



[Français](#)

Securities Act

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INTERPRETATION

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Definitions

1. (1) In this Act,

“adviser” means a person or company engaging in or holding himself, herself or itself out as engaging in the business of advising others as to the investing in or the buying or selling of securities; (“conseiller”)

Note: On a day to be named by proclamation of the Lieutenant Governor, the definition of “adviser” is amended by adding “or derivatives” at the end. See: 2010, c. 26, Sched. 18, ss. 1 (1), 47 (2).

“alternative trading system” means a marketplace that,

- (a) is not a recognized quotation and trade reporting system or a recognized exchange,
- (b) does not require an issuer to enter into an agreement to have its securities traded on the marketplace,
- (c) does not provide, directly or through one or more subscribers, a guarantee of a two-sided market for a security or derivative on a continuous or reasonably continuous basis,
- (d) does not set requirements governing the conduct of subscribers, other than conduct in respect of the trading by those subscribers on the marketplace, and
- (e) does not discipline subscribers other than by exclusion from participation in the marketplace; (“système de négociation parallèle”)

“associate”, where used to indicate a relationship with any person or company, means,

- (a) except in Part XX, any company of which such person or company beneficially owns, directly or indirectly, voting securities carrying more than 10 per cent of the voting rights attached to all voting securities of the company for the time being outstanding,
- (a.1) in Part XX, any issuer of which such person or company beneficially owns or controls, directly or indirectly, voting securities carrying more than 10 per cent of the voting rights attached to all voting securities of the issuer for the time being outstanding,

- (b) any partner of that person or company,
- (c) any trust or estate in which such person or company has a substantial beneficial interest or as to which such person or company serves as trustee or in a similar capacity,
- (d) any relative of that person who resides in the same home as that person,
- (e) any person who resides in the same home as that person and to whom that person is married or with whom that person is living in a conjugal relationship outside marriage,
or
- (f) any relative of a person mentioned in clause (e) who has the same home as that person;
("personne qui a un lien")

"chief compliance officer" means, in respect of a registrant that is a registered dealer, registered adviser or registered investment fund manager, an individual designated by the registrant,

- (a) to establish and maintain policies and procedures to assess, monitor and report on the registrant's compliance with Ontario securities law, and
- (b) to fulfill such other compliance functions as may be prescribed by the regulations; ("chef de la conformité")

"clearing agency" means,

- (a) with respect to securities, a person or company that,
 - (i) acts as an intermediary in paying funds or delivering securities, or both, in connection with trades and other transactions in securities,
 - (ii) provides centralized facilities for the clearing of trades and other transactions in securities, including facilities for comparing data respecting the terms of settlement of a trade or transaction, or
 - (iii) provides centralized facilities as a depository of securities,
 but does not include,
 - (iv) the Canadian Payments Association or its successors,
 - (v) an exchange or a quotation and trade reporting system,
 - (vi) a registered dealer, or
 - (vii) a bank, trust company, loan corporation, insurance company, treasury branch, credit union or caisse populaire that, in the normal course of its authorized business in Canada, engages in an activity described in subclause (a) (i), but does not also engage in an activity described in subclause (a) (ii) or (iii), and
- (b) with respect to derivatives, a person or company that provides centralized facilities for the clearing and settlement of trades in derivatives that, with respect to a contract, instrument or transaction,
 - (i) enables each party to the contract, instrument or transaction to substitute, through novation or otherwise, the credit of the clearing agency for the credit of the parties,

- (ii) arranges or provides, on a multilateral basis, for the settlement or netting of obligations resulting from such contracts, instruments or transactions executed by participants in the clearing agency, or
- (iii) otherwise provides clearing services or arrangements that mutualize or transfer among participants in the clearing agency the credit risk arising from such contracts, instruments or transactions executed by the participants,

but does not include a person or company solely because the person or company arranges or provides for,

- (iv) settlement, netting or novation of obligations resulting from agreements, contracts or transactions on a bilateral basis and without a central counterparty,
- (v) settlement or netting of cash payments through the Automated Clearing Settlement System or the Large Value Transfer System, or
- (vi) settlement, netting or novation of obligations resulting from a sale of a commodity in a transaction in the spot market; (“agence de compensation”)

“Commission” means the Ontario Securities Commission; (“Commission”)

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

“contract” includes a trust agreement, declaration of trust or other similar instrument; (“contrat”)

“contractual plan” means any contract or other arrangement for the purchase of shares or units 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 such payment for sales charges if deductions had been made from each payment at a constant rate for the duration of the plan; (“plan à versements périodiques”)

“control person” means,

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

“credit rating” means an assessment that is publicly disclosed or distributed by subscription

concerning the creditworthiness of an issuer,

(a) as an entity, or

(b) with respect to specific securities or a specific pool of securities or assets; (“notation”)

“credit rating organization” means a person or company that issues credit ratings; (“organisme de notation”)

“dealer” means, except for the purposes described in subsection (1.2), a person or company engaging in or holding himself, herself or itself out as engaging in the business of trading in securities as principal or agent; (“courtier”)

Note: On a day to be named by proclamation of the Lieutenant Governor, the definition of “dealer” is amended by adding “or derivatives” after “securities”. See: 2010, c. 26, Sched. 18, ss. 1 (5), 47 (2).

“debt security” means a bond, debenture, note or similar instrument representing indebtedness, whether secured or unsecured; (“titre de créance”)

“decision” means, in respect of a decision of the Commission or a Director, a direction, decision, order, ruling or other requirement made under a power or right conferred by this Act or the regulations; (“décision”)

“derivative” means an option, swap, futures contract, forward contract or other financial or commodity contract or instrument whose market price, value, delivery obligations, payment obligations or settlement obligations are derived from, referenced to or based on an underlying interest (including a value, price, rate, variable, index, event, probability or thing), but does not include,

(a) a commodity futures contract as defined in subsection 1 (1) of the *Commodity Futures Act*,

(b) a commodity futures option as defined in subsection 1 (1) of the *Commodity Futures Act*,

(c) a contract or instrument that, by reason of an order of the Commission under subsection (10), is not a derivative, or

(d) a contract or instrument in a class of contracts or instruments prescribed by the regulations not to be derivatives; (“produit dérivé”)

“designated credit rating organization” means a credit rating organization that is designated by the Commission under Part IX; (“organisme de notation désigné”)

“designated derivative” means a derivative,

(a) that, by reason of an order of the Commission under subsection (11), is a designated derivative, or

(b) that belongs to a class of derivatives prescribed by the regulations; (“produit dérivé désigné”)

“designated trade repository” means a trade repository that is designated by the Commission under section 21.2.2; (“répertoire des opérations désigné”)

“Director” means the Executive Director of the Commission, a Director or Deputy Director of the Commission, or a person employed by the Commission in a position designated by the Executive Director for the purpose of this definition; (“directeur”)

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

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

- (a) a trade in securities of an issuer that have not been previously issued,
- (b) a trade by or on behalf of an issuer in previously issued securities of that issuer that have been redeemed or purchased by or donated to that issuer,
- (c) a trade in previously issued securities of an issuer from the holdings of any control person,
- (d) a trade by or on behalf of an underwriter in securities which were acquired by that underwriter, acting as underwriter, prior to the 15th day of September, 1979 if those securities continued on that date to be owned by or for that underwriter, so acting,
- (e) a trade by or on behalf of an underwriter in securities which were acquired by that underwriter, acting as underwriter, within eighteen months after the 15th day of September, 1979, if the trade took place during that eighteen months, and
- (f) any trade that is a distribution under the regulations,

and on and after the 15th day of March, 1981, includes a distribution as referred to in subsections 72 (4), (5), (6) and (7), and also includes any transaction or series of transactions involving a purchase and sale or a repurchase and resale in the course of or incidental to a distribution and “distribute”, “distributed” and “distributing” have a corresponding meaning; (“placement”, “placer”, “placé”)

“distribution company” means a person or company distributing securities under a distribution contract; (“compagnie de placement”)

“distribution contract” means a contract between a mutual fund or its trustees or other legal representative and a person or company under which that person or company is granted the right to purchase the shares or units of the mutual fund for distribution or to distribute the shares or units of the mutual fund on behalf of the mutual fund; (“contrat de placement”)

“distribution to the public”, where used in relation to trading in securities, means a distribution that is made for the purpose of distributing to the public securities issued by an issuer, whether such trades are made directly or indirectly to the public through an underwriter or otherwise; (“placement dans le public”)

“economic exposure” in relation to a reporting issuer means the extent to which the economic or financial interests of a person or company are aligned with the trading price of securities of the reporting issuer or the economic or financial interests of the reporting issuer; (“risque financier”)

“economic interest in a security” means,

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

security, or

(b) an exposure to a loss or a risk of loss in respect of a security; (“intérêt financier dans une valeur mobilière”)

“form of proxy” means a written or printed form that, upon completion and execution by or on behalf of a security holder, becomes a proxy; (“formule de procuration”)

“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; (“information prospective”)

“individual” means a natural person, but does not include a partnership, unincorporated association, unincorporated syndicate, unincorporated organization, trust, or a natural person in his or her capacity as trustee, executor, administrator or other legal personal representative; (“particulier”)

“insider” means,

(a) a director or officer of a reporting issuer,

(b) a director or officer of a person or company that is itself an insider or subsidiary of a reporting issuer,

(c) a person or company that has,

(i) beneficial ownership of, or control or direction over, directly or indirectly, securities of a reporting issuer carrying more than 10 per cent of the voting rights attached to all the reporting issuer’s outstanding voting securities, excluding, for the purpose of the calculation of the percentage held, any securities held by the person or company as underwriter in the course of a distribution, or

(ii) a combination of beneficial ownership of, and control or direction over, directly or indirectly, securities of a reporting issuer carrying more than 10 per cent of the voting rights attached to all the reporting issuer’s outstanding voting securities, excluding, for the purpose of the calculation of the percentage held, any securities held by the person or company as underwriter in the course of a distribution,

(d) a reporting issuer that has purchased, redeemed or otherwise acquired a security of its own issue, for so long as it continues to hold that security,

(e) a person or company designated as an insider in an order made under subsection (11),

(f) a person or company that is in a class of persons or companies designated under subparagraph 40 v of subsection 143 (1); (“initié”)

“investment fund” means a mutual fund or a non-redeemable investment fund; (“fonds d’investissement”)

“investment fund manager” means a person or company that directs the business, operations or affairs of an investment fund; (“gestionnaire de fonds d’investissement”)

“issuer” means a person or company who has outstanding, issues or proposes to issue, a security;

(“émetteur”)

“management company” means a person or company who provides investment advice, under a management contract; (“compagnie de gestion”)

“management contract” means a contract under which a mutual fund is provided with investment advice, alone or together with administrative or management services, for valuable consideration; (“contrat de gestion”)

“market participant” means,

- (a) a registrant,
- (b) a person or company exempted from the requirement to be registered under this Act by a ruling of the Commission,
- (c) a reporting issuer or a director, officer or promoter of a reporting issuer,
- (d) a manager or custodian of assets, shares or units of a mutual fund,
- (e) a recognized clearing agency,
- (f) a recognized commodity futures exchange,
- (g) a recognized exchange,
- (h) a recognized quotation and trade reporting system,
- (i) a recognized self-regulatory organization,
- (j) a designated credit rating organization,
- (k) a designated trade repository,
- (l) a transfer agent for securities of a reporting issuer,
- (m) a registrar for securities of a reporting issuer,
- (n) the Canadian Investor Protection Fund,
- (o) the Ontario Contingency Trust Fund,
- (p) the general partner of a market participant, or
- (q) any other person or company or member of a class of persons or companies prescribed by the regulations; (“participant au marché”)

“marketplace” means any of the following, but does not include an inter-dealer bond broker:

1. An exchange.
2. A quotation and trade reporting system.
3. A person or company not included in paragraph 1 or 2 that,
 - i. constitutes, maintains or provides a market or facility for bringing together buyers and sellers of securities or derivatives,
 - ii. brings together the orders for securities or derivatives of multiple buyers and sellers, and
 - iii. uses established non-discretionary methods under which the orders interact with

each other, and the buyers and sellers entering the orders agree to the terms of a trade.

4. With respect to securities, a dealer who executes a trade of an exchange-traded security outside a marketplace described in paragraph 1, 2 or 3; (“marché”)

“material change”,

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

- (i) a change in the business, operations or capital of the issuer that would reasonably be expected to have a significant effect on the market price or value of any of the securities of the issuer, or
- (ii) a decision to implement a change referred to in subclause (i) made by the board of directors or other persons acting in a similar capacity or by senior management of the issuer who believe that confirmation of the decision by the board of directors or such other persons acting in a similar capacity is probable, and

(b) when used in relation to an issuer that is an investment fund, means,

- (i) a change in the business, operations or affairs of the issuer that would be considered important by a reasonable investor in determining whether to purchase or continue to hold securities of the issuer, or
- (ii) a decision to implement a change referred to in subclause (i) made,
 - (A) by the board of directors of the issuer or the board of directors of the investment fund manager of the issuer or other persons acting in a similar capacity,
 - (B) by senior management of the issuer who believe that confirmation of the decision by the board of directors or such other persons acting in a similar capacity is probable, or
 - (C) by senior management of the investment fund manager of the issuer who believe that confirmation of the decision by the board of directors of the investment fund manager of the issuer or such other persons acting in a similar capacity is probable; (“changement important”)

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

“Minister” means the Minister of Finance or such other member of the Executive Council to whom the administration of this Act may be assigned; (“ministre”)

“misrepresentation” means,

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

“mutual fund” means an issuer whose primary purpose is to invest money provided by its security

holders and whose securities entitle the holder to receive on demand, or within a specified period after demand, an amount computed by reference to the value of a proportionate interest in the whole or in part of the net assets, including a separate fund or trust account, of the issuer; (“fonds mutuel”)

“mutual fund in Ontario” means a mutual fund that is a reporting issuer or that is organized under the laws of Ontario, but does not include a private mutual fund; (“fonds mutuel de l’Ontario”)

“non-redeemable investment fund” means an issuer,

(a) whose primary purpose is to invest money provided by its security holders,

(b) that does not invest,

(i) for the purpose of exercising or seeking to exercise control of an issuer, other than an issuer that is a mutual fund or a non-redeemable investment fund, or

(ii) for the purpose of being actively involved in the management of any issuer in which it invests, other than an issuer that is a mutual fund or a non-redeemable investment fund, and

(c) that is not a mutual fund; (“fonds d’investissement à capital fixe”)

“offering memorandum” means a document, together with any amendments to that document, purporting to describe the business and affairs of an issuer that has been prepared primarily for delivery to and review by a prospective purchaser so as to assist the prospective purchaser to make an investment decision in respect of securities being sold in a distribution to which section 53 would apply but for the availability of one or more of the exemptions contained in Ontario securities law, but does not include a document setting out current information about an issuer for the benefit of a prospective purchaser familiar with the issuer through prior investment or business contacts; (“notice d’offre”)

“officer”, with respect to an issuer or registrant, means,

(a) a chair or vice-chair of the board of directors, a chief executive officer, a chief operating officer, a chief financial officer, a president, a vice-president, a secretary, an assistant secretary, a treasurer, an assistant treasurer and a general manager,

(b) every individual who is designated as an officer under a by-law or similar authority of the registrant or issuer, and

(c) every individual who performs functions similar to those normally performed by an individual referred to in clause (a) or (b); (“dirigeant”)

“Ontario securities law” means,

(a) this Act,

(b) the regulations, and

(c) in respect of a person or company, a decision of the Commission or a Director to which the person or company is subject; (“droit ontarien des valeurs mobilières”)

“person” means an individual, partnership, unincorporated association, unincorporated syndicate, unincorporated organization, trust, trustee, executor, administrator, or other legal representative; (“personne”)

