) (a) or (b), nothing in this Part prevents the extraprovincial securities commission from delegating or sub-delegating the British Columbia authority in the manner and to the extent that the extraprovincial securities commission may delegate or subdelegate, or authorize another person to exercise, an authority under the extraprovincial securities laws under which it operates.

Revocation

167.4 (1) If an extraprovincial securities commission is exercising or intends to exercise a power provided to it under section 167.2 (1) (a) or (b) to make a decision, the commission may withdraw from the extraprovincial securities commission any matter that is before the extraprovincial securities commission for its decision.

- The commission or the executive director, as the case may be, may decide a matter
- (2) that the commission has withdrawn under subsection (1).

Adoption or incorporation of extraprovincial securities laws

167.5 (1) Subject to the regulations, the commission may, by order, adopt or incorporate by reference all or any provisions of any extraprovincial securities laws to be applied to

- a person or class of persons whose primary jurisdiction is the
- (a) extraprovincial jurisdiction, or
- a trade, intended trade, security or derivative involving a person or class
- (b) of persons referred to in paragraph (a).

An order made under subsection (1) may adopt or incorporate the extraprovincial

(2) securities laws as they are amended from time to time, before or after the making of the order.

Exercise of discretion, interprovincial reliance

167.6 (1) Subject to the regulations, if the commission, the executive director or a designated organization is empowered under this Act to make a decision regarding a trade, intended trade, security, derivative or person, the commission, executive director or designated organization may make the decision on the basis that the commission, executive director or designated organization, as the case may be, considers that an extraprovincial securities commission has made the same or a substantially similar determination regarding the trade, intended trade, security, derivative or person.

Subject to the regulations, despite any provision of this Act, the commission,

(2) executive director or designated organization may make a decision referred to in subsection (1) without giving a person affected by the decision an opportunity to be heard.

Review of extraprovincial decision

167.7 If an extraprovincial commission delegates or subdelegates a British Columbia authority, section 165 (3) to (6) and (9) applies to a decision made under that authority as if the decision were a decision of the executive director under this Act.

Appeal of decision of an extraprovincial securities commission

167.8 (1) Except as provided in section 167.7, section 167 applies to a decision of an extraprovincial securities commission made under a British Columbia authority.

The extraprovincial securities commission is a respondent to an appeal under this

(2) section.

Appeal of determination of the commission

167.9 (1) In this section, "**delegated authority**" means any extraprovincial authority that the commission accepts under section 167.2 (1) (c).

A person directly affected by a determination of the commission under a delegated

(2) authority has the same rights under section 167 as if the determination were a

decision under this Act.

- Subsection (2) does not apply to a determination
- (3) refusing to exempt a person or class of persons from a requirement of
- (a) extraprovincial securities laws, or
- made by a person to whom the commission has delegated or
- (b) subdelegated the extraprovincial authority under which the determination is made.

- A person that has a right to appeal a determination under this section may, subject
- (4) to any direction of the Court of Appeal, exercise that right of appeal whether or not that person may have a right to appeal that determination to a court in another jurisdiction.

- If a determination referred to in subsection (2) is being appealed to a court in
- (5) another jurisdiction, the Court of Appeal may stay an appeal under this section until the determination of the appeal in the other jurisdiction.

Part 20 — General Provisions

Admissibility in evidence of certified statements

168 A statement concerning

- the registration or non-registration of a person under this Act,
- (a) the filing or non-filing of a record or material required or permitted to be
- (b) filed under this Act,
- any other matter or information arising out of the registration or non-
- (c) registration of a person or the filing or non-filing of a record or material, whichever is the case, or
- the date on which the facts on which any proceedings are to be based
- (d) first came to the knowledge of the commission,

purporting to be certified by the commission, a member of it or the executive director is, without proof of the office or signature of the person certifying, admissible in evidence, so far as it is relevant, for all purposes in any action, proceeding or prosecution.

Aiding, abetting and counselling contraventions

- 168.01** A person must not do or omit to do anything the person knows or reasonably should know aids, abets or counsels a contravention of the Act, the regulations or a decision of the commission or the executive director.

Custody of property

- 168.02** If a person is required under this Act to hold another person's property in trust or

separate and apart from the person's own property, the person must not convert the other person's property or any part of it to a use that is not permitted under this Act.

Conspiracy

168.03 A person must not conspire with another person to contravene this Act, the regulations or a decision of the commission or the executive director.

Protection of employee from reprisals

168.04 (1) A person must not take any of the following measures of reprisal against another person, or counsel or direct that any of the following measures of reprisal be taken against the other person, solely by reason that the other person has, in good faith, sought advice about making a disclosure, expressed an intent to make a disclosure or made a disclosure to the commission, a recognized self-regulatory body or a law enforcement agency, gave evidence at a hearing or similar proceeding, or cooperated with a review, investigation, examination or inspection under this Act, in relation to criminal law relating to securities or derivatives or under the bylaws or similar instruments of a recognized self-regulatory body:

- a disciplinary measure;
- (a) a demotion;
- (b) a termination of employment or a contract;
- (c) any measure that adversely affects the other person's employment or
- (d) working conditions;
- a threat to take any of the measures referred to in paragraphs (a) to (d).
- (e)

In a proceeding relating to a contravention of subsection (1), it is not necessary to
(2) prove that the other person

- made, may have made or intended to make a disclosure, or
- (a) cooperated with a review, investigation, examination or inspection.
- (b)

Civil remedies not limited

168.05 Section 168.04 does not limit a person's right to any other remedy that the person may have, including, in the case of an employee, the employee's right to a remedy available to the employee under a collective agreement or another contract.

False or misleading statements prohibited

168.1 (1) A person must not

- make a statement in evidence or submit or give information to the
- (a) commission, the executive director or any person appointed under this Act that, in a material respect and at the time and in light of circumstances under which it is made, is false or misleading, or omit facts from the statement or information necessary to make that

statement or information not false or misleading, or

- make a statement or provide information in any record filed, provided,
- (b) delivered or sent under this Act, or in relation to a service provided by the commission, that, in a material respect and at the time and in light of circumstances under which it is made, is false or misleading, or omit facts from the statement or information necessary to make that statement or information not false or misleading.

A person does not contravene subsection (1) if the person

(2)

- did not know, and
- (a) in the exercise of reasonable diligence, could not have known
- (b) that the statement or information was false or misleading.