“portfolio securities”, where used in relation to a mutual fund, means securities held or proposed to be purchased by the mutual fund; (“valeurs de portefeuille”)

“private company” means a company in whose constating document,

- (a) the right to transfer its shares is restricted,
- (b) the number of its shareholders, exclusive of persons who are in its employment and exclusive of persons who, having been formerly in the employment of the company, were, while in that employment, and have continued after termination of that employment to be, shareholders of the company, is limited to not more than fifty, two or more persons who are the joint registered owners of one or more shares being counted as one shareholder, and
- (c) any invitation to the public to subscribe for its securities is prohibited; (“compagnie fermée”)

“private mutual fund” means a mutual fund that is,

- (a) operated as an investment club, where,
 - (i) its shares or units are held by not more than fifty persons and its indebtedness has never been offered to the public,
 - (ii) it does not pay or give any remuneration for investment advice or in respect of trades in securities, except normal brokerage fees, and
 - (iii) all of its members are required to make contributions in proportion to the shares or units each holds for the purpose of financing its operations, or
- (b) administered by a trust corporation registered under the *Loan and Trust Corporations Act* and consists of a common trust fund as defined in section 1 of that Act; (“fonds mutuel fermé”)

“promoter” means,

- (a) a person or company who, acting alone or in conjunction with one or more other persons, companies or a combination thereof, directly or indirectly, takes the initiative in founding, organizing or substantially reorganizing the business of an issuer, or
- (b) a person or company who, in connection with the founding, organizing or substantial reorganizing of the business of an issuer, directly or indirectly, receives in consideration of services or property, or both services and property, 10 per cent or more of any class of securities of the issuer or 10 per cent or more of the proceeds from the sale of any class of securities of a particular issue, but a person or company who receives such securities or proceeds either solely as underwriting commissions or solely in consideration of property shall not be deemed a promoter within the meaning of this definition if such person or company does not otherwise take part in founding, organizing, or substantially reorganizing the business; (“promoteur”)

“proxy” means a completed and executed form of proxy by means of which a security holder has appointed a person or company as the security holder’s nominee to attend and act for and on the security holder’s behalf at a meeting of security holders; (“procuration”)

- “quotation and trade reporting system” means a person or company that operates facilities that permit the dissemination of price quotations for the purchase and sale of securities and reports of completed transactions in securities for the exclusive use of registered dealers, but does not include an exchange or a registered dealer; (“système de cotation et de déclaration des opérations”)
- “recognized clearing agency” means a clearing agency recognized by the Commission under section 21.2; (“agence de compensation reconnue”)
- “recognized commodity futures exchange” means a person or company that is registered or recognized by the Commission as a commodity futures exchange under the *Commodity Futures Act* or that is exempted from the requirement to be registered or recognized by order of the Commission; (“Bourse reconnue de contrats à terme sur marchandises”)
- “recognized exchange” means a person or company recognized by the Commission under section 21; (“bourse reconnue”)
- “recognized quotation and trade reporting system” means a quotation and trade reporting system recognized by the Commission under section 21.2.1; (“système reconnu de cotation et de déclaration des opérations”)
- “recognized self-regulatory organization” means a self-regulatory organization recognized by the Commission under section 21.1 or recognized as a self-regulatory body by the Commission under the *Commodity Futures Act*; (“organisme d’autoréglementation reconnu”)
- “registrant” means a person or company registered or required to be registered under this Act; (“personne ou compagnie inscrite”)
- “regulations” means the regulations made under this Act and, unless the context otherwise indicates, includes the rules; (“règlements”)
- “related derivative” means, with respect to a security, a derivative that is related to the security because the derivative’s market price, value, delivery obligations, payment obligations or settlement obligations are, in a material way, derived from, referenced to or based on the market price, value, delivery obligations, payment obligations or settlement obligations of the security; (“produit dérivé connexe”)
- “related financial instrument” means an agreement, arrangement or understanding to which an insider of a reporting issuer is a party, the effect of which is to alter, directly or indirectly, the insider’s,
- (a) economic interest in a security of the reporting issuer, or
 - (b) economic exposure to the reporting issuer; (“instrument financier connexe”)
- “reporting issuer” means an issuer,
- (a) that has issued voting securities on or after the 1st day of May, 1967 in respect of which a prospectus was filed and a receipt therefor obtained under a predecessor of this Act or in respect of which a securities exchange take-over bid circular was filed under a predecessor of this Act,
 - (b) that has filed a prospectus and for which the Director has issued a receipt under this Act,

- (b.1) that has filed a securities exchange take-over bid circular under this Act before December 14, 1999,
- (c) any of whose securities have been at any time since the 15th day of September, 1979 listed and posted for trading on any exchange in Ontario recognized by the Commission, regardless of when such listing and posting for trading commenced,
- (d) to which the *Business Corporations Act* applies and which, for the purposes of that Act, is offering its securities to the public,
- (e) that is the company whose existence continues following the exchange of securities of a company by or for the account of such company with another company or the holders of the securities of that other company in connection with,
- (i) a statutory amalgamation or arrangement, or
 - (ii) a statutory procedure under which one company takes title to the assets of the other company that in turn loses its existence by operation of law, or under which the existing companies merge into a new company,
- where one of the amalgamating or merged companies or the continuing company has been a reporting issuer for at least twelve months, or
- (f) that is designated as a reporting issuer in an order made under subsection 1 (11); (“émetteur assujéti”)

“representative” means,

- (a) in respect of a registered dealer, an individual who trades securities on behalf of the dealer, whether or not the individual is employed by the dealer, or
- (b) in respect of a registered adviser, an individual who provides advice on behalf of the adviser with respect to investing in, buying or selling securities, whether or not the individual is employed by the adviser; (“représentant”)

Note: On a day to be named by proclamation of the Lieutenant Governor, the definition of “representative” is repealed and the following substituted:

“representative” means,

- (a) in respect of a registered dealer, an individual who trades securities or derivatives on behalf of the dealer, whether or not the individual is employed by the dealer, or
- (b) in respect of a registered adviser, an individual who provides advice on behalf of the adviser with respect to investing in securities or buying or selling securities or derivatives, whether or not the individual is employed by the adviser; (“représentant”)

See: 2010, c. 26, Sched. 18, ss. 1 (13), 47 (2).

“rules” means,

- (a) the rules made under section 143, and
- (b) orders, rulings and policies listed in the Schedule; (“règles”)

“security” includes,

- (a) any document, instrument or writing commonly known as a security,
- (b) any document constituting evidence of title to or interest in the capital, assets, property, profits, earnings or royalties of any person or company,
- (c) any document constituting evidence of an interest in an association of legatees or heirs,
- (d) any document constituting evidence of an option, subscription or other interest in or to a security,
- (e) a bond, debenture, note or other evidence of indebtedness or a share, stock, unit, unit certificate, participation certificate, certificate of share or interest, preorganization certificate or subscription other than,
 - (i) a contract of insurance issued by an insurance company licensed under the *Insurance Act*, and
 - (ii) evidence of a deposit issued by a bank listed in Schedule I, II or III to the *Bank Act* (Canada), by a credit union or league to which the *Credit Unions and Caisses Populaires Act, 1994* applies, by a loan corporation or trust corporation registered under the *Loan and Trust Corporations Act* or by an association to which the *Cooperative Credit Associations Act* (Canada) applies,
- (f) any agreement under which the interest of the purchaser is valued for purposes of conversion or surrender by reference to the value of a proportionate interest in a specified portfolio of assets, except a contract issued by an insurance company licensed under the *Insurance Act* which provides for payment at maturity of an amount not less than three quarters of the premiums paid by the purchaser for a benefit payable at maturity,
- (g) any agreement providing that money received will be repaid or treated as a subscription to shares, stock, units or interests at the option of the recipient or of any person or company,
- (h) any certificate of share or interest in a trust, estate or association,
- (i) any profit-sharing agreement or certificate,
- (j) any certificate of interest in an oil, natural gas or mining lease, claim or royalty voting trust certificate,
- (k) any oil or natural gas royalties or leases or fractional or other interest therein,
- (l) any collateral trust certificate,
- (m) any income or annuity contract not issued by an insurance company,
- (n) any investment contract,
- (o) any document constituting evidence of an interest in a scholarship or educational plan or trust, and
- (p) any commodity futures contract or any commodity futures option that is not traded on a commodity futures exchange registered with or recognized by the Commission under the *Commodity Futures Act* or the form of which is not accepted by the Director under that Act,

whether any of the foregoing relate to an issuer or proposed issuer; (“valeur mobilière”)

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

“trade” or “trading” includes,

- (a) any sale or disposition of a security for valuable consideration, whether the terms of payment be on margin, instalment or otherwise, but does not include a purchase of a security or, except as provided in clause (d), a transfer, pledge or encumbrance of securities for the purpose of giving collateral for a debt made in good faith,
- (b) any participation as a trader in any transaction in a security through the facilities of any exchange or quotation and trade reporting system,
 - (b.1) entering into a derivative or making a material amendment to, terminating, assigning, selling or otherwise acquiring or disposing of a derivative, or
 - (b.2) a novation of a derivative, other than a novation with a clearing agency,
- (c) any receipt by a registrant of an order to buy or sell a security,
- (d) any transfer, pledge or encumbering of securities of an issuer from the holdings of any person or company or combination of persons or companies described in clause (c) of the definition of “distribution” for the purpose of giving collateral for a debt made in good faith, and
- (e) any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of any of the foregoing; (“opération”)

“trade repository” means a person or company that collects and maintains reports of completed trades by other persons and companies; (“répertoire des opérations”)

“ultimate designated person” means, in respect of a registrant that is a registered dealer, registered adviser or registered investment fund manager, an individual designated by the registrant,

- (a) to supervise the registrant’s activities that are directed towards ensuring compliance with Ontario securities law by the registrant and by each individual acting on the registrant’s behalf, and
- (b) to fulfill such other functions as may be prescribed by the regulations in order to otherwise promote compliance with Ontario securities law; (“personne désignée responsable”)

“underwriter” means a person or company who, as principal, agrees to purchase securities with a view to distribution or who, as agent, offers for sale or sells securities in connection with a distribution and includes a person or company who has a direct or indirect participation in any such distribution, but does not include,

- (a) a person or company whose interest in the transaction is limited to receiving the usual and customary distributor’s or seller’s commission payable by an underwriter or issuer,

- (b) a mutual fund that, under the laws of the jurisdiction to which it is subject, accepts its shares or units for surrender and resells them,
- (c) a company that, under the laws of the jurisdiction to which it is subject, purchases its shares and resells them, or
- (d) a bank listed in Schedule I, II or III to the *Bank Act* (Canada) with respect to securities described in paragraph 1 of subsection 35 (2) or to such banking transactions as are designated by the regulations; (“souscripteur à forfait”)

“voting security” means any security other than a debt security of an issuer carrying a voting right either under all circumstances or under some circumstances that have occurred and are continuing. (“valeur mobilière avec droit de vote”) R.S.O. 1990, c. S.5, s. 1 (1); 1994, c. 11, s. 350; 1994, c. 33, s. 1 (1, 2); 1997, c. 19, s. 23 (1); 1999, c. 6, s. 60 (1); 1999, c. 9, s. 193; 2001, c. 23, s. 209; 2002, c. 22, s. 177 (1, 2); 2004, c. 31, Sched. 34, s. 1 (1-3); 2005, c. 5, s. 64 (1); 2006, c. 8, s. 144; 2006, c. 33, Sched. Z.5, s. 1 (1-6); 2007, c. 7, Sched. 38, s. 1 (1); 2009, c. 18, Sched. 26, s. 1 (1-7); 2010, c. 1, Sched. 26, s. 1; 2010, c. 26, Sched. 18, s. 1 (2-4, 6-12, 14-16).

Same

[\(1.1\)](#) For the purposes of this Act, any of “business combination”, “consultant”, “disclosure controls and procedures”, “exchange-traded security”, “future-oriented financial information”, “going private transaction”, “insider bid”, inter-dealer bond broker”, “internal controls”, “penny stocks”, “related party transactions” and “reverse take-overs” may be defined in the regulations or the rules and, if so defined, has the defined meaning. 2010, c. 26, Sched. 18, s. 1 (17).

Purchase and sale of a derivative

[\(1.1.1\)](#) For the purposes of this Act,

- (a) a person or company purchases a derivative by entering into, making a material amendment to or otherwise acquiring a derivative;
- (b) a person or company sells a derivative by making a material amendment to, terminating, assigning or otherwise disposing of a derivative; and
- (c) a novation of a derivative, other than a novation with a clearing agency, is deemed to be the purchase and sale of a derivative. 2010, c. 26, Sched. 18, s. 1 (18).

Meaning of “dealer” for purposes of Parts XV and XVI and s. 133

[\(1.2\)](#) For the purposes of Parts XV and XVI and section 133,

“dealer” means a person or company that trades in securities in the capacity of principal or agent. 2009, c. 18, Sched. 26, s. 1 (8).

Affiliated companies

[\(2\)](#) Except for the purposes of Part XX, a company shall be deemed to be an affiliate of another company if one of them is the subsidiary of the other or if both are subsidiaries of the same company or if each of them is controlled by the same person or company. R.S.O. 1990, c. S.5, s. 1 (2); 2007, c. 7, Sched. 38, s. 1 (3).

Controlled companies

[\(3\)](#) Except for the purposes of Part XX, a company shall be deemed to be controlled by another person or company or by two or more companies if,

- (a) voting securities of the first-mentioned company carrying more than 50 per cent of the votes for the election of directors are held, otherwise than by way of security only, by or for the benefit of the other person or company or by or for the benefit of the other companies; and
- (b) the votes carried by such securities are entitled, if exercised, to elect a majority of the board of directors of the first-mentioned company. R.S.O. 1990, c. S.5, s. 1 (3); 2007, c. 7, Sched. 38, s. 1 (4).

Subsidiary companies

(4) Except for the purposes of Part XX, a company shall be deemed to be a subsidiary of another company if,

- (a) it is controlled by,
 - (i) that other, or
 - (ii) that other and one or more companies each of which is controlled by that other, or
 - (iii) two or more companies each of which is controlled by that other; or
- (b) it is a subsidiary of a company that is that other's subsidiary. R.S.O. 1990, c. S.5, s. 1 (4); 2007, c. 7, Sched. 38, s. 1 (5).

Beneficial ownership of securities

(5) A person shall be deemed to own beneficially securities beneficially owned by a company controlled by the person or by an affiliate of such company. R.S.O. 1990, c. S.5, s. 1 (5).

Idem

(6) A company shall be deemed to own beneficially securities beneficially owned by its affiliates. R.S.O. 1990, c. S.5, s. 1 (6).

Insider of mutual fund

(7) Every management company and every distribution company of a mutual fund that is a reporting issuer and every insider of such management company or distribution company shall be deemed to be an insider of the mutual fund. R.S.O. 1990, c. S.5, s. 1 (7).

(8), (9) Repealed: 2006, c. 33, Sched. Z.5, s. 1 (8).

Relieving orders

(10) If the Commission is satisfied that it would not be prejudicial to the public interest, it may make an order that, for the purposes of Ontario securities law,

- (a) a person or company is not,
 - (i) an insider, or
 - (ii) a reporting issuer;
- (b) a contract or instrument is not a derivative; or
- (c) a derivative is not a designated derivative. 2010, c. 26, Sched. 18, s. 1 (19).

Designation

(11) If the Commission considers that it is in the public interest, it may make an order that, for purposes of Ontario securities law,

- (a) a person or company is an insider of a reporting issuer if the person or company would reasonably be expected to have, in the ordinary course, access to material information about the business, operations, assets or revenues of the issuer;
- (b) a person or company is a reporting issuer; or
- (c) a derivative is a designated derivative. 2006, c. 33, Sched. Z.5, s. 1 (9); 2010, c. 26, Sched. 18, s. 1 (20).