Contraventions attributable to employees, officers, directors and agents

168.2 (1) If a person, other than an individual, contravenes a provision of this Act or of the regulations, or fails to comply with a decision, an employee, officer, director or agent of the person who authorizes, permits or acquiesces in the contravention or non-compliance also contravenes the provision or fails to comply with the decision, as the case may be.

If an investment fund contravenes a provision of this Act or of the regulations, or

(2) fails to comply with a decision, the investment fund manager also contravenes the provision or fails to comply with the decision, as the case may be.

Filing and inspection of records

169 (1) Unless otherwise indicated, records required by this Act or by the regulations to be filed must be filed by depositing them with the commission.

Subject to the regulations, records required by this Act or by the regulations to be

(2) filed may be filed electronically in any form specified by the executive director.

Subject to subsection (4), all records filed under this Act must be made available for

(3) public inspection during normal business hours.

The commission may hold in confidence all or part of a record required to be filed

(4) under this Act if the commission considers that

- a person whose information appears in the record would be unduly
- (a) prejudiced by disclosure of the information, and
- the person's privacy interest outweighs the public's interest in having the
- (b) information disclosed.

Information collection and sharing

169.1 (1) For the purposes of administering this Act or assisting in the administration of the securities laws of another jurisdiction, the commission may, directly or indirectly,

collect information from, and use information collected from,

- an exchange, quotation and trade reporting system or clearing agency,
- (a) a credit rating organization,
- (a.1) a benchmark administrator,
- (a.2) a benchmark contributor,
- (a.3) an information processor,
- (a.4) a trade repository,
- (a.5) a self-regulatory body,
- (b) a registrant or issuer, or
- (c) a law enforcement agency, government, governmental authority,
- (d) securities regulatory authority or financial regulatory authority,

in British Columbia or elsewhere.

- For the purposes of administering this Act or assisting in the administration of the
- (2) securities laws of another jurisdiction, the commission may disclose information to, or share information with,

- a person recognized under section 24,
- (a) a law enforcement agency, government, governmental authority,
- (b) securities regulatory authority or financial regulatory authority, or
- a person with whom the commission has entered into an arrangement or
- (c) agreement that relates to or includes the sharing of information,

in British Columbia or elsewhere.

- For the purposes of administering its bylaws, rules or other regulatory instruments
- (3) or policies, assisting in the administration of the bylaws, rules or other regulatory instruments or policies of another exchange, quotation and trade reporting system, clearing agency, self-regulatory body or trade repository, or assisting in the administration of this Act or the securities laws of another jurisdiction, a person recognized under section 24 may, directly or indirectly, collect information from, and use information collected from,

- an exchange, quotation and trade reporting system, clearing agency or
- (a) trade repository,
- a self-regulatory body,
- (b) a registrant or issuer, or
- (c) a law enforcement agency, government, governmental authority,
- (d) securities regulatory authority or financial regulatory authority,

in British Columbia or elsewhere.

- For the purposes of administering its bylaws, rules or other regulatory instruments
- (4)

or policies, assisting in the administration of the bylaws, rules or other regulatory instruments or policies of another exchange, quotation and trade reporting system, clearing agency, self-regulatory body or trade repository, or assisting in the administration of this Act or the securities laws of another jurisdiction, a person recognized under section 24 may disclose information to, or share information with,

- (a) an exchange, quotation and trade reporting system, clearing agency or trade repository,
- a self-regulatory body, or
- (b) a law enforcement agency, government, governmental authority,
- (c) securities regulatory authority or financial regulatory authority,

in British Columbia or elsewhere.

For the purposes of this section, "**securities laws**" means laws of a jurisdiction
(5) respecting the trading of securities or derivatives.

Immunity of commission and others

170 (1) No action or other proceeding for damages lies and no application for judicial review under the *Judicial Review Procedure Act* may be instituted against the commission, a member of the commission, an officer, servant or agent of the commission, a designated organization, a director, officer, servant or agent of a designated organization, an auditor oversight body, a director, officer, servant or agent of an auditor oversight body, an employee appointed to administer this Act or any person proceeding under

- an order, a written or oral direction or the consent of the commission,
- (a) an order of the minister made under this Act, or
- (b) a delegation or authorization referred to in section 167.2 (1) (a) or (b),
- (b.1) for any act done in good faith in the

- performance or intended performance of any duty, or
- (c) exercise or the intended exercise of any power,
- (d) under this Act, including a duty or power referred to in section 167.2 (1) (c), or for any neglect or default in the performance or exercise in good faith of that duty or power.

No person has any remedies and no proceedings lie or may be brought against any
(2) person for any act done or omission made as a result of compliance with this Act, the regulations or any decision rendered under this Act.

Compulsion protection

170.1 A member, officer, employee or agent of the commission must not be required to testify or produce evidence in any proceeding, other than a criminal proceeding or a

proceeding under this Act, respecting information or a record or thing obtained in the exercise or intended exercise of a power or the performance or intended performance of a duty under this Act.

Discretion to revoke or vary decision

171 If the commission, the executive director or a designated organization considers that to do so would not be prejudicial to the public interest, the commission, executive director or designated organization, as the case may be, may make an order revoking in whole or in part or varying a decision the commission, the executive director or the designated organization, as the case may be, has made under this Act, another enactment or a former enactment, whether or not the decision has been filed under section 163.

Conditions on decisions

172 The commission or the executive director may impose any conditions, restrictions or requirements the commission or executive director considers necessary in respect of any decision made by the commission or executive director.

Authority of persons presiding at hearings

173 The person presiding at a hearing required or permitted under this Act

- (a) has the same power that an investigator appointed under section 142 or 147 has under section 144,
- (b) must receive all relevant evidence submitted by a person to whom notice has been given and may receive relevant evidence submitted by any person, and
- (c) is not bound by the rules of evidence.

Hearing fees and charges

174 The person presiding at a hearing required or permitted under this Act may order a person whose affairs are the subject of the hearing to pay prescribed fees or charges for the costs of or related to the hearing that are incurred by or on behalf of the commission or the executive director including, without limiting this,

- (a) costs of matters preliminary to the hearing,
- (b) costs for time spent by the commission or the executive director or the staff of either of them,
- (c) fees paid to an expert or witness, and
- (d) costs of legal services.