Terms and conditions

[\(12\)](#) An order under subsection (10) may be made subject to such terms and conditions as the Commission may impose. 2006, c. 33, Sched. Z.5, s. 1 (9).

Who may apply

[\(13\)](#) An order under subsection (10) or (11) may be made on application by an interested person or by the Director. 2006, c. 33, Sched. Z.5, s. 1 (9).

Hearing

[\(14\)](#) The Commission shall not make an order under subsection (10) or (11) without giving the person or company that would be subject to the order an opportunity to be heard. 2006, c. 33, Sched. Z.5, s. 1 (9).

Extended meaning for purposes of subs. (14)

[\(15\)](#) A person or company that is a party to a contract, instrument or derivative referred to in clause (10) (b) or (c) or (11) (c) is deemed, for the purpose of subsection (14), to be a person or company that would be subject to an order made under subsection (10) or (11). 2010, c. 26, Sched. 18, s. 1 (21).

Purposes of Act

[1.1](#) The purposes of this Act are,

- (a) to provide protection to investors from unfair, improper or fraudulent practices; and
- (b) to foster fair and efficient capital markets and confidence in capital markets. 1994, c. 33, s. 2.

PART I THE COMMISSION

[2.](#) Repealed: 1997, c. 10, s. 36.

Principles to consider

[2.1](#) In pursuing the purposes of this Act, the Commission shall have regard to the following fundamental principles:

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

to ensure honest and responsible conduct by market participants.

3. Effective and responsive securities regulation requires timely, open and efficient administration and enforcement of this Act by the Commission.
4. The Commission should, subject to an appropriate system of supervision, use the enforcement capability and regulatory expertise of recognized self-regulatory organizations.
5. The integration of capital markets is supported and promoted by the sound and responsible harmonization and co-ordination of securities regulation regimes.
6. Business and regulatory costs and other restrictions on the business and investment activities of market participants should be proportionate to the significance of the regulatory objectives sought to be realized. 1994, c. 33, s. 2.

Authority in extraordinary circumstances

Notice to Minister

[2.2 \(1\)](#) The Commission shall notify the Minister if, in its opinion, there are extraordinary circumstances that may require immediate action to be taken under this section in the public interest. 2009, c. 18, Sched. 26, s. 2.

Criteria

[\(2\)](#) For the purposes of this section, each of the following events constitutes extraordinary circumstances:

1. A major market disturbance characterized by or constituting sudden fluctuations of securities prices that threaten fair and orderly capital markets.
2. A major market disturbance characterized by or constituting a substantial disruption in the system for clearance and settlement of transactions.
3. A major disruption in the functioning of capital markets or of a significant segment of the markets, including a major disruption in the availability of capital to market participants.
4. A major disruption in the transmission, execution or processing of securities transactions.
5. A substantial threat of such a major market disturbance or major disruption. 2009, c. 18, Sched. 26, s. 2.

Order to suspend trading

[\(3\)](#) The Commission may, without notice or a hearing, make an order under this subsection to suspend trading in a security or related derivative or to suspend all trading on a recognized exchange or otherwise,

- (a) if, in the opinion of the Commission, there are extraordinary circumstances requiring immediate action to be taken in the public interest; and
- (b) if, in the opinion of the Commission, the order is necessary to maintain or restore fair and orderly securities markets, to ensure prompt, accurate and safe clearance and settlement of transactions in securities or to assist in doing so in another jurisdiction. 2009, c. 18, Sched. 26, s. 2; 2010, c. 26, Sched. 18, s. 2.

Terms and conditions

(4) The order may be subject to such terms and conditions as the Commission may impose. 2009, c. 18, Sched. 26, s. 2.

Duration of order

(5) The order takes effect immediately and expires no later than 10 days after the day on which it is made. 2009, c. 18, Sched. 26, s. 2.

Notice and publication of order

(6) The Commission shall promptly issue a news release describing the details of the order and shall publish the order in its Bulletin. 2009, c. 18, Sched. 26, s. 2.

Opportunity to be heard

(7) The Commission shall give an opportunity to be heard to persons and companies who are directly affected by the order and who consider themselves aggrieved by it, and the opportunity to be heard may be oral or in writing in the discretion of the Commission. 2009, c. 18, Sched. 26, s. 2.

Revocation or variation of order

(8) The Commission may make an order revoking or varying the order under subsection (3) but cannot vary it to provide for an expiry later than the date specified in subsection (5). 2009, c. 18, Sched. 26, s. 2.

Commission regulation

(9) Subject to the approval of the Minister, the Commission may make a regulation relating to any matter governed by Ontario securities law, despite any other provision of this Act,

- (a) if, in the opinion of the Commission, there are extraordinary circumstances requiring immediate action to be taken in the public interest; and
- (b) if, in the opinion of the Commission, the regulation is necessary to maintain or restore fair and orderly securities markets, to ensure prompt, accurate and safe clearance and settlement of transactions in securities or to assist in doing so in another jurisdiction. 2009, c. 18, Sched. 26, s. 2.

Same

(10) The Commission is not precluded from making a regulation under subsection (9) that has substantially the same effect as an order previously made under subsection (3) in respect of the same extraordinary circumstances. 2009, c. 18, Sched. 26, s. 2.

Duration of regulation

(11) Upon being approved by the Minister, the regulation comes into force immediately, despite section 22 of the *Legislation Act, 2006*, and it is revoked no later than 30 days after the day on which it comes into force. 2009, c. 18, Sched. 26, s. 2.

Extension of duration of regulation

(12) Despite subsection (11), an amendment to the regulation may provide that it remains in effect for a further period of up to 30 days, and the regulation may be so amended more than once. 2009, c. 18, Sched. 26, s. 2.

Notice and publication of regulation

(13) When the regulation comes into force, the Commission shall promptly issue a news release describing the details of the regulation and shall publish the regulation in its Bulletin

together with a statement setting out the substance and purpose of the regulation and the nature of the extraordinary circumstances. 2009, c. 18, Sched. 26, s. 2.

Same, amendment of regulation

(14) Subsection (13) applies, with necessary modifications, with respect to any amendment to the regulation. 2009, c. 18, Sched. 26, s. 2.

Additional information

(15) As soon as practicable after the regulation comes into force, the Commission shall publish in its Bulletin a description of the particular circumstances upon which the Commission based its decision to make the regulation. 2009, c. 18, Sched. 26, s. 2.

Regulation of the L.G. in C.

(16) The Lieutenant Governor in Council may make a regulation relating to any matter governed by Ontario securities law, despite any other provision of this Act,

- (a) if, in the opinion of the Lieutenant Governor in Council, there are extraordinary circumstances requiring immediate action to be taken in the public interest; and
- (b) if, in the opinion of the Lieutenant Governor in Council, the regulation is necessary to maintain or restore fair and orderly securities markets, to ensure prompt, accurate and safe clearance and settlement of transactions in securities or to assist in doing so in another jurisdiction. 2009, c. 18, Sched. 26, s. 2.

Regulation of L.G. in C. prevails

(17) A regulation made under subsection (16) prevails over a regulation made under subsection (9), and a regulation made under subsection (16) may revoke a regulation made under subsection (9). 2009, c. 18, Sched. 26, s. 2.

Interpretation

(18) This section does not limit the authority of the Commission under any other section of this Act. 2009, c. 18, Sched. 26, s. 2.

Commission continued

3. (1) The Ontario Securities Commission is continued as a corporation without share capital under the name Ontario Securities Commission in English and Commission des valeurs mobilières de l'Ontario in French. 1997, c. 10, s. 37.

Composition

(2) The Commission is composed of at least nine and not more than 16 members. 1997, c. 10, s. 37; 2009, c. 34, Sched. S, s. 1 (1); 2012, c. 8, Sched. 55, s. 1.

Deficiency in number

(3) If there are fewer than nine but at least two members in office, the Commission shall be deemed to be properly constituted for a period not exceeding 90 days after the deficiency in the number of members first occurs. 1997, c. 10, s. 37.

Appointment

(4) The members shall be appointed by the Lieutenant Governor in Council for such term of office not exceeding five years as the Lieutenant Governor in Council determines. A member may be reappointed. 1997, c. 10, s. 37.

Chair and Vice-Chairs

[\(5\)](#) The Lieutenant Governor in Council shall, by order, designate a member of the Commission as Chair and may designate up to three members as Vice-Chairs. 1997, c. 10, s. 37; 2009, c. 34, Sched. S, s. 1 (2).

Same

[\(6\)](#) The Chair and each Vice-Chair holds office for the term specified by the Lieutenant Governor in Council which shall not exceed his or her term as a member of the Commission. 1997, c. 10, s. 37.

Duties of Chair

[\(7\)](#) The Chair is the chief executive officer of the Commission and shall devote his or her full time to the work of the Commission. 1997, c. 10, s. 37.

Duties of members

[\(8\)](#) The members (other than the Chair) shall devote such time as may be necessary for the due performance of their duties as members. 1997, c. 10, s. 37.

Protection from liability

[\(9\)](#) A member is not liable for an act, an omission, an obligation or a liability of the Commission or its employees. A member is not liable for any act that in good faith is done or omitted in the performance or intended performance of his or her duties as a member of the Commission under this or any other Act. 1997, c. 10, s. 37.

Acting Chair

[\(10\)](#) If the office of Chair is vacant or if the Chair is absent or is unable to act for any reason, a Vice-Chair shall act as Chair. 1997, c. 10, s. 37.

Quorum

[\(11\)](#) Two members of the Commission constitute a quorum. 1997, c. 10, s. 37.

Crown agency

[\(12\)](#) The Commission is an agent of Her Majesty in right of Ontario, and its powers may be exercised only as an agent of Her Majesty. 1997, c. 10, s. 37.

Board of directors

[3.1 \(1\)](#) The Commission shall have a board of directors composed of the members of the Commission. 1997, c. 10, s. 37.

Duties

[\(2\)](#) The board of directors shall oversee the management of the financial and other affairs of the Commission. 1997, c. 10, s. 37.

Presiding officer

[\(3\)](#) The Chair shall preside over board meetings and, in his or her absence, a Vice-Chair shall do so. In the absence of the Chair and Vice-Chairs, the members in attendance may appoint one of their number to preside at a meeting. 1997, c. 10, s. 37.

Meetings

[\(4\)](#) Subject to the by-laws of the Commission, the board of directors may meet at any place in Canada. 1997, c. 10, s. 37.

Powers of the Commission

[3.2 \(1\)](#) The Commission has the capacity and the rights, powers and privileges of a natural

person. 1997, c. 10, s. 37.

Duties

(2) The Commission is responsible for the administration of this Act and shall perform the duties assigned to it under this Act and any other Act. 1997, c. 10, s. 37.

By-laws

- (3) Subject to the approval of the Minister, the Commission may make by-laws,
- (a) governing the administration, management and conduct of the affairs of the Commission;
 - (b) governing the appointment of an auditor;
 - (c) setting out the powers, functions and duties of the Chair, each Vice-Chair and the officers employed by the Commission;
 - (d) delegating to employees of the Commission the exercise or performance of any power or duty conferred or imposed on an officer of the Commission under this Act and fixing the terms or conditions of the delegation;
 - (e) governing the remuneration and benefits of the Chair, each Vice-Chair and the other members of the Commission;
 - (f) governing the time, place and method for holding meetings of the board of directors and the procedure at such meetings;
 - (g) governing the appointment, operation or dissolution of committees of the board of directors and delegating duties of the board to the committees; and
 - (h) governing the refund of fees paid to the Commission under this or any other Act and authorizing employees of the Commission to approve refunds subject to such conditions and in such circumstances as the Commission considers appropriate. 1997, c. 10, s. 37.

Notice to Minister

(4) The Commission shall deliver to the Minister a copy of every by-law passed by it. 1997, c. 10, s. 37.

Minister's review

(5) Within 60 days after delivery of the by-law, the Minister may approve, reject or return it to the Commission for further consideration. 1997, c. 10, s. 37.

Effect of approval

(6) A by-law that is approved by the Minister becomes effective on the date of the approval or on such later date as the by-law may provide. 1997, c. 10, s. 37.

Effect of rejection

(7) A by-law that is rejected by the Minister does not become effective. 1997, c. 10, s. 37.

Effect of return for further consideration

(8) A by-law that is returned to the Commission for further consideration does not become effective until the Commission returns it to the Minister and the Minister approves it. 1997, c. 10, s. 37.

Expiry of review period

(9) If within the 60-day period the Minister does not approve, reject or return the by-law for

further consideration, the by-law becomes effective on the 75th day after it is delivered to the Minister or on such later date as the by-law may provide. 1997, c. 10, s. 37.

Publication

[\(10\)](#) The Commission shall publish the by-law in its Bulletin as soon as practicable after the by-law becomes effective. 1997, c. 10, s. 37.

Legislation Act, 2006, Part III

[\(11\)](#) Part III (Regulations) of the *Legislation Act, 2006* does not apply to by-laws made by the Commission. 1997, c. 10, s. 37; 2006, c. 21, Sched. F, s. 136 (1).

Borrowing power

[3.3 \(1\)](#) The Commission shall not, without the approval of the Lieutenant Governor in Council, borrow money, pledge, mortgage or hypothecate any of its property, or create or give a security interest in any of its property. 1997, c. 10, s. 37.

Short term loans permitted

[\(2\)](#) Despite subsection (1), the Commission may borrow money for periods of not more than two years to meet the short term needs of the Commission, and shall do so only on such terms and conditions, whether with or without security, as the Minister may approve. 1997, c. 10, s. 37.

Purchases and loans by Province

[\(3\)](#) The Minister, on behalf of Ontario, may purchase securities of or make loans to the Commission in such amounts, at such times and on such terms and conditions as the Lieutenant Governor in Council considers expedient. 1997, c. 10, s. 37.

Same

[\(4\)](#) The Minister may pay from the Consolidated Revenue Fund the money necessary for a purchase or loan made under subsection (3). 1997, c. 10, s. 37.

Fees

[3.4 \(0.1\)](#) The Commission may collect and enforce the payment of such fees as may be prescribed by the regulations. 2009, c. 18, Sched. 26, s. 3.

Authority re income

[\(1\)](#) Despite the *Financial Administration Act*, the fees payable to the Commission under this or any other Act, the revenue from the exercise of a power conferred or the discharge of a duty imposed on the Commission under this or any other Act, and the investments held by the Commission do not form part of the Consolidated Revenue Fund and, subject to this section, shall be applied to carrying out the powers conferred and duties imposed on the Commission under this or any other Act. 1997, c. 10, s. 37.

Exceptions

[\(2\)](#) The Commission shall pay into the Consolidated Revenue Fund money received by the Commission pursuant to an order under paragraph 9 or 10 of subsection 127 (1) of this Act or paragraph 9 or 10 of subsection 60 (1) of the *Commodity Futures Act* or as a payment to settle enforcement proceedings commenced by the Commission, other than money,

(a) to reimburse the Commission for costs incurred or to be incurred by it; or

(b) that is designated under the terms of the order or settlement,

(i) for allocation to or for the benefit of third parties, or

- (ii) for use by the Commission for the purpose of educating investors or promoting or otherwise enhancing knowledge and information of persons regarding the operation of the securities and financial markets. 2002, c. 22, s. 178; 2004, c. 31, Sched. 34, s. 2 (1); 2012, c. 8, Sched. 55, s. 2.

Same

[\(2.1\)](#) The Minister may establish guidelines respecting the allocation of money received by the Commission pursuant to an order described in subsection (2) or money received by the Commission as a payment to settle enforcement proceedings commenced by the Commission. 2004, c. 31, Sched. 34, s. 2 (2).

Surplus

[\(3\)](#) When ordered to do so by the Minister, the Commission shall pay into the Consolidated Revenue Fund such of its surplus funds as are determined by the Minister. 1997, c. 10, s. 37.