Extrajurisdictional evidence

175 (1) On an application made by the commission, if it appears to the Supreme Court that a person outside British Columbia may have evidence that may be relevant to

- (a) an investigation ordered by the commission under section 142 or 143.1,
or

a hearing required or permitted under this Act,

(b)
the Supreme Court may issue a letter of request directed to the judicial authority of the jurisdiction in which the person to be examined is believed to be located.

The letter of request referred to in subsection (1) must

- (2) be signed by the judge hearing the application or another judge of the
 - (a) Supreme Court, and

be provided to the commission for disposition under subsection (5).

- (b)
(3) A letter of request issued under subsection (1) may request the judicial authority to which it is directed to

order the person referred to in the letter of request to be examined

- (a) under oath in the manner, at the place and by the date referred to in the letter of request,

order, in the case of an examination for the purposes of a hearing

- (b) referred to in subsection (1) (b), that a person who is a party to the hearing is entitled to

be present or represented by counsel during the examination, and

- (i) examine the person referred to in paragraph (a),

(ii)
appoint a person as the examiner to conduct the examination,

- (c) order the person to be examined to produce at the examination the
- (d) records and things or classes of records and things specified in the letter of request,

direct that the evidence obtained by the examination be recorded and

- (e) certified in the manner specified by the letter of request, and

take any further or other action that the Supreme Court considers

- (f) appropriate.

The failure of the person entitled under subsection (3) (b) to be present or

- (4) represented by counsel during the examination or to examine the person referred to in subsection (3) (a) does not prevent the commission from reading in the evidence at the hearing if the examination has otherwise been conducted in accordance with the order made under that subsection.

The commission must send the letter of request,

- (5) if the examination is to be held in Canada, to the Deputy Attorney

- (a) General for the Province of British Columbia, or

if the examination is to be held outside Canada, to the Under Secretary of

- (b) State for External Affairs of Canada.

(6) The letter of request must have attached to it

- any interrogatories to be put to the person to be examined,
- (a) if known, a list of the names, addresses and telephone numbers of
- (b) the solicitors or agents of the commission,
 - (i) the person to be examined, and
 - (ii) if applicable, the person entitled under subsection (3) (b) to be
 - (iii) present or represented by counsel during the examination and to examine the person referred to in subsection (3) (a),
- both in British Columbia and in the other jurisdiction, and
- a translation of the letter of request and any interrogatories into the
- (c) appropriate official language of the jurisdiction where the examination is to take place, along with a certificate of the translator, bearing the full name and address of the translator, that the translation is a true and complete translation.

The commission must file with the Under Secretary of State for External Affairs of
(7) Canada or with the Deputy Attorney General for the Province of British Columbia, as the case may be, an undertaking to be responsible for all of the charges and expenses incurred by the Under Secretary or the Deputy Attorney General, as the case may be, in respect of the letter of request and to pay them on receiving notification of the amount.

This section does not limit any power the commission may have to obtain evidence
(8) outside British Columbia by any other means.

The making of an order by a judicial authority referred to in subsection (1)
(9) pursuant to a letter of request issued under that subsection does not determine whether evidence obtained under the order is admissible in evidence in a hearing before the commission.

Except if otherwise provided by this section, the practice and procedure in
(10) connection with appointing a person, conducting an examination and certifying and returning the appointment under this section, as far as possible, are the same as those that govern similar matters in civil proceedings in the Supreme Court.

Extrajurisdictional request for evidence

176 (1) In this section, "**qualifying letter of request**" means a letter of request that

- is issued by a court or tribunal of competent jurisdiction in a jurisdiction
- (a) other than British Columbia,
- is issued on behalf of the body that is, in the jurisdiction from which the
- (b) letter is issued, empowered by the laws of that jurisdiction to administer or regulate the trading of securities or derivatives in that jurisdiction,
- is issued in relation to
- (c)

- (i) a matter under investigation by the body referred to in paragraph (b), or
 - a matter that is the subject of a hearing before the body referred
 - (ii) to in paragraph (b), and
- requests that evidence in relation to a matter referred to in paragraph (c)
- (d) be obtained from a person believed to be located in British Columbia.

On receipt of a qualifying letter of request, the Supreme Court may make the order

(2) it considers appropriate and may, without limitation,

- order that the person referred to in subsection (1) (d) be examined under
- (a) oath in the manner, at the place and by the date requested by the foreign court or tribunal,
- order, in the case of an examination for the purposes of a hearing
- (b) referred to in subsection (1) (c) (ii), that a person who is a party to the hearing is entitled to
 - be present or represented by counsel during the examination, and
 - (i) examine the person referred to in paragraph (a),
 - (ii) appoint a person as the examiner to conduct the examination,
- (c) order that the person referred to in subsection (1) (d) produce at the
- (d) examination any records and things or classes of records and things specified in the request,
- direct that the evidence obtained by the examination be recorded and
- (e) certified in the manner requested, and
- make any further or other order that the Supreme Court considers
- (f) appropriate.

An order under subsection (2) may be enforced in the same manner as if the order

(3) were made in or in respect of a proceeding brought in the Supreme Court and, if the person referred to in subsection (1) (d) fails without lawful excuse to comply with the order, the person is in contempt of the Supreme Court and is subject to the penalty that the Supreme Court imposes.

A person ordered to give evidence under subsection (2) has the same rights

(4)

- to receive conduct money or any other money that the person would
- (a) have had if the examination were held in relation to a proceeding in the Supreme Court, and
- to refuse to answer questions and produce records and things or classes
- (b) of records and things that the person would have in a proceeding in the Supreme Court.

The person appointed by the Supreme Court as the examiner has the authority to

(5) administer an oath or affirmation to the person to be examined.

- (6) Except if otherwise provided by this section, the practice and procedure in connection with appointing a person, conducting an examination and certifying and returning the appointment under this section, as far as possible, are the same as those that govern similar matters in civil proceedings in the Supreme Court.

Committal for contempt

- 177** On application by the commission to the Supreme Court, a person is liable to be committed for contempt as if the person were in breach of an order or judgment of the Supreme Court, if the person's conduct in, or in relation to, a hearing required or permitted under this Act would be a contempt of the Supreme Court if done in, or in relation to, a hearing of that court.

Executive director may refund fee

- 178** If
- (a) an application for registration or renewal or reinstatement of registration is abandoned, or
 - (b) a prospectus or similar record is withdrawn,
- the executive director may, on application of an affected person, refund the fee or part of the fee paid.

Review of fees and charges

- 179** (1) If a person is ordered to pay prescribed fees or prescribed charges for the costs of, or related to,
- (a) an examination or investigation by a person appointed under section 13, [Repealed 2007-37-39.]
 - (b) a review, investigation, examination or inspection under Part 17, or
 - (c) a hearing required or permitted under this Act,
 - (d) a hearing required or permitted under this Act,
- the person ordered to pay the fees or charges may apply within 30 days after the date of the order to a master or registrar of the Supreme Court to review the order.
- On a review under this section, the master or registrar may vary the total amount
- (2) of the fees and charges, within the limits, if any, set out in the regulations, after considering all of the circumstances, including
- (a) the complexity, difficulty or novelty of the issues involved,
 - (b) the skill, specialized knowledge and responsibility required of the person or persons who conducted the examination, review, investigation, inspection or hearing referred to in subsection (1) (a) to (d),
 - (c) the total amount of the fees and charges set out in the order referred to in subsection (1), and
 - (d) the time reasonably expended.

- (3) On application for a review under this section of an order to pay prescribed fees or prescribed charges, the applicant must give notice of the application to the maker of the order that is to be reviewed.

The Supreme Court Civil Rules relating to taxation of costs apply to a review of the

(4) total amount of fees and charges made under this section.

Receiver manager

- 179.1** (1) If any of the circumstances referred to in section 164.04 (2) or (3) exist, the commission may apply to the Supreme Court for an order appointing a person to act as a receiver, receiver manager or trustee for property or the whole or a portion of an interest in property of a person.

A person appointed to act as a receiver, receiver manager or trustee under this

(2) section is the receiver, receiver manager or trustee of the property or the whole or a portion of the interest in property specified by the court.

If directed by the court, a receiver, receiver manager or trustee

- (3)
- (a) may receive and hold property or the whole or a portion of an interest in property and dispose of property or the whole or a portion of an interest in property in the ordinary course of business,
 - (b) has the authority to manage the business and affairs conducted in relation to the property or the whole or a portion of the interest in property of the person named, and
 - (c) has all the incidental powers necessary to hold and manage the property or the whole or a portion of the interest in property.

The commission may make an application under this section without notice to any

(4) other person and, in that event, the court may make a temporary order under subsection (2) appointing a receiver, receiver manager or trustee for a period not longer than 15 days.

Notices generally

- 180** (1) Unless otherwise provided by this Act, prescribed by the regulations, or ordered by the commission or executive director, a record that under this Act is sent or is required to be sent must be

personally delivered,

- (a) mailed, or
- (b) transmitted by electronic means
- (c) to the person that under this Act is the intended recipient of the record.

A record sent to a person by means referred to in subsection (1) (b) or (c) must be

(2) sent to that person

at the latest address known for that person by the sender of the record,

(a)

(b) at the address for service in British Columbia filed by that person with the commission, or

at the address of the person's solicitor if the person, or the solicitor, has

(c) advised that the solicitor is acting for the person.

A record is deemed to have been personally delivered to the commission if the
(3) record is deposited at the office of the commission during normal business hours.

A record is deemed to have been received by the person to whom it was sent
(4)

if mailed by ordinary mail, on the seventh day after mailing, or

(a) if mailed by registered mail, on the earlier of the seventh day after

(b) mailing or the day its receipt was acknowledged in writing by the person to whom it was sent or by a person accepting it on that person's behalf.

If, on 2 consecutive occasions, the records sent by an issuer to a security holder in
(5) accordance with subsection (2) are returned, the issuer is not required to send any further records to the security holder until the security holder informs the issuer in writing of the security holder's new address.

Reference to record includes amendment

181 Unless the context indicates otherwise, a reference to a specific record in this Act includes a reference to any amendment, variation or modification of it that is permitted or required under this Act.

Reference to administration includes enforcement

181.1 For greater certainty, in this Act, a reference to the administration of this Act includes the enforcement of this Act.

Required records

182 (1) Subject to the further requirements of this Act or the regulations, if this Act or the regulations provide that a record is to be prepared, filed, provided or sent in a required form, the executive director may specify the form, content and other particulars relating to the record including specifying

the principles to be applied in its preparation, and

(a) accompanying records to be filed with it.

(b)

If this Act or the regulations provide that a record is to be prepared, filed, provided or
(2) sent in a required form, the executive director may, for different classes of a particular kind of record, specify a different form, content and other particulars relating to the record including specifying

the principles to be applied in its preparation, and

(a) accompanying records to be filed with it.

(b)

Lieutenant Governor in Council regulations

183 The Lieutenant Governor in Council may make regulations for the purpose of regulating trading in securities or derivatives, or regulating the securities industry or derivatives industry, including regulations as follows:

- regulating the listing and trading of securities, and the trading of
 - (1) derivatives, on an exchange recognized by the commission under section 24 (b);
 - regulating the trading of securities and derivatives other than on an
 - (2) exchange recognized by the commission under section 24 (b);
 - respecting any matter necessary or advisable to regulate derivatives,
 - (2.1) including, but not limited to,
 - rules that refer to a derivative, or a class of derivatives, designated
 - (i) by the commission,
 - prohibiting a derivative, or a class of derivatives, from being
 - (ii) traded, or
 - prescribing different requirements, restrictions or prohibitions for
 - (iii) different classes of persons involved in trading derivatives;
 - respecting any matter necessary or advisable to regulate benchmarks,
 - (2.2) benchmark administrators or benchmark contributors, including, but not limited to,
 - regulations that refer to a benchmark or benchmark administrator,
 - (i) or a class of benchmarks or benchmark administrators, designated by the commission,
 - the methodology or method used by a benchmark administrator
 - (ii) to determine or distribute a benchmark,
 - prohibiting a person or class of persons from using a benchmark
 - (iii) that has not been designated by the commission under section 187,
 - prescribing different requirements or restrictions for different
 - (iv) classes of benchmark administrators, benchmark contributors or benchmark users, or
 - requiring a person or class of persons to provide information to a
 - (v) benchmark administrator;
 - respecting any matter necessary or advisable to regulate information
 - (2.3) processors, including, but not limited to, regulations that refer to an information processor or class of information processors, designated by the commission;
 - governing conflict of interest for members of the commission, its
 - (3) employees, the executive director, employees in the office of the executive director and persons engaged by the commission or the executive director to act as advisers or to perform duties under this Act;