Same

[\(4\)](#) In determining the amount of a payment to be made under subsection (3), the Minister shall allow such reserves for the future needs of the Commission as he or she considers appropriate, and shall ensure that the payment will not impair the Commission's ability to pay its liabilities, to meet its obligations as they become due or to fulfil its contractual commitments. 1997, c. 10, s. 37.

Powers re hearings

[3.5 \(1\)](#) The Commission may hold hearings in or outside Ontario. 1997, c. 10, s. 37.

Joint hearings

[\(2\)](#) The Commission may hold hearings in conjunction with other bodies empowered by statute to administer or regulate trading in securities, derivatives or commodities, and may consult with those bodies during the course of, or in connection with, the hearing. 1997, c. 10, s. 37; 2010, c. 26, Sched. 18, s. 3.

Powers of one commissioner

[\(3\)](#) Despite subsection 3 (11) and subject to subsection (4), any two or more members of the Commission may in writing authorize one member of the Commission to exercise any of the powers and perform any of the duties of the Commission, including the power to conduct contested hearings on the merits, and a decision of the member shall have the same force and effect as if made by the Commission. 2011, c. 9, Sched. 38, s. 1.

Eligibility to sit on hearing

[\(4\)](#) No member who exercises a power or performs a duty of the Commission under Part VI, except section 17, in respect of a matter under investigation or examination shall sit on a hearing by the Commission that deals with the matter, except with the written consent of the parties to the proceeding. 1997, c. 10, s. 37; 1999, c. 9, s. 194.

Commission staff

[3.6 \(1\)](#) The Commission may employ such persons as it considers necessary to enable it effectively to perform its duties and exercise its powers under this or any other Act. 1997, c. 10, s. 37.

Officers

[\(2\)](#) The Commission shall appoint from among its employees an Executive Director and a Secretary as officers of the Commission, and may appoint from among its employees such other officers as it considers necessary. 1997, c. 10, s. 37.

Status of members

[\(3\)](#) The members of the Commission are not its employees, and the Chair and Vice-Chairs shall not hold any other office in the Commission or be employed by it in any other capacity. 1997, c. 10, s. 37.

Conflict of interest, indemnification

[\(4\)](#) Sections 132 (conflict of interest) and 136 (indemnification) of the *Business Corporations Act* apply with necessary modifications with respect to the Commission as if the Minister were its sole shareholder. 1997, c. 10, s. 37.

[\(5\)](#) Repealed: 2006, c. 35, Sched. C, s. 121.

Public Service Pension Plan not to apply

[\(6\)](#) The Public Service Pension Plan established under the *Public Service Pension Act* does not apply to the members and employees of the Commission, except as authorized by order of the Lieutenant Governor in Council. 1997, c. 10, s. 37.

Agreement for services

[\(7\)](#) The Commission and a ministry of the Crown may enter into agreements for the provision by employees of the Crown of any service required by the Commission to carry out its duties and powers. The Commission shall pay the agreed amount for services provided to it. 1997, c. 10, s. 37.

Memorandum of understanding

[3.7 \(1\)](#) Every five years beginning with the Commission's 1998-99 fiscal year, the Commission and the Minister shall enter into a memorandum of understanding setting out,

- (a) the respective roles and responsibilities of the Minister and the Chair;
- (b) the accountability relationship between the Commission and the Minister;
- (c) the responsibility of the Commission to provide to the Minister business plans, operational budgets and plans for proposed significant changes in the operations or activities of the Commission; and
- (d) any other matter that the Minister may require. 1997, c. 10, s. 37.

Same

[\(2\)](#) The Commission shall comply with the memorandum of understanding in exercising its powers and performing its duties under this Act, but the failure to do so does not affect the validity of any action taken by the Commission or give rise to any rights or remedies by any person. 1997, c. 10, s. 37.

Publication of memorandum

[\(3\)](#) The Commission shall publish the memorandum of understanding in its Bulletin as soon as practicable after the memorandum is entered into. 1997, c. 10, s. 37.

Minister's request for information

[3.8 \(1\)](#) The Commission shall promptly give the Minister such information about its

activities, operations and financial affairs as the Minister requests. 1997, c. 10, s. 37.

Examination

(2) The Minister may designate a person to examine any financial or accounting procedures, activities or practices of the Commission. The person designated shall do so and report the results of the examination to the Minister. 1997, c. 10, s. 37.

Duty to assist, etc.

(3) The members and employees of the Commission shall give the person designated by the Minister all the assistance and co-operation necessary to enable him or her to complete the examination. 1997, c. 10, s. 37.

Fiscal year

3.9 (1) The fiscal year of the Commission begins on April 1. 1997, c. 10, s. 37.

Financial statements

(2) The Commission shall prepare annual financial statements in accordance with generally accepted accounting principles. The financial statements must present the financial position, financial performance and changes in the financial position of the Commission for its most recent fiscal year. 1997, c. 10, s. 37; 2010, c. 1, Sched. 26, s. 2.

Auditors

(3) The Commission shall appoint one or more auditors licensed under the *Public Accounting Act, 2004* to audit the financial statements of the Commission for each fiscal year. 1997, c. 10, s. 37; 2004, c. 8, s. 46.

Auditor General

(4) The Auditor General may also audit the financial statements of the Commission. 1997, c. 10, s. 37; 2004, c. 17, s. 32.

Annual report

3.10 (1) Within six months after the end of each fiscal year, the Commission shall deliver to the Minister an annual report, including the Commission's audited financial statements, on the affairs of the Commission for that fiscal year. 1997, c. 10, s. 37.

Report to be laid before Assembly

(2) Within one month after receiving the Commission's annual report, the Minister shall lay the report before the Assembly by delivering the report to the Clerk. 1997, c. 10, s. 37.

Review by standing or select committee

(3) After the annual report is laid before the Assembly, a standing or select committee of the Assembly shall be empowered to review the report and to report the committee's opinions and recommendations to the Assembly. 2005, c. 31, Sched. 20, s. 1.

Collection of personal information

3.11 The Commission may collect personal information within the meaning of section 38 of the *Freedom of Information and Protection of Privacy Act* for the purpose of carrying out its duties and exercising its powers under this or any other Act. 1997, c. 10, s. 37.

Non-application of certain Acts

3.12 The *Corporations Act* and the *Corporations Information Act* do not apply with respect to the Commission. 1997, c. 10, s. 37.

Note: On the day subsection 4 (1) of the *Not-for-Profit Corporations Act, 2010* comes into force, section 3.12 is amended by striking out “*Corporations Act*” and substituting “*Not-for-Profit Corporations Act, 2010*”. See: 2012, c. 8, Sched. 55, ss. 3, 4 (2).

PART II (s. 4) Repealed: 2009, c. 34, Sched. S, s. 2.

PART III APPOINTMENT OF EXPERTS

Appointment of experts

5. (1) The Commission may appoint one or more experts to assist the Commission in such manner as it may consider expedient. R.S.O. 1990, c. S.5, s. 5 (1).

Submissions to experts

(2) The Commission may submit any agreement, prospectus, financial statement, report or other document to one or more experts appointed under subsection (1) for examination, and the Commission has the like power to summon and enforce the attendance of witnesses before the expert and to compel them to produce documents, records and things as is vested in the Commission, and subsection 13 (1) applies with necessary modifications. R.S.O. 1990, c. S.5, s. 5 (2); 1994, c. 11, s. 353.

Payment of experts

(3) An expert appointed under subsection (1) shall be paid such amounts for services and expenses as the Lieutenant Governor in Council may determine. R.S.O. 1990, c. S.5, s. 5 (3).

PART IV EXECUTIVE DIRECTOR AND SECRETARY

Executive Director

6. (1) There shall be an Executive Director of the Commission. 1994, c. 11, s. 354.

Chief administrative officer

(2) Subject to the direction of the Commission, the Executive Director is the chief administrative officer of the Commission. 1994, c. 11, s. 354.

Assignment of powers and duties

(3) A quorum of the Commission may assign any of its powers and duties under this Act, except powers and duties under section 8 and Part VI, to the Executive Director or to another Director. 1994, c. 11, s. 354.

Same

(4) The Executive Director may assign any of his or her powers and duties to another Director, other than powers and duties assigned to the Executive Director by the Commission. 1994, c. 11, s. 354.

Revocation of assignment

(5) The Commission may revoke, in whole or in part, an assignment of powers and duties made under subsection (3) and the Executive Director may revoke, in whole or in part, an assignment of powers and duties made under subsection (4). 1994, c. 11, s. 354.

Terms and conditions

[\(6\)](#) An assignment under this section may be subject to such terms and conditions as are set out in the assignment. 1994, c. 11, s. 354.

Absence or incapacity of Executive Director

[\(7\)](#) If the Executive Director is absent or incapable of acting, the Commission may designate another individual to act as Executive Director. 1997, c. 10, s. 38.

Secretary

[7. \(1\)](#) There shall be a Secretary to the Commission. 1994, c. 11, s. 354.

Powers and duties

[\(2\)](#) The Secretary,

- (a) may accept service of all notices and other documents on behalf of the Commission;
- (b) when authorized by the Commission, may sign a decision made by the Commission as a result of a hearing;
- (c) may certify under his or her hand a decision made by the Commission or a document, record or thing used in connection with a hearing by the Commission if certification is required for a purpose other than that stated in subsection 9 (3);
- (d) may exercise such other powers as are vested in the Secretary by this Act or the regulations; and
- (e) shall perform such duties as are imposed on the Secretary by this Act or the regulations or by the Commission. 1994, c. 11, s. 354.

Acting Secretary

[\(3\)](#) If the Secretary is absent for any reason, the Commission may designate another individual to act in the capacity of Secretary and the individual designated has all the powers and duties of the Secretary. 1994, c. 11, s. 354.

Certification by Secretary

[\(4\)](#) A certificate purporting to be signed by the Secretary is, without proof of the office or signature, admissible in evidence, so far as it is relevant, for all purposes in any action, prosecution or other proceeding. 1994, c. 11, s. 354.

PART V

ADMINISTRATIVE PROCEEDINGS, REVIEWS AND APPEALS

Review of Director's decision

[8. \(1\)](#) Within 30 days after a decision of the Director, the Commission may notify the Director and any person or company directly affected of its intention to convene a hearing to review the decision. 1999, c. 9, s. 195.

Same

[\(2\)](#) Any person or company directly affected by a decision of the Director may, by notice in writing sent by registered mail to the Commission within thirty days after the mailing of the notice of the decision, request and be entitled to a hearing and review thereof by the Commission. R.S.O. 1990, c. S.5, s. 8 (2).

Power on review

(3) Upon a hearing and review, the Commission may by order confirm the decision under review or make such other decision as the Commission considers proper. R.S.O. 1990, c. S.5, s. 8 (3).

Stay

(4) Despite the fact that a person or company requests a hearing and review under subsection (2), the decision under review takes effect immediately, but the Commission may grant a stay until disposition of the hearing and review. 1994, c. 11, s. 355.

Appeal of Commission's decision

9. (1) A person or company directly affected by a final decision of the Commission, other than a decision under section 74, may appeal to the Divisional Court within thirty days after the later of the making of the final decision or the issuing of the reasons for the final decision. 1994, c. 11, s. 356 (1).

Stay

(2) Despite the fact that an appeal is taken under this section, the decision appealed from takes effect immediately, but the Commission or the Divisional Court may grant a stay until disposition of the appeal. R.S.O. 1990, c. S.5, s. 9 (2).

Certification of documents

- (3) The Secretary shall certify to the Divisional Court,
- (a) the decision that has been reviewed by the Commission;
 - (b) the decision of the Commission, together with any statement of reasons therefor;
 - (c) the record of the proceedings before the Commission; and
 - (d) all written submissions to the Commission or other material that is relevant to the appeal. R.S.O. 1990, c. S.5, s. 9 (3); 1994, c. 11, s. 356 (2).

Respondent on appeal

(4) The Commission is the respondent to an appeal under this section. 1994, c. 11, s. 356 (3).

Minister

(4.1) The Minister is entitled to be heard by counsel or otherwise on the argument of an appeal under this section, whether or not the Minister is named as a party to the appeal. 1994, c. 11, s. 356 (3).

Powers of court on appeal

(5) Where an appeal is taken under this section, the court may by its order direct the Commission to make such decision or to do such other act as the Commission is authorized and empowered to do under this Act or the regulations and as the court considers proper, having regard to the material and submissions before it and to this Act and the regulations, and the Commission shall make such decision or do such act accordingly. R.S.O. 1990, c. S.5, s. 9 (5).

Further decisions

(6) Despite an order of the court on an appeal, the Commission may make any further decision upon new material or where there is a significant change in the circumstances, and every such decision is subject to this section. R.S.O. 1990, c. S.5, s. 9 (6).

10. Repealed: 1994, c. 11, s. 357.

PART VI INVESTIGATIONS AND EXAMINATIONS

Investigation order

11. (1) The Commission may, by order, appoint one or more persons to make such investigation with respect to a matter as it considers expedient,

- (a) for the due administration of Ontario securities law or the regulation of the capital markets in Ontario; or
- (b) to assist in the due administration of the securities or derivatives laws or the regulation of the capital markets in another jurisdiction. 1994, c. 11, s. 358; 2010, c. 26, Sched. 18, s. 4 (1).

Contents of order

(2) An order under this section shall describe the matter to be investigated. 1994, c. 11, s. 358.

Scope of investigation

(3) For the purposes of an investigation under this section, a person appointed to make the investigation may investigate and inquire into,

- (a) the affairs of the person or company in respect of which the investigation is being made, including any trades, communications, negotiations, transactions, investigations, loans, borrowings or payments to, by, on behalf of, or in relation to or connected with the person or company and any property, assets or things owned, acquired or alienated in whole or in part by the person or company or by any other person or company acting on behalf of or as agent for the person or company; and
- (b) the assets at any time held, the liabilities, debts, undertakings and obligations at any time existing, the financial or other conditions at any time prevailing in or in relation to or in connection with the person or company, and any relationship that may at any time exist or have existed between the person or company and any other person or company by reason of investments, commissions promised, secured or paid, interests held or acquired, the loaning or borrowing of money, stock or other property, the transfer, negotiation or holding of stock, interlocking directorates, common control, undue influence or control or any other relationship. 1994, c. 11, s. 358.

Right to examine

(4) For the purposes of an investigation under this section, a person appointed to make the investigation may examine any documents or other things, whether they are in the possession or control of the person or company in respect of which the investigation is ordered or of any other person or company. 1994, c. 11, s. 358.

Minister may order investigation

(5) Despite subsection (1), the Minister may, by order, appoint one or more persons to make such investigation as the Minister considers expedient,

- (a) for the due administration of Ontario securities law or the regulation of the capital markets in Ontario; or

- (b) to assist in the due administration of the securities or derivatives laws or the regulation of the capital markets in another jurisdiction. 1994, c. 11, s. 358; 2010, c. 26, Sched. 18, s. 4 (2).

Same

[\(6\)](#) A person appointed under subsection (5) has, for the purpose of the investigation, the same authority, powers, rights and privileges as a person appointed under subsection (1). 1994, c. 11, s. 358.

Financial examination order

[12. \(1\)](#) The Commission may, by order, appoint one or more persons to make such examination of the financial affairs of a market participant as it considers expedient,

- (a) for the due administration of Ontario securities law or the regulation of the capital markets in Ontario; or
- (b) to assist in the due administration of the securities or derivatives laws or the regulation of the capital markets in another jurisdiction. 1994, c. 11, s. 358; 2010, c. 26, Sched. 18, s. 5.

Contents of order

[\(2\)](#) An order under subsection (1) shall describe the matter to be examined. 1994, c. 11, s. 358.