- (4) requiring the commission to publish a periodical containing specified information filed with the commission;

providing for the referral of a question of policy or interpretation to the

- (5) commission for a hearing and determination;

respecting expenditures under section 15 (3) (e), (f) or (g), including

- (5.01) prescribing circumstances in which money may be expended,
 - (i) restricting the amount that may be paid to a person,
 - (ii) prohibiting expenditures to a class of persons or prohibiting all
 - (iii) expenditures under subsection (3) (e), (f) or (g) of that section, or
 - (iv) prescribing different restrictions or prohibitions for or in respect of
 - (iv) different classes of persons;

respecting applications and payments under section 15.1, including

- (5.1) matters that must be considered by the commission before
 - (i) making a payment under section 15.1 (3), if any, including matters that affect the amount or timing of a payment,
 - (ii) respecting circumstances when no payment of compensation may be made to an applicant or a category of applicants, and
 - (iii) respecting the process for adjudication of an application for compensation;

respecting registration under this Act including, but not limited to,

- (6) prescribing
 - categories for persons for purposes of registration and otherwise,
 - (i) the duration of registration, and permitting the commission to
 - (ii) determine the duration of registration and to determine different periods of duration of registration for different categories of registrants,
 - the manner of allocating persons to categories, and permitting the
 - (iii) executive director to make these allocations,
 - conditions to be met by persons in the categories, including a
 - (iv) condition relating to, or requiring membership in, one or more self-regulatory organizations specified in the regulation,
 - standards of conduct to be met by registrants and practices to be
 - (v) carried out by registrants,
 - requirements that are necessary or advisable for the prevention or
 - (vi) regulation of conflicts of interest,
 - different or additional requirements for different classes of
 - (vii) registrants within a registration category, and
 - circumstances in which
 - (viii) a person or class of persons is not required to be registered
 - (A) under section 34, or

- (B) a person or class of persons is deemed to be registered for the purposes of this Act,
including the circumstance in which a person or class of persons is registered under the laws of another jurisdiction respecting trading in securities or derivatives;
- authorizing the executive director to require an applicant for registration
- (7) or a registrant to be bonded;
- respecting the suspension, surrender or cancellation of a registration
- (8) under this Act;
- governing trust arrangements for the holding of securities, derivatives or
- (9) funds of a client by a registrant;
- respecting any matter necessary or advisable to regulate credit rating
- (9.1) organizations, including, but not limited to, rules that refer to a credit rating organization, or a class of credit rating organizations, designated by the commission;
- [Repealed 2006-32-63.]
- (10) respecting the transfer and pledging of securities or the transfer of
- (11) derivatives;
- respecting any matter necessary or advisable to carry out effectively the
- (12) intent and purpose of Part 9, including, but not limited to,
- prescribing disclosure requirements in respect of distributions,
- (i) including the use of particular forms or of particular types of documents,
- prescribing procedures for distributions of securities on an
- (ii) expedited basis including modifying or varying the application of this Act as may be necessary for the purpose of permitting expedited distributions to occur,
- prescribing circumstances in which a record may be, or is deemed
- (iii) to be, incorporated by reference into any other record,
- prescribing procedures respecting the issuance of receipts,
- (iv) prescribing circumstances in which
- (iv.1) section 61 does not apply to a person or class of persons, or
- (A) a receipt is deemed to have been issued for the purposes of
- (B) this Act,
- including the circumstance in which a receipt has been issued for a preliminary prospectus or prospectus under the laws of another jurisdiction respecting trading in securities or derivatives;
- prescribing periods in which receipts, or classes of receipts, are
- (v) effective and circumstances in which receipts, or a class of receipts, may be revoked,

- (vi) prescribing circumstances in which a distribution of securities may occur on a continuous or delayed basis,
- prescribing additional requirements that must be satisfied before a
- (vii) receipt may be issued or before a distribution may occur, and
- establishing, for the purposes of section 162, that a contravention
- (viii) of an undertaking given by an issuer constitutes a contravention of the regulation requiring the undertaking;
- [Repealed 2006-32-64.]
- (ix)
- (12.1) prescribing circumstances in which a person that purchases a security under a distribution may cancel the purchase, including
 - prescribing the period in which the purchaser may cancel the
 - (i) purchase,
 - prescribing the principles for determining the amount of the
 - (ii) refund if the purchaser cancels the purchase,
 - specifying the persons responsible for making and administering
 - (iii) the payment of the refund and prescribing the period in which the refund must be paid, and
 - prescribing different circumstances, periods, principles or persons
 - (iv) for different classes of securities, issuers or purchasers;
- prescribing different requirements, restrictions or prohibitions for
- (12.2) different classes of persons engaging in promotional activities;
- in relation to disclosure documents,
- (13)
 - respecting their use in connection with any distribution under an
 - (i) exemption from section 61,
 - governing their form and content including, without limiting this
 - (ii) power, requiring content that has the effect of conferring on each purchaser under the distribution a contractual right of action, a contractual right of withdrawal from an agreement of purchase and sale, or both, and
 - regulating or prohibiting the use of a class of disclosure
 - (iii) documents during a distribution;
- prescribing the circumstances under which a class or classes of trades of
- (14) securities, acquired under an exemption from section 61 granted under this Act, are deemed to be a distribution;
- respecting the lapse date of a prospectus and the continuation of a
- (15) distribution under a new prospectus including, without limiting this,
 - prescribing the terms and conditions under which a distribution
 - (i) may be continued after the lapse date,
 - prescribing the circumstances in which cancellation rights are
 - (ii) available to certain purchasers after the lapse date,

- (iii) authorizing the executive director to order an extension of the prescribed period of time within which a distribution may be continued after the lapse date, and
 - prescribing the terms and conditions under which a new
- (iv) prospectus may be receipted;
- prescribing terms that must be contained in an escrow or pooling
- (16) agreement with respect to securities issued for consideration other than cash;
- respecting any matter necessary or advisable to regulate exchange
- (17) issuers;
- respecting any matter necessary or advisable to regulate auditors of
- (17.1) reporting issuers;
- prescribing the information required or permitted to be distributed
- (18) under section 78 (2);
- respecting any matter necessary or advisable to carry out effectively the
- (19) intent and purpose of Part 12, including, but not limited to,
 - requiring any person or class of persons to comply with Part 12 or
 - (i) any provision of it,
 - prescribing how a security or class of securities of a reporting
 - (ii) issuer, or a related financial instrument or class of related financial instruments of a security of a reporting issuer, must be reported in an insider report filed under section 87,
 - prescribing standards for determining when a material fact or
 - (iii) material change has been generally disclosed;
 - prescribing procedures for the integration of the disclosure
 - (iv) required under Part 9 with that required under Part 12 including modifying or varying the application of this Act as may be necessary for the purpose of permitting integrated disclosure, and
 - prescribing different classes of requirements for different classes
 - (v) of persons;
- respecting the governance of an issuer or a class of issuers, including,
- (19.1) but not limited to,
 - prescribing the powers, duties and functions of a person
 - (i) responsible for governance, and
 - specifying transactions, investments or arrangements of an issuer
 - (ii) that a person responsible for governance must review or approve;
- respecting any matter necessary or advisable to carry out effectively the
- (20) intent and purpose of section 136, including, but not limited to,
 - exempting any class of persons, trades, securities or derivatives
 - (i) from liability under section 136,

- (ii) prescribing circumstances and conditions for the purpose of an exemption under subparagraph (i),
- prescribing standards for determining when a material fact or
- (iii) material change has been generally disclosed, and
- prescribing a method for determining the amount under section
- (iv) 136 (3) (b);

- (21) in relation to any matter necessary or advisable for regulating offers to acquire securities, acquisitions or redemptions of securities, business combinations or related party transactions, including, but not limited to,
- prescribing requirements or prohibitions relating to the conduct or
 - (i) management of the affairs of an issuer and its directors and officers before, during or after an offer to acquire, acquisition, redemption, business combination or related party transaction,
 - prohibiting a person from purchasing or trading a security or
 - (ii) entering into a transaction involving a related financial instrument before, during or after an offer to acquire, acquisition, redemption, business combination or related party transaction,
 - prescribing records required to be filed or delivered to a person,
 - (iii) prescribing different requirements or prohibitions for different
 - (iv) classes of persons, and
 - prescribing circumstances in which an offer to acquire, acquisition,
 - (v) redemption, business combination or related party transaction must not proceed without the approval of the issuer's security holders or a specified class or group of security holders, and defining for specified types of circumstances what constitutes approval by the security holders;

- (22) respecting any matter necessary or advisable to carry out effectively the intent and purpose of Part 14, including, but not limited to,
- prescribing requirements for the solicitation and voting of proxies,
 - (i) prescribing requirements relating to communication with
 - (ii) registered holders or beneficial owners of securities and relating to other persons, including depositories and registrants, that hold securities on behalf of beneficial owners, and
 - prescribing restrictions or requirements relating to the solicitation,
 - (iii) collection, submission, tabulation or validation of proxy votes and voting instructions;

- (22.1) prescribing matters relating to conflicts of interest requiring approval of a reporting issuer's security holders and what constitutes approval by the security holders for different types of matters, including prescribing classes of security holders that are, or are not, entitled to participate in the determination of security holder approval with respect to a matter;

- (23) respecting any matter necessary or advisable to regulate mutual funds or non-redeemable investment funds and the distribution and trading of the securities of the funds, including, but not limited to,
- prescribing disclosure requirements in respect of funds, including
 - (i) the use of particular forms or of particular types of documents,
 - prescribing permitted investment policy and investment practices
 - (ii) for the funds and prohibiting or restricting certain types of investments or investment practices for the funds,
 - prescribing requirements governing the custodianship of assets
 - (iii) for funds,
 - prescribing matters requiring approval of the security holders of
 - (iv) the funds, the commission or the executive director, and defining for specified types of matters what constitutes approval by the security holders,
 - respecting fees, commissions or compensation payable by a fund,
 - (v) a purchaser of securities of a fund or a holder of securities of a fund relating to
 - sales charges, commissions or sales incentives, and
 - (A) investment advice or administrative or management
 - (B) services provided to the fund,
 - prescribing procedures relating to
 - (vi) sales and redemptions of fund securities, and
 - (A) payments for sales and redemptions, and
 - (B) designating a mutual fund or a class of mutual funds as a private
 - (vii) mutual fund or class of private mutual funds, as the case may be;
 - prescribing the principles for determining the market value, market price
 - (24) or closing price of a security or derivative, the financial exposure of a person under a derivative or the net asset value of a security;
 - authorizing the commission to determine the market value, market price
 - (24.01) or closing price of a security or derivative, the financial exposure of a person under a derivative or the net asset value of a security;
 - in relation to any matter necessary or advisable for carrying out
 - (24.1) effectively the intent and purpose of Part 16.1, including, but not limited to,
 - exempting any class of persons, trades or securities from liability
 - (i) under Part 16.1, and
 - prescribing or limiting the type of damages payable under Part
 - (ii) 16.1;
 - prescribing standards in relation to the suitability for certain investors of
 - (25) certain securities and derivatives;

- (26) prescribing the practice and procedure for investigations, examinations or inspections under Part 17;
 - establishing fees and charges, or limits on fees and charges, for the
- (27) purpose of Part 17 or of section 13 or 174;
 - prescribing the principles for determining a person's profit or loss under
- (27.1) section 155 (5), including prescribing different principles for different contraventions referred to in that section;
- (28) prescribing classes of decisions made under the regulations or the commission rules that are to be subject to an appeal under Part 19;
 - for the purpose of section 163 (1.1), prescribing
- (28.1) classes of decisions that must not be filed under that subsection,
 - (i) and
 - conditions, restrictions or requirements in relation to decisions
 - (ii) that are permitted to be filed under that subsection;
- (29) prescribing the rules and procedure to be followed in any hearing required or permitted by this Act;
- (30) providing for the collection by a designated organization of fees payable to the commission or executive director and for their remission to the commission or executive director;
- (31) determining what constitutes approval of a person's records for which approval is required under this Act;
- (32) incorporating by reference and adopting laws, codes, standards, bylaws, rules and other regulatory instruments as they are amended from time to time before or after the making of the regulations;
- (33) governing the providing or distribution of information or records by a person, including the commission and the executive director, or class of persons to any person, including the commission and the executive director, the payment of fees for providing that information or records and including authorizing the executive director to regulate and control the use of advertising and sales literature for securities or derivatives;
- (34) respecting the keeping and providing of accounts and records, and the preparation, filing and providing or distributing of financial statements, annual reports and other records by any person or class of persons;
- (35) prescribing the fees payable in connection with the administration of this Act, the regulations or the commission rules or the activities carried out by the commission or the executive director under another enactment or a policy statement;
- (35.1) imposing restrictions or requirements on a registrant, or suspending a registrant, if the registrant does not pay a fee required under this Act;