Right to examine

[\(3\)](#) For the purposes of an examination under this section, a person appointed to conduct the examination may examine any documents or other things, whether they are in the possession or control of the market participant or any other person or company. 1994, c. 11, s. 358.

Power of investigator or examiner

[13. \(1\)](#) A person making an investigation or examination under section 11 or 12 has the same power to summon and enforce the attendance of any person and to compel him or her to testify on oath or otherwise, and to summon and compel any person or company to produce documents and other things, as is vested in the Superior Court of Justice for the trial of civil actions, and the refusal of a person to attend or to answer questions or of a person or company to produce such documents or other things as are in his, her or its custody or possession makes the person or company liable to be committed for contempt by the Superior Court of Justice as if in breach of an order of that court. 1994, c. 11, s. 358; 2006, c. 19, Sched. C, s. 1 (1).

Rights of witness

[\(2\)](#) A person or company giving evidence under subsection (1) may be represented by counsel and may claim any privilege to which the person or company is entitled. 1994, c. 11, s. 358.

Inspection

[\(3\)](#) A person making an investigation or examination under section 11 or 12 may, on production of the order appointing him or her, enter the business premises of any person or company named in the order during business hours and inspect any documents or other things that are used in the business of that person or company and that relate to the matters specified in the order, except those maintained by a lawyer in respect of his or her client's affairs. 1994, c. 11, s. 358.

Authorization to search

(4) A person making an investigation or examination under section 11 or 12 may apply to a judge of the Ontario Court of Justice in the absence of the public and without notice for an order authorizing the person or persons named in the order to enter and search any building, receptacle or place specified and to seize anything described in the authorization that is found in the building, receptacle or place and to bring it before the judge granting the authorization or another judge to be dealt with by him or her according to law. 1994, c. 11, s. 358; 2006, c. 19, Sched. C, s. 1 (2).

Grounds

(5) No authorization shall be granted under subsection (4) unless the judge to whom the application is made is satisfied on information under oath that there are reasonable and probable grounds to believe that there may be in the building, receptacle or place to be searched anything that may reasonably relate to the order made under section 11 or 12. 1994, c. 11, s. 358.

Power to enter, search and seize

(6) A person named in an order under subsection (4) may, on production of the order, enter any building, receptacle or place specified in the order between 6 a.m. and 9 p.m., search for and seize anything specified in the order, and use as much force as is reasonably necessary for that purpose. 1994, c. 11, s. 358.

Expiration

(7) Every order under subsection (4) shall name the date that it expires, and the date shall be not later than fifteen days after the order is granted. 1994, c. 11, s. 358.

Application

(8) Sections 159 and 160 of the *Provincial Offences Act* apply to searches and seizures under this section with such modifications as the circumstances require. 1994, c. 11, s. 358.

Private residences

(9) For the purpose of subsections (4), (5) and (6),

“building, receptacle or place” does not include a private residence. 1994, c. 11, s. 358.

Copying

14. (1) Anything seized or produced under this Part shall be made available for inspection and copying by the person or company from which it was obtained, if practicable. 1994, c. 11, s. 358.

Return

(2) Anything seized or produced under this Part shall be returned to the person or company from which it was obtained when,

(a) retention is no longer necessary for the purposes of an investigation, examination, proceeding or prosecution; or

(b) the Commission so orders. 1994, c. 11, s. 358.

Report of investigation or examination

15. (1) A person appointed under subsection 11 (1) or 12 (1) shall, at the request of the Chair of the Commission or of a member of the Commission involved in making the appointment, provide a report to the Chair or member, as the case may be, or any testimony given and any documents or other things obtained under section 13. 1994, c. 11, s. 358.

Same

(2) A person appointed under subsection 11 (5) shall, at the request of the Chair of the Commission, provide a report to the Chair or any testimony given and any documents or other things obtained under section 13. 1994, c. 11, s. 358.

Report privileged

(3) A report provided under this section is privileged. 1994, c. 11, s. 358.

Non-disclosure

16. (1) Except in accordance with section 17, no person or company shall disclose at any time, except to his, her or its counsel,

- (a) the nature or content of an order under section 11 or 12; or
- (b) the name of any person examined or sought to be examined under section 13, any testimony given under section 13, any information obtained under section 13, the nature or content of any questions asked under section 13, the nature or content of any demands for the production of any document or other thing under section 13, or the fact that any document or other thing was produced under section 13. 1994, c. 11, s. 358.

Confidentiality

(2) If the Commission issues an order under section 11 or 12, all reports provided under section 15, all testimony given under section 13 and all documents and other things obtained under section 13 relating to the investigation or examination that is the subject of the order are for the exclusive use of the Commission or of such other regulator as the Commission may specify in the order, and shall not be disclosed or produced to any other person or company or in any other proceeding except as permitted under section 17. 2002, c. 18, Sched. H, s. 7.

Disclosure by Commission

17. (1) If the Commission considers that it would be in the public interest, it may make an order authorizing the disclosure to any person or company of,

- (a) the nature or content of an order under section 11 or 12;
- (b) the name of any person examined or sought to be examined under section 13, any testimony given under section 13, any information obtained under section 13, the nature or content of any questions asked under section 13, the nature or content of any demands for the production of any document or other thing under section 13, or the fact that any document or other thing was produced under section 13; or
- (c) all or part of a report provided under section 15. 1994, c. 11, s. 358.

Opportunity to object

(2) No order shall be made under subsection (1) unless the Commission has, where practicable, given reasonable notice and an opportunity to be heard to,

- (a) persons and companies named by the Commission; and
- (b) in the case of disclosure of testimony given or information obtained under section 13, the person or company that gave the testimony or from which the information was obtained. 1994, c. 11, s. 358.

Disclosure to police

(3) Without the written consent of the person from whom the testimony was obtained, no order shall be made under subsection (1) authorizing the disclosure of testimony given under subsection 13 (1) to,

- (a) a municipal, provincial, federal or other police force or to a member of a police force; or
- (b) a person responsible for the enforcement of the criminal law of Canada or of any other country or jurisdiction. 1994, c. 11, s. 358.

Terms and conditions

(4) An order under subsection (1) may be subject to terms and conditions imposed by the Commission. 1994, c. 11, s. 358.

Disclosure by court

(5) A court having jurisdiction over a prosecution under the *Provincial Offences Act* initiated by the Commission may compel production to the court of any testimony given or any document or other thing obtained under section 13, and after inspecting the testimony, document or thing and providing all interested parties with an opportunity to be heard, the court may order the release of the testimony, document or thing to the defendant if the court determines that it is relevant to the prosecution, is not protected by privilege and is necessary to enable the defendant to make full answer and defence, but the making of an order under this subsection does not determine whether the testimony, document or thing is admissible in the prosecution. 1994, c. 11, s. 358.

Disclosure in investigation or proceeding

(6) A person appointed to make an investigation or examination under this Act may disclose or produce anything mentioned in subsection (1), but may do so only in connection with,

- (a) a proceeding commenced or proposed to be commenced by the Commission under this Act; or
- (b) an examination of a witness, including an examination of a witness under section 13. 2001, c. 23, s. 210.

Disclosure to police

(7) Without the written consent of the person from whom the testimony was obtained, no disclosure shall be made under subsection (6) of testimony given under subsection 13 (1) to,

- (a) a municipal, provincial, federal or other police force or to a member of a police force; or
- (b) a person responsible for the enforcement of the criminal law of Canada or of any other country or jurisdiction. 1999, c. 9, s. 196.

Prohibition on use of compelled testimony

18. Testimony given under section 13 shall not be admitted in evidence against the person from whom the testimony was obtained in a prosecution for an offence under section 122 or in any other prosecution governed by the *Provincial Offences Act*. 1994, c. 11, s. 358.

PART VII RECORD-KEEPING AND COMPLIANCE REVIEWS

Record-keeping

19. (1) Every market participant shall keep such books, records and other documents as are necessary for the proper recording of its business transactions and financial affairs and the

transactions that it executes on behalf of others and shall keep such other books, records and documents as may otherwise be required under Ontario securities law. 1994, c. 11, s. 358.

Record of transaction

(2) Without limiting the generality of subsection (1), every recognized exchange shall keep a record of the time at which each transaction on the recognized exchange took place and shall supply to any client of a member of the recognized exchange, on production of a written confirmation of a transaction with the member, particulars of the time at which the transaction took place and verification or otherwise of the matters set forth in the written confirmation. 2010, c. 26, Sched. 18, s. 6.

Provision of information to Commission

(3) Every market participant shall deliver to the Commission at such time or times as the Commission or any member, employee or agent of the Commission may require,

- (a) any of the books, records and documents that are required to be kept by the market participant under Ontario securities law; and
- (b) except where prohibited by law, any filings, reports or other communications made to any other regulatory agency whether within or outside of Ontario. 1999, c. 9, s. 197.

Compliance reviews

20. (1) The Commission may designate in writing one or more persons to review the books, records and documents that are required to be kept by a market participant under section 19 for the purpose of determining whether Ontario securities law is being complied with. 1994, c. 11, s. 358.

Note: On a day to be named by proclamation of the Lieutenant Governor, section 20 is amended by adding the following subsection:

Compliance reviews, derivatives

(1.1) The Commission may designate in writing one or more persons for the purpose of reviewing the books, records and documents that are required to be kept by a person or company under the regulations with respect to derivatives. 2010, c. 26, Sched. 18, s. 7 (1).

See: 2010, c. 26, Sched. 18, ss. 7 (1), 47 (2).

Powers of compliance reviewer

(2) A person conducting a compliance review under this section may, on production of his or her designation,

- (a) enter the business premises of any market participant during business hours; and
- (b) inquire into and examine the books, records and documents of the market participant that are required to be kept under section 19, and make copies of the books, records and documents. 1994, c. 11, s. 358.

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (2) is repealed and the following substituted:

Powers of compliance reviewer

(2) A person conducting a compliance review may, on production of his or her designation, do the following:

1. In respect of a compliance review under subsection (1),
 - i. enter the business premises of any market participant during business hours, and
 - ii. inquire into and examine the books, records and documents of the market participant that are required to be kept under section 19, and make copies of the books, records and documents.
2. In respect of a compliance review under subsection (1.1),
 - i. enter the business premises of any person or company during business hours, and
 - ii. inquire into and examine the books, records and documents of the person or company that are required to be kept under the regulations with respect to derivatives, and make copies of the books, records and documents. 2010, c. 26, Sched. 18, s. 7 (2).

See: 2010, c. 26, Sched. 18, ss. 7 (2), 47 (2).

Fees

[\(3\)](#) A market participant in respect of which a compliance review is conducted under this section shall pay the Commission such fees as may be prescribed by the regulations. 1994, c. 11, s. 358.

Continuous disclosure reviews

[20.1 \(1\)](#) The Commission or any member, employee or agent of the Commission may conduct a review of the disclosures that have been made or that ought to have been made by a reporting issuer or mutual fund in Ontario, on a basis to be determined at the discretion of the Commission or the Director. 2002, c. 22, s. 179.

Information and documents

[\(2\)](#) A reporting issuer or mutual fund in Ontario that is subject to a review under this section shall, at such time or times as the Commission or Director may require, deliver to the Commission or Director any information and documents relevant to the disclosures that have been made or that ought to have been made by the reporting issuer or mutual fund. 2002, c. 22, s. 179.

Freedom of Information and Protection of Privacy Act

[\(3\)](#) Despite the *Freedom of Information and Protection of Privacy Act*, information and documents obtained pursuant to a review under this section are exempt from disclosure under that Act if the Commission determines that the information and documents should be maintained in confidence. 2002, c. 22, s. 179.

Prohibition on certain representations

[\(4\)](#) A reporting issuer or mutual fund in Ontario, or any person or company acting on behalf of a reporting issuer or mutual fund in Ontario, shall not make any representation, written or oral, that the Commission has in any way passed upon the merits of the disclosure record of the reporting issuer or mutual fund. 2002, c. 22, s. 179.

PART VIII SELF-REGULATION

Exchanges

[21. \(1\)](#) No person or company shall carry on business as an exchange in Ontario unless

recognized by the Commission under this section. 2010, c. 26, Sched. 18, s. 8 (1).

Exception, commodity futures exchange

[\(1.1\)](#) Subsection (1) does not apply to a person or company with respect to carrying on business as a commodity futures exchange if the person or company is registered to do so under the *Commodity Futures Act*. 2010, c. 26, Sched. 18, s. 8 (2).

Recognition

[\(2\)](#) The Commission may, on the application of a person or company proposing to carry on business as an exchange in Ontario, recognize the person or company if the Commission is satisfied that to do so would be in the public interest. 1994, c. 11, s. 358; 2010, c. 26, Sched. 18, s. 8 (3).

Same

[\(3\)](#) A recognition under this section shall be made in writing and shall be subject to such terms and conditions as the Commission may impose. 1994, c. 11, s. 358.

Standards and conduct

[\(4\)](#) A recognized exchange shall regulate the operations and the standards of practice and business conduct of its members and their representatives in accordance with its by-laws, rules, regulations, policies, procedures, interpretations and practices. 1994, c. 11, s. 358; 2010, c. 26, Sched. 18, s. 8 (4).

Commission's powers

[\(5\)](#) The Commission may, if it considers it in the public interest, make any decision with respect to,

- (a) the manner in which a recognized exchange carries on business;
- (b) the trading of securities or derivatives on or through the facilities of a recognized exchange;
- (c) any security or derivative listed or posted for trading on a recognized exchange;
- (d) issuers, whose securities are listed or posted for trading on a recognized exchange, to ensure that they comply with Ontario securities law; or
- (e) any by-law, rule, regulation, policy, procedure, interpretation or practice of a recognized exchange. 2010, c. 26, Sched. 18, s. 8 (5).

Alternative trading systems

[21.0.1](#) The Commission may, if it considers it in the public interest, make any decision with respect to,

- (a) the manner in which an alternative trading system carries on business in Ontario;
- (b) the trading of securities or derivatives on or through the facilities of the alternative trading system; or
- (c) any by-law, rule, regulation, policy, procedure, interpretation or practice of the alternative trading system. 2010, c. 26, Sched. 18, s. 9.

Self-regulatory organizations

[21.1 \(1\)](#) The Commission may, on the application of a self-regulatory organization,

recognize the self-regulatory organization if the Commission is satisfied that to do so would be in the public interest. 1994, c. 11, s. 358.

Same

(2) A recognition under this section shall be made in writing and shall be subject to such terms and conditions as the Commission may impose. 1994, c. 11, s. 358.

Standards and conduct

(3) A recognized self-regulatory organization shall regulate the operations and the standards of practice and business conduct of its members and their representatives in accordance with its by-laws, rules, regulations, policies, procedures, interpretations and practices. 1994, c. 11, s. 358.

Commission's powers

(4) The Commission may, if it is satisfied that to do so would be in the public interest, make any decision with respect to any by-law, rule, regulation, policy, procedure, interpretation or practice of a recognized self-regulatory organization. 1994, c. 11, s. 358.

Clearing agencies

Prohibition

21.2 (0.1) No person or company shall carry on business in Ontario as a clearing agency unless the person or company is recognized by the Commission under this section as a clearing agency. 2005, c. 31, Sched. 20, s. 2 (1).

Clearing agencies

(1) The Commission may, on the application of a clearing agency, recognize the clearing agency if the Commission is satisfied that to do so would be in the public interest. 1994, c. 11, s. 358.

Same

(2) A recognition under this section shall be made in writing and shall be subject to such terms and conditions as the Commission may impose. 1994, c. 11, s. 358.

Commission's powers

(3) The Commission may make decisions with respect to any of the following matters if the Commission is satisfied that it is in the public interest to do so:

1. Any by-law, rule, regulation, policy, procedure, interpretation or practice of a recognized clearing agency.
2. The manner in which a recognized clearing agency carries on its business. 2005, c. 31, Sched. 20, s. 2 (2).

Quotation and trade reporting system

21.2.1 (1) The Commission may, on the application of a quotation and trade reporting system, recognize the quotation and trade reporting system if the Commission is satisfied that to do so is in the public interest. 1997, c. 19, s. 23 (2).

Same

(2) A recognition under this section shall be made in writing and is subject to such terms and conditions as the Commission may impose. 1997, c. 19, s. 23 (2).

Commission's powers

(3) The Commission may, if it is satisfied that to do so is in the public interest, make any

decision with respect to any by-law, rule, regulation, policy, procedure, interpretation or practice of a recognized quotation and trade reporting system. 1997, c. 19, s. 23 (2).

Trade repository designation

21.2.2 (1) The Commission may, on the application of a person or company proposing to carry on business as a trade repository in Ontario, designate the person or company if the Commission considers it in the public interest. 2010, c. 26, Sched. 18, s. 10.

Further requirements

(2) A designation under this section must be made in writing and is subject to such terms and conditions as the Commission may impose. 2010, c. 26, Sched. 18, s. 10.

Commission's powers

(3) The Commission may, if it considers it in the public interest, make any decision with respect to,

- (a) the manner in which a designated trade repository carries on business; or
- (b) any by-law, rule, regulation, policy, procedure, interpretation or practice of a designated trade repository. 2010, c. 26, Sched. 18, s. 10.

Council, committee or ancillary body

21.3 (1) A recognized exchange, a recognized quotation and trade reporting system or a recognized self-regulatory organization may, with the prior approval of the Commission and on such terms and conditions as the Commission determines to be necessary or appropriate in the public interest, establish a council, committee or ancillary body and assign to it regulatory or self-regulatory powers or responsibilities or both. 1997, c. 19, s. 23 (3); 2010, c. 26, Sched. 18, s. 11 (1).

Inclusion

(2) A council, committee or ancillary body that exercises the powers or assumes the responsibilities of a recognized exchange, recognized quotation and trade reporting system or recognized self-regulatory organization is also included in,

- (a) the recognition of the recognized exchange, recognized quotation and trade reporting system or recognized self-regulatory organization;
- (b) any suspension, restriction or termination of the recognition of the recognized exchange, recognized quotation and trade reporting system or recognized self-regulatory organization; and
- (c) any imposition of terms or conditions on the recognition of the recognized exchange, recognized quotation and trade reporting system or recognized self-regulatory organization. 1997, c. 19, s. 23 (3); 2010, c. 26, Sched. 18, s. 11 (2, 3).

Same

(3) The provisions of Ontario securities law that apply to recognized exchanges, recognized quotation and trade reporting systems and recognized self-regulatory organizations also apply with necessary modifications to the council, committee or ancillary body. 1997, c. 19, s. 23 (3); 2010, c. 26, Sched. 18, s. 11 (4).

Voluntary surrender

21.4 On application by a recognized exchange, recognized self-regulatory organization,

recognized quotation and trade reporting system, recognized clearing agency or designated trade repository, the Commission may accept the voluntary surrender of the recognition or designation, and may impose terms and conditions applicable to the acceptance, if the Commission is satisfied that the surrender of the recognition or designation is not prejudicial to the public interest. 2010, c. 26, Sched. 18, s. 12.

Assignment of powers and duties

21.5 (1) The Commission may, on such terms and conditions as it may impose, assign to a recognized exchange or recognized self-regulatory organization any of the powers and duties of the Commission under Part XI or the regulations related to that Part. 1994, c. 11, s. 358; 2010, c. 26, Sched. 18, s. 13.

Same

(2) The Executive Director may, with the approval of the Commission, assign to a recognized exchange or recognized self-regulatory organization any of the powers and duties of the Director under Part XI or the regulations related to that Part. 1994, c. 11, s. 358; 2010, c. 26, Sched. 18, s. 13.

Revocation of assignment

(3) The Commission or, with the approval of the Commission, the Executive Director may at any time revoke, in whole or in part, an assignment of powers and duties made under this section. 1994, c. 11, s. 358.

Contravention of Ontario securities law

21.6 No by-law, rule, regulation, policy, procedure, interpretation or practice of a recognized exchange, recognized self-regulatory organization, recognized quotation and trade reporting system, recognized clearing agency or designated trade repository shall contravene Ontario securities law, but a recognized exchange, recognized self-regulatory organization, recognized quotation and trade reporting system, recognized clearing agency or designated trade repository may impose additional requirements within its jurisdiction. 2010, c. 26, Sched. 18, s. 14.

Review of decisions

21.7 (1) The Executive Director or a person or company directly affected by, or by the administration of, a direction, decision, order or ruling made under a by-law, rule, regulation, policy, procedure, interpretation or practice of a recognized exchange, recognized self-regulatory organization, recognized quotation and trade reporting system, recognized clearing agency or designated trade repository may apply to the Commission for a hearing and review of the direction, decision, order or ruling. 2010, c. 26, Sched. 18, s. 15.

Procedure

(2) Section 8 applies to the hearing and review of the direction, decision, order or ruling in the same manner as it applies to a hearing and review of a decision of the Director. 1994, c. 11, s. 358.

Auditors

Exchanges

21.8 (1) Every recognized exchange shall appoint an auditor for the exchange. 2010, c. 26, Sched. 18, s. 16.

Recognized self-regulatory organization auditor

[\(2\)](#) At the request of the Commission, a recognized self-regulatory organization shall appoint an auditor for the self-regulatory organization. 1994, c. 11, s. 358.

Recognized clearing agency auditor

[\(3\)](#) At the request of the Commission, a recognized clearing agency shall appoint an auditor for the clearing agency. 2005, c. 31, Sched. 20, s. 3.

Auditor of member

[21.9 \(1\)](#) Every recognized exchange and every recognized self-regulatory organization shall cause each of its members to appoint an auditor. 1994, c. 11, s. 358; 2010, c. 26, Sched. 18, s. 17 (1).

Selection of auditor

[\(2\)](#) The auditor of a member shall be chosen from the panel of auditing firms selected under subsection (3). 1994, c. 11, s. 358.

Panel of auditors

[\(3\)](#) Every recognized exchange and recognized self-regulatory organization shall select a panel of auditing firms for their members. 1994, c. 11, s. 358; 2010, c. 26, Sched. 18, s. 17 (1).

Auditor

[\(4\)](#) No person shall be appointed as an auditor under subsection (1) unless the person has practised as an auditor in the securities industry in Canada for five years or more. 1994, c. 11, s. 358.

Examination and report

[\(5\)](#) The auditor of a member shall make an examination, in accordance with generally accepted auditing standards, of the annual financial statements and regulatory filings of the member as called for by the by-laws, rules, regulations, policies, procedures, interpretations or practices applicable to the member, and shall report on the financial affairs of the member to the recognized exchange or recognized self-regulatory organization, as the case may be, in accordance with professional reporting standards. 1994, c. 11, s. 358; 2010, c. 26, Sched. 18, s. 17 (2).

Auditor of registrant

[21.10 \(1\)](#) Every registrant that is not subject to section 21.9 shall appoint an auditor who satisfies such requirements as may be established by the Commission. 1994, c. 11, s. 358.

Examination and report

[\(2\)](#) The auditor of a registrant that is not subject to section 21.9 shall make an examination of the annual financial statements and other regulatory filings of the registrant, in accordance with generally accepted auditing standards, and shall prepare a report on the financial affairs of the registrant in accordance with professional reporting standards. 1994, c. 11, s. 358.

Filing with Commission

[\(3\)](#) The registrant shall file the report with the Commission together with its annual financial statements and other regulatory filings. 1994, c. 11, s. 358.

Delivery of financial statements

[\(4\)](#) A registrant that is not subject to section 21.9 shall deliver to the Commission annual audited financial statements, prepared in accordance with generally accepted accounting principles, and other regulatory filings as prescribed by the regulations, within ninety days after the end of its

financial year or as otherwise prescribed by the regulations. 1994, c. 11, s. 358.

Certification of financial statements

(5) The annual financial statements and regulatory filings delivered to the Commission shall be certified by the registrant or an officer or partner of the registrant. 1994, c. 11, s. 358.

Additional information

(6) The registrant shall deliver to the Commission such other information as the Commission may require in such form as it may require. 1994, c. 11, s. 358.

Restriction on shareholdings in The Toronto Stock Exchange Inc.

21.11 (1) Without the prior approval of the Commission, no person or company and no combination of persons or companies acting jointly or in concert shall beneficially own or exercise control or direction over more than 5 per cent, or such other percentage as may be prescribed under subsection (5), of any class or series of voting shares of The Toronto Stock Exchange Inc. 1999, c. 9, s. 198.

Sale of restricted shares

(2) The Toronto Stock Exchange Inc. may sell any shares held contrary to the restriction in subsection (1) in accordance with section 45 of the *Business Corporations Act*, with necessary modifications. 1999, c. 9, s. 198.

Transition

(3) Despite subsection (1), if a person or company beneficially owns or exercises control or direction over more than 5 per cent, or such other percentage as may be prescribed under subsection (5), of any class or series of voting shares of The Toronto Stock Exchange Inc. as a result of the issue of shares by The Toronto Stock Exchange Inc. in connection with the continuance of The Toronto Stock Exchange under the *Business Corporations Act*, the person or company may continue to beneficially own or exercise control or direction over the shares, but shall not vote or cause to permit to be voted any shares of any class or series of voting shares in excess of the 5 per cent level or the prescribed level, as the case may be, without the prior approval of the Commission. 1999, c. 9, s. 198.

Approval

(4) The Commission may, by order, give its approval to a person, company or transaction, for the purposes of subsection (1) or (3), and may impose such terms and conditions on the approval as the Commission considers appropriate. 1999, c. 9, s. 198.

Regulations

(5) The Commission may, by regulation, prescribe a percentage for the purposes of subsections (1) and (3) and may prescribe different percentages for different classes of persons or companies. 1999, c. 9, s. 198.

Non-application of s. 42 *Business Corporations Act*

(6) Section 42 of the *Business Corporations Act* does not apply to The Toronto Stock Exchange Inc. 1999, c. 9, s. 198.

PART IX CREDIT RATING ORGANIZATIONS

Application for designation

22. (1) A credit rating organization may apply to the Commission to be designated by the Commission if the credit rating organization wants its credit ratings to satisfy,

- (a) a requirement in Ontario securities law that a credit rating be given by a credit rating organization designated by the Commission; or
- (b) a condition for an exemption under Ontario securities law. 2010, c. 26, Sched. 18, s. 18.

Designation

(2) The Commission may designate a credit rating organization, subject to any terms and conditions the Commission considers advisable, if,

- (a) an application for designation is made by the credit rating organization or the Director; and
- (b) the Commission considers it in the public interest to designate the credit rating organization. 2010, c. 26, Sched. 18, s. 18.

Cancellation of designation

(3) The Commission may, if it considers it in the public interest, cancel the designation of a credit rating organization or impose or change the terms and conditions of the designation. 2010, c. 26, Sched. 18, s. 18.

Right to hearing

(4) The Commission shall not, without giving the credit rating organization an opportunity to be heard, refuse to designate a credit rating organization, cancel its designation or impose or change the terms and conditions to which the designation is subject. 2010, c. 26, Sched. 18, s. 18.

Same

(5) If the Director applies to the Commission for the designation of a credit rating organization, the Commission shall not designate the credit rating organization without giving the credit rating organization an opportunity to be heard. 2010, c. 26, Sched. 18, s. 18.

Duty to comply with prescribed requirements

23. A designated credit rating organization shall comply with such requirements as may be prescribed by the regulations, including requirements,

- (a) relating to the establishment, publication and enforcement by the credit rating organization of a code of conduct applicable to its directors, officers and employees and the minimum requirements to be included in the code of conduct;
- (b) prohibiting conflicts of interest between the credit rating organization and a person or company whose securities are being rated and establishing procedures to be followed if conflicts of interest arise or to avoid conflicts of interest. 2010, c. 26, Sched. 18, s. 18.

Commission not involved in credit rating

24. (1) Nothing in this Part shall be construed as authorizing the Commission to direct or regulate the content of credit ratings or methodologies used to determine credit ratings. 2010, c. 26, Sched. 18, s. 18.

Same

(2) No credit rating organization and no person or company acting on its behalf shall make any written or oral representation that the Commission has in any way passed upon the merits of a

credit rating or the methodologies used to determine the credit rating. 2010, c. 26, Sched. 18, s. 18.

PART X Repealed: 1994, c. 11, s. 358.

PART XI REGISTRATION

Registration Dealers

25. (1) Unless a person or company is exempt under Ontario securities law from the requirement to comply with this subsection, the person or company shall not engage in or hold himself, herself or itself out as engaging in the business of trading in securities unless the person or company,

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (1) is amended by striking out the portion before clause (a) and substituting the following:

Registration

Dealers

(1) Unless a person or company is exempt under Ontario securities law from the requirement to comply with this subsection, the person or company shall not engage in or hold himself, herself or itself out as engaging in the business of trading in securities or derivatives unless the person or company,

See: 2010, c. 26, Sched. 18, ss. 19 (1), 47 (2).

- (a) is registered in accordance with Ontario securities law as a dealer; or
- (b) is a representative registered in accordance with Ontario securities law as a dealing representative of a registered dealer and is acting on behalf of the registered dealer.
2009, c. 18, Sched. 26, s. 4.

Note: On a day to be named by proclamation of the Lieutenant Governor, section 25 is amended by adding the following subsection:

If trading in derivatives

(1.1) Despite subsection (1), if the regulations provide that a person or company trading in derivatives must be registered in a category of registration prescribed by the regulations or that the person or company must comply with prescribed requirements when trading derivatives on his, her or its own account, or both, the person or company shall not trade in derivatives unless,

- (a) the person or company,
 - (i) is, if required by the regulations, registered in the applicable category under the regulations, and
 - (ii) is in compliance with such requirements as may be prescribed by the regulations; or
- (b) the person or company is exempt under Ontario securities law from the requirement to comply with this subsection. 2010, c. 26, Sched. 18, s. 19 (2).

See: 2010, c. 26, Sched. 18, ss. 19 (2), 47 (2).

Same, underwriters

(2) Unless a person or company is exempt under Ontario securities law from the requirement to comply with this subsection, the person or company shall not act as an underwriter unless the person or company,

- (a) is registered in accordance with Ontario securities law as a dealer and is authorized under section 26 or 27 to act as an underwriter in the circumstances; or
- (b) is a representative registered in accordance with Ontario securities law as a dealing representative of a registered dealer described in clause (a) and is acting on behalf of the registered dealer. 2009, c. 18, Sched. 26, s. 4.

Same, advisers

(3) Unless a person or company is exempt under Ontario securities law from the requirement to comply with this subsection, the person or company shall not engage in the business of, or hold himself, herself or itself out as engaging in the business of, advising anyone with respect to investing in, buying or selling securities unless the person or company,

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (3) is amended by striking out the portion before clause (a) and substituting the following:

Same, advisers

(3) Unless a person or company is exempt under Ontario securities law from the requirement to comply with this subsection, the person or company shall not engage in the business of, or hold himself, herself or itself out as engaging in the business of, advising anyone with respect to investing in securities or buying or selling securities or derivatives unless the person or company,

See: 2010, c. 26, Sched. 18, ss. 19 (3), 47 (2).

- (a) is registered in accordance with Ontario securities law as an adviser;
- (b) is a representative registered in accordance with Ontario securities law as an advising representative of a registered adviser and is acting on behalf of the registered adviser; or
- (c) is a representative registered in accordance with Ontario securities law as an associate advising representative of a registered adviser and is acting on behalf of the registered adviser under the supervision of a registered advising representative of the registered adviser. 2009, c. 18, Sched. 26, s. 4.