- (36) recognizing or designating an exchange or a quotation and trade reporting system for any purpose under this Act;
designating one or more persons to perform a function relating to
- (36.1) market integration, market transparency, the consolidation of data relating to the trading in securities or derivatives or the clearing and settlement of trades;
- authorizing the commission or the executive director to vary the
- (37) provisions of the regulations, excluding regulations made under paragraph (3), as they apply to any person, trade, security or derivative or class of persons, trades, securities or derivatives;
- providing that any or all of the exemptions in this Act, the regulations or
- (38) the commission rules do not apply to a class of persons, trades, securities or derivatives, and prescribing circumstances in which or conditions on which the exemption is or the exemptions are disapplied under this paragraph, including, with respect to an exemption in a regulation or a commission rule, a condition that the executive director's consent be obtained before the exemption applies;
- authorizing the commission or the executive director to order that any or
- (39) all of the exemptions in this Act or the regulations do not apply to a particular person, trade, security or derivative or class of persons, trades, securities or derivatives;
- exempting a class of persons, trades, securities or derivatives from one
- (40) or more of the provisions of Parts 4, 5, 7, 8, 9, 11, 12, 13, 14 and 15, of the regulations relating to any of those Parts or of the commission rules relating to any of those Parts;
- prescribing circumstances and conditions for the purpose of an
- (41) exemption under paragraph (40) or otherwise, including circumstances and conditions
 - relating to the laws of another jurisdiction or relating to an
 - (i) exemption from those laws granted by a securities regulatory authority in that jurisdiction, or
 - that refer to a person or a class of persons designated by the
 - (ii) commission;
- prescribing circumstances in which a person or a class of persons is
- (41.1) prohibited from trading or purchasing securities or derivatives, or a particular security or derivative, including the circumstance in which a securities regulatory authority in a jurisdiction other than British Columbia has ordered that
 - a person is prohibited from trading or purchasing securities or
 - (i) derivatives, or a particular security or derivative, or
 - trades or purchases of a particular security or derivative cease;
 - (ii)

- (42) authorizing the commission or the executive director to order that any or all of the provisions of this Act or the regulations, excluding regulations made under paragraph (3), do not apply to a particular person, trade, security or derivative or class of persons, trades, securities or derivatives; respecting those matters for which this Act provides that regulations or
- (43) commission rules be made or requirements prescribed; respecting the filing of records under this Act;
- (44) requiring a person to certify the content of a record required under this
- (44.1) Act, including requiring different certificates for different classes of persons; respecting
- (45) the amendment or modification of a record and the effect of that
 - (i) amendment or modification,
 - the use of codes and symbols for the identification of persons on
 - (ii) records,
 - the use of records, prepared in accordance with similar laws of
 - (iii) another jurisdiction, to satisfy the requirements of this Act, the regulations or the commission rules, and
 - [Repealed 2006-32-63.]
 - (iv) the filing of records by electronic means;
 - (v)
- (45.1) authorizing the commission or executive director to disclose personal information in a manner, or to a person, government or governmental authority, or a class of any of those, in British Columbia or elsewhere, not otherwise contemplated by sections 169 (3) and 169.1;
- authorizing the commission or executive director to collect personal
- (45.2) information indirectly from a person, or a class of persons, in British Columbia or elsewhere, not otherwise contemplated by section 169.1;
- authorizing the commission or executive director to enter into an
- (45.3) arrangement or agreement with a person, or a class of persons, in British Columbia or elsewhere, regarding or involving the collection, sharing or disclosure of personal information, not otherwise contemplated by section 169.1;
- prescribing classes of documents or records to which the commission or
- (45.4) executive director must not have access when exercising a power under Part 4 or 17 in relation to an auditor oversight body;
- defining words and expressions used but not defined in this Act,
- (46) including, without limitation, words and expressions used in Part 16 or 16.1;
- to meet any difficulties that may arise by reason of the repeal of the
- (47) *Securities Act*, R.S.B.C. 1979, c. 380, and the substitution of this Act;

- (48) for the purpose of section 155 (1) (d), specifying provisions of the regulations, the contravention of any of which constitutes an offence under section 155 (1) (d);
- for the purpose of section 155 (1) (e), specifying provisions of the
- (49) commission rules, the contravention of any of which constitutes an offence under section 155 (1) (e);
- respecting the registration under the *Personal Property Security Act* of a
- (49.1) notice under section 164.18 (2) of this Act, and the legal effect of that registration;
- respecting the disposition of
- (49.2) a property forfeited to the commission or a property in which an
 - (i) interest in property or a portion of an interest in property is forfeited to the commission, or
 - an interest in property or a portion of an interest in property that is
 - (ii) forfeited to the commission;
- governing the procedures that are to be followed by the commission in
- (50) making and repealing commission rules including, but not limited to, prescribing requirements with which the commission must comply before depositing a commission rule with the registrar of regulations;
- prescribing a regulation made by the Lieutenant Governor in Council
- (51) under this Act to be a commission rule;
- amending or repealing any commission rule.
- (52)

Commission rules

- 184** (1) Subject to subsections (4) to (7), the commission may make rules for the purpose of regulating trading in securities or derivatives, or regulating the securities industry or derivatives industry.