Same, investment fund managers

(4) Unless a person or company is exempt under Ontario securities law from the requirement to comply with this subsection, the person or company shall not act as an investment fund manager unless the person or company is registered in accordance with Ontario securities law as an investment fund manager. 2009, c. 18, Sched. 26, s. 4.

Same, ultimate designated person

(5) If a registrant that is a registered dealer, registered adviser or registered investment fund manager is required under the regulations to designate an individual as his, her or its ultimate designated person, the individual must be registered in accordance with Ontario securities law as

the ultimate designated person of the registrant. 2009, c. 18, Sched. 26, s. 4.

Same, chief compliance officer

(6) If a registrant that is a registered dealer, registered adviser or registered investment fund manager is required under the regulations to designate an individual as his, her or its chief compliance officer, the individual must be registered in accordance with Ontario securities law as the chief compliance officer of the registrant. 2009, c. 18, Sched. 26, s. 4.

Commission guidelines re engaged in a business

(7) The Commission may, by the adoption of a policy under section 143.8, establish guidelines setting out criteria to be considered in determining whether a person or company is engaged in a business when trading securities or providing advice with respect to investing in, buying or selling securities. 2009, c. 18, Sched. 26, s. 4.

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (7) is repealed and the following substituted:

Commission guidelines re engaged in a business

(7) The Commission may, by the adoption of a policy under section 143.8, establish guidelines setting out criteria to be considered in determining whether a person or company is engaged in a business when he, she or it,

- (a) is trading securities or derivatives;
- (b) is providing advice with respect to investing in securities; or
- (c) is providing advice with respect to buying or selling securities or derivatives. 2010, c. 26, Sched. 18, s. 19 (4).

See: 2010, c. 26, Sched. 18, ss. 19 (4), 47 (2).

Application for registration, etc.

26. (1) An application for registration, reinstatement of registration or an amendment to an existing registration must contain such information in such form as the Director may reasonably require and must be accompanied by such fee as may be required by the regulations. 2009, c. 18, Sched. 26, s. 4.

Dealer registration categories

(2) A person or company making an application under subsection (1) with respect to registration as a dealer under this Act shall do the following:

1. Apply to be registered in one or more of the following categories:
 - i. investment dealer,
 - ii. mutual fund dealer,
 - iii. scholarship plan dealer,
 - iv. exempt market dealer,
 - v. restricted dealer, limited to the trading and underwriting activities authorized under section 27 for the person's or company's registration,
 - vi. such other category of dealer as may be prescribed by the regulations.

2. Provide such information as the Director may require to verify that the activities of the person or company will be within the permitted activities prescribed by the regulations for the particular category or categories of dealer registration for which the person or company has applied. 2009, c. 18, Sched. 26, s. 4.

Permitted underwriting, investment dealer

(3) A person or company registered under this Act as an investment dealer may act as an underwriter in respect of any distribution of securities unless the regulations provide otherwise. 2009, c. 18, Sched. 26, s. 4.

Permitted underwriting, exempt market dealer

(4) A person or company registered under this Act as an exempt market dealer may act as an underwriter with respect to a distribution of securities made under an exemption from the prospectus requirements under this Act or the regulations unless the regulations provide otherwise. 2009, c. 18, Sched. 26, s. 4.

Permitted underwriting, other

(5) A person or company registered under this Act in a category referred to in subparagraph 1 vi of subsection (2) may act as an underwriter in respect of any distribution of securities if the regulations so provide. 2009, c. 18, Sched. 26, s. 4.

Adviser registration categories

(6) A person or company making an application under subsection (1) with respect to registration as an adviser shall indicate for which of the following categories of adviser registration he, she or it is applying and shall provide such information as the Director may require to verify that the activities of the person or company will be within the permitted activities for that category of adviser registration:

1. Portfolio manager, authorized to provide advice to a client with respect to investing in, buying or selling any type of security, with or without discretionary authority granted by the client to manage the client's portfolio.
2. Restricted portfolio manager, limited to the advising activities authorized under section 27 for the person's or company's registration.
3. Such other category of adviser as may be prescribed by the regulations. 2009, c. 18, Sched. 26, s. 4.

Prescribed category

(7) If one or more categories of registration are prescribed by the regulations, a person or company applying for registration in a category prescribed by the regulations shall so indicate and provide such information as the Director may require to verify that the category is appropriate for the applicant. 2009, c. 18, Sched. 26, s. 4.

Registration, etc.

27. (1) On receipt of an application by a person or company and all information, material and fees required by the Director and the regulations, the Director shall register the person or company, reinstate the registration of the person or company or amend the registration of the person or company, unless it appears to the Director,

- (a) that, in the case of a person or company applying for registration, reinstatement of

registration or an amendment to a registration, the person or company is not suitable for registration under this Act; or

- (b) that the proposed registration, reinstatement of registration or amendment to registration is otherwise objectionable. 2009, c. 18, Sched. 26, s. 4.

Matters to be considered

(2) In considering for the purposes of subsection (1) whether a person or company is not suitable for registration, the Director shall consider,

- (a) whether the person or company has satisfied,
- (i) the requirements prescribed in the regulations relating to proficiency, solvency and integrity, and
 - (ii) such other requirements for registration, reinstatement of registration or an amendment to a registration, as the case may be, as may be prescribed by the regulations; and
- (b) such other factors as the Director considers relevant. 2009, c. 18, Sched. 26, s. 4.

Terms and conditions

(3) The Director may, in his or her discretion, impose terms and conditions on the registration, reinstatement of registration or amendment of registration of any person or company and, without limiting the generality of the foregoing,

- (a) may restrict the duration of the registration; and
- (b) may restrict the person or company to,
- (i) trading only specified securities or specified classes of securities or securities of specified classes of issuers,

Note: On a day to be named by proclamation of the Lieutenant Governor, subclause (i) is repealed and the following substituted:

- (i) trading only specified securities or derivatives, specified classes of securities or derivatives or securities of specified classes of issuers,

See: 2010, c. 26, Sched. 18, ss. 20 (1), 47 (2).

- (ii) underwriting only specified securities or specified classes of securities or securities of specified classes of issuers, or
- (iii) providing advice with respect to investing in, buying or selling only specified securities or specified classes of securities or securities of specified classes of issuers. 2009, c. 18, Sched. 26, s. 4.

Note: On a day to be named by proclamation of the Lieutenant Governor, subclause (iii) is repealed and the following substituted:

- (iii) providing advice with respect to,
 - (A) investing in, buying or selling only specified securities or specified classes of securities or securities of specified classes of issuers, or

(B) buying or selling only specified derivatives or specified classes of derivatives.

See: 2010, c. 26, Sched. 18, ss. 20 (2), 47 (2).

Right to require audit or review

(4) The Commission or the Director may, at any time, require a registrant that is a registered dealer, registered adviser or registered investment fund manager to direct its auditor, at the registrant's expense, to conduct any audit or financial review required by the Commission or the Director and deliver to the Commission as soon as practicable a report of the findings of the audit or review. 2009, c. 18, Sched. 26, s. 4.

Revocation or suspension of registration or imposition of terms and conditions

28. The Director may revoke or suspend the registration of a person or company or impose terms or conditions of registration at any time during the period of registration of the person or company if it appears to the Director,

- (a) that the person or company is not suitable for registration or has failed to comply with Ontario securities law; or
- (b) that the registration is otherwise objectionable. 2009, c. 18, Sched. 26, s. 4.

Automatic suspension, person or company

29. (1) The registration of a person or company in a particular category of registration is suspended if any of the following events occurs:

1. A fee imposed on the person or company under this Act or the regulations relating to a particular category of registration of the person or company remains unpaid more than 30 days after the day it is due.
2. The membership of the person or company in a self-regulatory organization is suspended or terminated if,
 - i. the membership of the person or company relates to the particular category of registration, and
 - ii. the membership of the person or company is a condition of registration under Ontario securities law.
3. The approval by a self-regulatory organization of the person as a representative of a registered dealer is revoked or suspended by the self-regulatory organization if,
 - i. the approval of the representative relates to the particular category of registration in which the representative is registered under Ontario securities law, and
 - ii. the membership of the dealer in the self-regulatory organization is a condition of the dealer's registration under Ontario securities law. 2009, c. 18, Sched. 26, s. 4.

Automatic suspension, representatives of suspended dealer or adviser

(2) A registered representative's registration in a particular category with respect to a particular registered dealer or registered adviser is suspended when the corresponding category of registration of that dealer or adviser is suspended. 2009, c. 18, Sched. 26, s. 4.

Automatic suspension, representative ceasing to represent registrant

(3) The registration of a representative with respect to a registrant that is a registered dealer, registered advisor or registered investment fund manager is suspended at the time the representative ceases, by reason of any of the following events, to have the authority to act on behalf of the registrant in a capacity that requires the representative to be registered:

1. The employment of the representative by the registrant is terminated.
2. The representative's employment functions change.
3. The partnership or agency relationship of the representative with the registrant changes or is terminated. 2009, c. 34, Sched. S, s. 3 (1); 2010, c. 1, Sched. 26, s. 3.

Automatic suspension, chief compliance officer or ultimate designated person

(4) The registration of an individual as a chief compliance officer or ultimate designated person is suspended at the time the individual ceases to be the chief compliance officer or ultimate designated person of the registered dealer, registered advisor or registered investment fund manager that designated the individual. 2009, c. 18, Sched. 26, s. 4.

Revocation after automatic suspension

(5) The registration of a person or company that is suspended under subsection (1), (2), (3) or (4) and not reinstated is revoked on the second anniversary of the suspension. 2009, c. 18, Sched. 26, s. 4.

Exception

(6) Despite subsection (5), if a proceeding is commenced under section 122 or 128 or under the rules of a self-regulatory organization with respect to a registrant, or a hearing is commenced under section 127 with respect to the activities of the registrant, the registrant's registration continues to remain suspended until an order has been made by the court or a decision is made by the Commission or self-regulatory organization in the proceeding or hearing. 2009, c. 34, Sched. S, s. 3 (2).

Surrender of registration

30. (1) On application by a person or company for the surrender of his, her or its registration, the Director may accept the application and revoke the registration if the Director is satisfied,

- (a) that all financial obligations of the person or company to his, her or its clients have been discharged;
- (b) that all requirements, if any, prescribed by the regulations for the surrender of registration have been fulfilled or the Director is satisfied that they will be fulfilled in an appropriate manner; and
- (c) that the surrender of the registration is not prejudicial to the public interest. 2009, c. 18, Sched. 26, s. 4.

Conditions

(2) The Director may impose such terms and conditions on the surrender of a registration as the Director considers appropriate in the circumstances. 2009, c. 18, Sched. 26, s. 4.

Right to be heard

31. The Director shall not do any of the following without giving a person or company an opportunity to be heard:

1. Refuse to register the person or company.
2. Amend the registration of the person or company.
3. Refuse to reinstate the registration of the person or company after the registration is suspended.
4. Refuse a request from the person or company to amend his, her or its registration.
5. Impose terms and conditions on the registration under subsection 27 (3) or section 28, either as a condition of registration or at any time during the period in which the person or company is registered.
6. Suspend or revoke the registration of the person or company under section 28.
7. Impose terms and conditions under subsection 30 (2) on the surrender of registration of the person or company. 2009, c. 18, Sched. 26, s. 4; 2009, c. 34, Sched. S, s. 4.

Duty to comply with Ontario securities law

32. (1) Every person and company registered under this Act shall comply at all times with Ontario securities law, including such regulations that apply to them as may be made relating to,

- (a) proficiency standards;
- (b) business conduct;
- (c) in the case of a registrant that is a registered dealer, registered adviser or registered investment fund manager, submission of information respecting ownership, management, directors, officers and any other persons or companies exercising control of the registrant;
- (d) opening accounts and reporting trades;
- (e) record-keeping;
- (f) custody of clients' assets;
- (g) conflicts of interest;
- (h) tied selling and referral arrangements;
- (i) client complaints;
- (j) appointment of auditors and preparation and filing of financial information;
- (k) procedures to be followed when a relationship is terminated between a representative and a registered dealer or registered adviser or when the representative commences a new association with a different registered dealer or registered adviser; and
- (l) reinstatement of registration. 2009, c. 18, Sched. 26, s. 4.

Duty to establish controls, etc.

(2) Every registrant that is a registered dealer, registered adviser or registered investment fund manager shall establish and maintain systems of control and supervision in accordance with the regulations for controlling his, her or its activities and supervising his, her or its representatives. 2009, c. 18, Sched. 26, s. 4.

Address for service

33. Except as otherwise permitted or required by the regulations, all notices under this Act or the regulations are sufficiently served for all purposes on a registrant or applicant if they are sent by ordinary letter mail or delivered to the last address for service provided to the Commission. 2009, c. 18, Sched. 26, s. 4.

Further information

33.1 The Director may require further information or material to be submitted by an applicant or registrant within a specified time and,

(a) may require verification by affidavit or otherwise of any information or material submitted; or

(b) may require,

(i) the applicant or registrant,

(ii) any partner of the applicant or registrant,

(iii) any officer, director, governor or trustee of the applicant or registrant or any person performing a similar function, or

(iv) any employee of the applicant or registrant,

to submit to examination under oath by a person designated by the Director. 2009, c. 18, Sched. 26, s. 4.

PART XII

EXEMPTIONS FROM REGISTRATION REQUIREMENTS

Exemption from registration requirements, advisers

34. (1) Each of the following persons and companies is exempt from the requirement to be registered as an adviser under this Act while engaging in the business of providing advice with respect to investing in or buying or selling securities:

1. A person or company that engages in or holds himself, herself or itself out as engaging in the business of providing advice, either directly or through publications or other media, with respect to investing in or buying or selling securities, including any class of securities and the securities of a class of issuers, that are not purported to be tailored to the needs of anyone receiving the advice.

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (1) is amended by striking out the portion before paragraph 1 and paragraph 1 and substituting the following:

Exemption from registration requirements, advisers

(1) Each of the following persons and companies is exempt from the requirement to be registered as an adviser under this Act while engaging in the business of providing advice with respect to investing in securities or buying or selling securities or derivatives:

1. A person or company that engages in or holds himself, herself or itself out as engaging in the business of providing advice, either directly or through publications or other media, with respect to investing in securities or buying or selling securities or derivatives, including any class of securities or derivatives and the securities of a class

of issuers, that are not purported to be tailored to the needs of anyone receiving the advice.

See: 2010, c. 26, Sched. 18, ss. 21 (1), 47 (2).

2. Such persons or companies as may be prescribed by the regulations or whose activities are prescribed by the regulations. 2009, c. 18, Sched. 26, s. 5.

Conditions and restrictions

(2) The regulations may prescribe conditions and restrictions that apply to an exemption under paragraph 2 of subsection (1). 2009, c. 18, Sched. 26, s. 5.

Requirement to disclose interest

(3) If an adviser described in paragraph 1 of subsection (1) recommends investing in, buying, selling or holding a specified security or class of securities or the securities of a specified class of issuers in which any of the following has a financial or other interest, either directly or indirectly, the adviser must disclose the interest concurrently with providing the advice:

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (3) is amended by striking out the portion before paragraph 1 and substituting the following:

Requirement to disclose interest

(3) If an adviser described in paragraph 1 of subsection (1) recommends investing in, buying, selling or holding a specified security or class of securities or the securities of a specified class of issuers, or buying or selling a specified derivative or specified class of derivatives, in which any of the following has a financial or other interest, either directly or indirectly, the adviser must disclose the interest concurrently with providing the advice:

See: 2010, c. 26, Sched. 18, ss. 21 (2), 47 (2).

1. The adviser.
2. A partner, director or officer of the adviser.
3. A person or company that would be an insider of the adviser if the adviser were a reporting issuer. 2009, c. 18, Sched. 26, s. 5.

Same

(4) If the adviser's financial or other interest includes an interest in an option described in clause (b) of the definition of "financial or other interest" in subsection (5), the disclosure required by subsection (3) must include a description of the terms of the option. 2009, c. 18, Sched. 26, s. 5.