Without limiting subsection (1) but subject to subsections (4) to (7), the commission (2) may make rules as follows:

- respecting those matters for which this Act provides that commission
- (a) rules be made;
- respecting those matters for which this Act provides that requirements
- (b) be prescribed, except those matters referred to in sections 141 (2) (y), 143 (4), 143.1 (6), 162.01, 163.2 (2) and (3), 164.06 (2) (b), 164.18 (1), (2) and (4) (b) and 183 (28.1), (50) and (51) and subsections (5) to (8) of this section;
- respecting those matters for which regulations may be made under
- (b.1) sections 26, 34, 51 (3), 56 (2), 63 (2), 65 (2), 81, 85, 87 (2), 98, 99, 118 (3), 130.1, and 169 (2);
- with respect to the same matters with respect to which the Lieutenant

Governor in Council may make regulations under section 183 (1), (2), (2.1), (2.2), (2.3), (6) to (24), (25), (27), (27.1), (30), (31), (33), (34), (35), (35.1), (36), (36.1), (38), (40), (41), (41.1), (44), (44.1), (45) and (46) and to the same extent;

- (d) incorporating by reference and adopting laws, codes, standards, bylaws, rules and other regulatory instruments as they are amended from time to time before or after the making of the rules;

authorizing one or more organizations, on specified terms and

- (e) conditions, to exercise any of the executive director's powers under Part 5 or to perform any of the executive director's duties under Part 5, including, but not limited to, the power

to grant, renew or reinstate registration, to refuse to grant, renew

- (i) or reinstate registration or to attach terms, conditions or restrictions to any grant, renewal or reinstatement of registration, to suspend or cancel registration,

- (ii) to satisfy itself of any matter that is a condition precedent to the

- (iii) exercise of a power it is authorized under this paragraph to exercise,

to require an applicant or registrant to submit to examination

- (iv) under oath, and

to require delivery of a bond;

(v)

establishing criteria to be applied and procedures to be followed by a

- (f) designated organization in making a direction, decision, order or ruling it is authorized under paragraph (e) to make;

requiring

- (g) applications for registration or for renewal or reinstatement of
 - (i) registration to be made to a designated organization, or
 - a record or a notice that is required to be filed or submitted under
 - (ii) this Act to be delivered to a designated organization;

requiring a designated organization

- (h) to provide the executive director with reports and information
 - (i) respecting any matter that is before the designated organization or any decision made by it under an authority given to it under paragraph (e),
 - to notify applicants, registrants or other persons of registrations
 - (ii) granted or decisions made by the designated organization under an authority given to it under paragraph (e), and
 - to keep records, including records of decisions made by the
 - (iii) designated organization under an authority given to it under paragraph (e) and to permit public inspection of classes of records

specified by the commission;

- empowering a designated organization to delegate any power or duty
- (i) conferred on it under paragraph (e) to a committee of the designated organization, and deeming the decisions of the committee to be the decisions of the designated organization;

- respecting the custody and use of the executive director's seal of office
- (j) and of any device for affixing a facsimile of the executive director's signature.

- If a designated organization is exercising or intends to exercise a power provided
- (3) to it under subsection (2) (e) to make a decision, the commission may withdraw from the designated organization any matter that is before the designated organization for its decision, and the executive director may decide the matter.

- Unless the power to do so is expressly provided to the commission under this
- (4) section, the commission must not make rules under this section with respect to the matters with respect to which the Lieutenant Governor in Council may make regulations under section 183 (3) to (5), (26), (28), (28.1), (29), (32), (37), (39), (42), (43) and (47) to (52).

- The commission must, before making or repealing a rule under this section, obtain
- (5) the consent of the minister in accordance with the regulations and comply with any other prescribed procedures and requirements.

- Without limiting subsection (5), the commission must not deposit with the registrar
- (6) of regulations any rule made by the commission under this section unless the commission has complied with the prescribed procedures and requirements.

- Despite subsections (5) and (6), the commission may deposit with the registrar of
- (7) regulations a rule made by the commission under this section without complying with the prescribed procedures and requirements if

- the commission considers it necessary and in the public interest to
- (a) deposit the rule without delay, and
- the minister consents
- (b) to the making of the rule, and
 - (i) to the rule being deposited without the commission's compliance
 - (ii) with the prescribed procedures and requirements.

- Unless earlier revoked, a rule made under subsection (7) is revoked on the day that
- (8) is the prescribed number of days following the day on which the rule is deposited with the registrar of regulations.

- The Lieutenant Governor in Council may, by regulation, designate a regulation
- (9) made under section 183, whether made before or after the coming into force of this section, to be a rule of the commission and the designated regulation is deemed for all purposes to be a rule of the commission made under this section.

- (10) The Lieutenant Governor in Council may, by regulation, repeal or amend any of the rules made by the commission under this section.

Regulations Act applies to commission rules

185 The *Regulations Act* applies to a commission rule.

Regulation prevails over commission rule

186 If a commission rule conflicts with a regulation made by the Lieutenant Governor in Council under section 183, the regulation prevails.

Administrative powers respecting commission rules

187 (1) The commission may

- vary the provisions of the commission rules as they apply to any person,
 - (a) trade, security or derivative or class of persons, trades, securities or derivatives,
- order that any or all of the exemptions in the commission rules do not
 - (b) apply to a person, trade, security or derivative or class of persons, trades, securities or derivatives,
- order that any or all of the provisions of the commission rules do not
 - (c) apply to a person, trade, security or derivative or class of persons, trades, securities or derivatives,
- designate
 - (c.1) a derivative or class of derivatives for the purposes of a rule
 - (i) contemplated by section 183 (2.1) (i),
 - a benchmark, benchmark administrator, class of benchmarks or
 - (ii) class of benchmark administrators for the purposes of a rule contemplated by section 183 (2.2) (i),
 - an information processor or class of information processors for
 - (iii) the purposes of a rule contemplated by section 183 (2.3),
 - a credit rating organization or class of credit rating organizations
 - (iv) for the purposes of a rule contemplated by section 183 (9.1), or
 - a person or class of persons for the purposes of a rule
 - (v) contemplated by section 183 (41) (ii), and
- authorize the executive director to exercise a power given to the
 - (d) commission under paragraphs (a) to (c).

For the purposes of subsection (1) (a) and (c), the commission may include

(2) conditions, restrictions or requirements in the order, including conditions, restrictions or requirements relating to

- the laws of another jurisdiction respecting trading in securities or
 - (a) derivatives, or

- (b) an exemption from a requirement under the laws referred to in paragraph (a) granted by a securities regulatory authority in that jurisdiction.

Policy statements

188 (1) The commission may issue policy statements, and other instruments the commission considers advisable, to facilitate the exercise of its powers and the performance of its duties under this Act and to interpret this Act, the regulations and the commission rules.

A policy statement or other instrument referred to in subsection (1) is not a
(2) commission rule or a regulation within the meaning of the [Regulations Act](#).