Interpretation

(5) For the purpose of subsection (3),

"financial or other interest" in a security includes,

- (a) ownership, beneficial or otherwise, in the security or in another security issued by the same issuer,
- (b) an option in respect of the security or in respect of another security issued by the same issuer,
- (c) a commission or other compensation received or expected to be received from any

- person or company in connection with a trade in the security,
- (d) a financial arrangement with any person or company regarding the security, and
- (e) a financial arrangement with any underwriter or other person or company who has an interest in the security. 2009, c. 18, Sched. 26, s. 5.

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (5) is repealed and the following substituted:

Interpretation

(5) For the purpose of subsection (3),

“financial or other interest” in a security or derivative includes,

- (a) an ownership interest, beneficial or otherwise, in the security or derivative,
- (b) an ownership interest, beneficial or otherwise, in another security issued by the same issuer,
- (c) an option in respect of the security or in respect of another security issued by the same issuer,
- (d) a commission or other compensation received or expected to be received from any person or company in connection with a trade in the security or the derivative,
- (e) a financial arrangement with any person or company regarding the security or derivative,
- (f) a financial arrangement with an underwriter or other person or company who has an interest in the security or derivative, and
- (g) in the case of a derivative and except as otherwise prescribed by the regulations, a material interest, financial or otherwise, in the derivative’s underlying interest. 2010, c. 26, Sched. 18, s. 21 (3).

See: 2010, c. 26, Sched. 18, ss. 21 (3), 47 (2).

Exemption from registration requirements, dealers

35. (1) A person or company is exempt from the requirement to be registered under this Act to act as a dealer when trading in the following types of securities or acting as an underwriter in respect of their distribution:

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

3. Debt securities that are issued by a corporation established under regulations made under subsection 248 (1) of the *Education Act*, 2009, c. 18, Sched. 26, s. 5.

Same

(2) A person or company is exempt from the requirement to be registered under this Act to act as a dealer when trading in or acting as an underwriter in respect of the distribution of a security evidencing indebtedness that is secured by or under a security agreement, as defined in subsection 1 (1) of the *Personal Property Security Act*, or that is secured in a similar manner in accordance with comparable legislation of another province or territory of Canada that provides for the granting of security in personal property. 2009, c. 18, Sched. 26, s. 5.

Exception to exemption

(3) The exemption described in subsection (2) does not apply with respect to a trade to an individual or with respect to underwriting such a trade. 2009, c. 18, Sched. 26, s. 5.

Exemption if other legislation applies

(4) The following persons and companies are exempt, in the circumstances indicated, from the requirement to be registered under this Act to act as a dealer when trading in securities that evidence indebtedness secured by a mortgage or charge on real property in Canada or when acting as an underwriter in respect of their distribution:

1. A person or company that is licensed under the *Mortgage Brokerages, Lenders and Administrators Act, 2006* or that is exempt from the requirement to be licensed under that Act, if the real property is in Ontario.
2. A person or company that is licensed or registered under comparable legislation in the province or territory of Canada, other than Ontario, in which the real property is located or that is exempt from any legislative requirement to be licensed or registered. 2009, c. 18, Sched. 26, s. 5.

Prescribed securities

(5) A person or company is exempt from the requirement to be registered under this Act to act as a dealer when trading in such types of securities as may be prescribed in the regulations that are traded in accordance with the regulations or when acting as an underwriter in respect of their distribution. 2009, c. 18, Sched. 26, s. 5.

Note: On a day to be named by proclamation of the Lieutenant Governor, section 35 is amended by adding the following subsection:

Prescribed derivatives

(5.1) A person or company is exempt from the requirement to be registered under this Act to act as a dealer when trading in such classes of derivatives as may be prescribed by the regulations. 2010, c. 26, Sched. 18, s. 22 (1).

See: 2010, c. 26, Sched. 18, ss. 22 (1), 47 (2).

Conditions and restrictions

(6) The regulations may prescribe conditions and restrictions that apply to an exemption under subsection (5). 2009, c. 18, Sched. 26, s. 5.

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (6) is

amended by striking out “subsection (5)” at the end and substituting “subsection (5) or (5.1)”. See: 2010, c. 26, Sched. 18, ss. 22 (2), 47 (2).

Exemption from registration requirement, financial institutions

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

1. A bank listed in Schedule I, II or III to the *Bank Act* (Canada).
2. An association to which the *Cooperative Credit Associations Act* (Canada) applies or a central cooperative credit society for which an order has been made under subsection 473 (1) of that Act.
3. A loan corporation, trust company, trust corporation, insurance company, treasury branch, credit union, caisse populaire, financial services cooperative or credit union league or federation that is authorized by a statute of Canada or Ontario to carry on business in Canada or Ontario, as the case may be.
4. Business Development Bank of Canada. 2009, c. 18, Sched. 26, s. 5.

Conditions and restrictions

(2) An exemption under subsection (1) is subject to such conditions and restrictions as may be prescribed by a regulation made by the Lieutenant Governor in Council. 2009, c. 18, Sched. 26, s. 5.

Additional exemptions

(3) Such other financial institutions as may be prescribed by regulation are exempt from the requirement to be registered under this Act to act as a dealer, underwriter, adviser or investment fund manager. 2009, c. 18, Sched. 26, s. 5.

Conditions and restrictions

(4) An exemption under subsection (3) is subject to such conditions and restrictions as may be prescribed by regulation. 2009, c. 18, Sched. 26, s. 5.

Exemption from registration requirements, international adviser or dealer

35.2 (1) The regulations shall provide that a person or company is exempt from the requirement to be registered under this Act to act as a dealer or adviser, as the case may be, if the person or company acts as a dealer or adviser in a jurisdiction outside Canada. 2009, c. 18, Sched. 26, s. 5.

Conditions and restrictions

(2) The regulations may prescribe conditions and restrictions that apply to an exemption under subsection (1). 2009, c. 18, Sched. 26, s. 5.

Additional exemptions by regulation

35.3 The regulations may prescribe exemptions from the requirement to be registered under this Act in addition to the exemptions provided under sections 34 to 35.2. 2009, c. 18, Sched. 26, s. 5.

PART XIII

TRADING IN SECURITIES AND DERIVATIVES GENERALLY

Confirmation of trade

36. (1) Subject to the regulations, every registered dealer who has acted as principal or agent in connection with the purchase or sale of a security or derivative shall promptly send by ordinary letter mail or deliver to the customer a written confirmation of the transaction containing the information required by the regulations. 2010, c. 26, Sched. 18, s. 23.

Disclosure of trade information to Commission

(2) Every person or company that has acted as an agent in connection with the purchase or sale of a security or derivative shall promptly disclose to the Commission, on receipt of a written request from the Commission, the name of every person or company from, to or through whom the security or derivative was bought or sold. 2010, c. 26, Sched. 18, s. 23.

Order prohibiting calls to residences

37. (1) The Commission may by order suspend, cancel, restrict or impose terms and conditions on the right of any person or company named or described in the order to call at a residence or telephone from a location in Ontario to a residence located in or out of Ontario for the purpose of trading in any security or derivative or in any class of securities or derivatives. 2010, c. 26, Sched. 18, s. 24.

Hearing

(2) The Commission shall not make an order under subsection (1) without giving the person or company affected an opportunity to be heard. R.S.O. 1990, c. S.5, s. 37 (2); 1994, c. 33, s. 3 (2).

“residence” defined

(3) In this section,

“residence” includes any building or part of a building in which the occupant resides either permanently or temporarily and any premises appurtenant thereto. R.S.O. 1990, c. S.5, s. 37 (3).

What constitutes calls

(4) For the purposes of this section, a person or company shall be deemed conclusively to have called or telephoned where an officer, director, employee or agent of the person or company calls or telephones on its behalf. R.S.O. 1990, c. S.5, s. 37 (4); 2009, c. 18, Sched. 26, s. 7.

Representations prohibited

38. (1) No person or company, with the intention of effecting a trade in a security, other than a security that carries an obligation of the issuer to redeem or purchase, or a right of the owner to require redemption or purchase, shall make any representation, written or oral, that he, she or it or any person or company,

(a) will resell or repurchase; or

(b) will refund all or any of the purchase price of,

such security. R.S.O. 1990, c. S.5, s. 38 (1).

Representation prohibited, derivatives

(1.1) No person or company, with the intention of effecting a trade in a derivative, shall make any representation, written or oral, that he, she or it or any other person or company will refund any

amount paid in respect of the derivative, unless the terms of the derivative provide for a refund or provide a right to a party to require a refund. 2010, c. 26, Sched. 18, s. 25 (1).

Future value

(2) No person or company, with the intention of effecting a trade in a security or derivative, shall give any undertaking, written or oral, relating to the future value or price of the security or derivative. 2010, c. 26, Sched. 18, s. 25 (2).

Listing

(3) Subject to the regulations, no person or company, with the intention of effecting a trade in a security or derivative, shall, except with the written permission of the Director, make any written or oral representation that the security or derivative will be listed on an exchange or quoted on a quotation and trade reporting system, or that application has been or will be made to list the security or derivative on an exchange or quote the security or derivative on a quotation and trade reporting system, unless,

- (a) in the case of securities, application has been made to list or quote the securities and other securities issued by the same issuer are already listed on an exchange or quoted on a quotation and trade reporting system; or
- (b) the exchange or quotation and trade reporting system has granted approval to the listing or quoting of the securities or derivatives, conditional or otherwise, or has consented to, or indicated that it does not object to, the representation. 2010, c. 26, Sched. 18, s. 25 (3).

Application of section

(4) This section does not apply to a representation referred to in subsection (1) or (1.1) if the representation is contained in an enforceable written agreement and,

- (a) in the case of a representation in respect of a security, the security has a total acquisition cost of more than \$50,000; or
- (b) in the case of a representation in respect of a derivative, the derivative is in a class of derivatives prescribed by the regulations. 2010, c. 26, Sched. 18, s. 25 (4).

39.-41. Repealed: 2009, c. 18, Sched. 26, s. 8.

42. Repealed: 1999, c. 9, s. 205.

Use of name of another registrant

43. No registrant shall use the name of another registrant on letterheads, forms, advertisements or signs, as correspondent or otherwise, unless the registrant is a partner, officer or agent of or is authorized so to do in writing by the other registrant. R.S.O. 1990, c. S.5, s. 43.

Representation of registration

44. (1) No person or company shall represent that he, she or it is registered under this Act unless the representation is true and, when making the representation, the person or company specifies his, her or its category of registration. 2009, c. 18, Sched. 26, s. 9.

Representation prohibited

(2) No person or company shall make a statement about any matter that a reasonable investor would consider relevant in deciding whether to enter into or maintain a trading or advising relationship with the person or company if the statement is untrue or omits information necessary

to prevent the statement from being false or misleading in the circumstances in which it is made. 2009, c. 18, Sched. 26, s. 9.

45. Repealed: 2009, c. 18, Sched. 26, s. 10.

Prohibited representation re Commission approval

46. No person or company shall make a written or oral representation that the Commission has in any way passed on the financial standing, fitness or conduct of a registrant or on the merits of an issuer or a security, derivative or underlying interest of a derivative. 2010, c. 26, Sched. 18, s. 26.

Margin contracts

47. (1) Where a person, or a partner or employee of a partnership, or a director, officer or employee of a company, after the person or the partnership or company has contracted as a registered dealer with any customer to buy and carry upon margin any securities of any issuer either in Canada or elsewhere, and while such contract continues, sells or causes to be sold securities of the same issuer for any account in which,

- (a) the person;
- (b) the firm or a partner thereof; or
- (c) the company or a director thereof,

has a direct or indirect interest, if the effect of such sale would, otherwise than unintentionally, be to reduce the amount of such securities in the hands of the dealer or under the dealer's control in the ordinary course of business below the amount of such securities that the dealer should be carrying for all customers, any such contract with a customer is, at the option of the customer, voidable and the customer may recover from the dealer all money paid with interest thereon or securities deposited in respect thereof. R.S.O. 1990, c. S.5, s. 47 (1).

Exercise of option

(2) The customer may exercise such option by a notice to that effect sent by prepaid mail addressed to the dealer at the dealer's address for service in Ontario. R.S.O. 1990, c. S.5, s. 47 (2).

Declaration as to short position

48. Any person or company who places an order for the sale of a security through an agent acting for him, her or it that is a registered dealer and who,

- (a) at the time of placing the order, does not own the security; or
- (b) if acting as agent, knows the principal does not own the security,

shall, at the time of placing the order to sell, declare to the agent that he, she or it or the principal, as the case may be, does not own the security. R.S.O. 1990, c. S.5, s. 48.

Shares in name of registrant not to be voted

49. (1) Subject to subsection (4), voting securities of an issuer registered in the name of,

- (a) a registrant or in the name of the registrant's nominee; or
- (b) a custodian or in the name of the custodian's nominee, where such issuer is a mutual fund that is a reporting issuer,

that are not beneficially owned by the registrant or the custodian, as the case may be, shall not be

voted by the registrant or custodian at any meeting of security holders of the issuer. R.S.O. 1990, c. S.5, s. 49 (1).

Forwarding of information by registrant

(2) Forthwith after receipt of a copy of a notice of a meeting of security holders of an issuer, the registrant or custodian shall, where the name and address of the beneficial owner of securities registered in the name of the registrant or custodian are known, send or deliver to each beneficial owner of such security so registered at the record date for notice of meeting a copy of any notice, financial statement, information circular or other material but the registrant or custodian is not required to send or deliver such material unless the issuer or the beneficial owner of such securities has agreed to pay the reasonable costs to be incurred by the registrant or custodian in so doing. R.S.O. 1990, c. S.5, s. 49 (2).

Copies of information

(3) At the request of a registrant or custodian, the person or company sending material referred to in subsection (2) shall forthwith furnish to the registrant or custodian, at the expense of the sender, the requisite number of copies of the material. R.S.O. 1990, c. S.5, s. 49 (3).

Voting of shares

(4) A registrant or custodian shall vote or give a proxy requiring a nominee to vote any voting securities referred to in subsection (1) in accordance with any written voting instructions received from the beneficial owner. R.S.O. 1990, c. S.5, s. 49 (4).

Proxies

(5) A registrant or custodian shall, if requested in writing by a beneficial owner, give to the beneficial owner or his, her or its nominee a proxy enabling the beneficial owner or the nominee to vote any voting securities referred to in subsection (1). R.S.O. 1990, c. S.5, s. 49 (5).

“custodian” defined

(6) For the purpose of this section,

“custodian” means a custodian of securities issued by a mutual fund held for the benefit of plan holders under a custodial agreement or other arrangement. R.S.O. 1990, c. S.5, s. 49 (6).

Submission of advertising

50. (1) The Commission may, after giving the registered dealer an opportunity to be heard, and upon being satisfied that the registered dealer’s past conduct with respect to the use of advertising and sales literature affords reasonable grounds for belief that it is necessary for the protection of the public to do so, order that the registered dealer shall deliver to the Commission at least seven days before it is used, copies of all advertising and sales literature which the registered dealer proposes to use in connection with trading in securities or derivatives. R.S.O. 1990, c. S.5, s. 50 (1); 2010, c. 26, Sched. 18, s. 27 (1).

Definitions

(2) For the purposes of this section,

“advertising” includes television and radio commercials, newspaper and magazine advertisements and all other sales material generally disseminated through the communications media;
 (“annonces publicitaires”)

“sales literature” includes audio and visual recordings in any media, written matter and all other

material designed for use in a presentation to a purchaser, whether such material is given or shown to the purchaser, but does not include,

- (a) preliminary prospectuses,
- (b) prospectuses, and
- (c) disclosure documents, in respect of derivatives, that satisfy the requirements prescribed by the regulations. (“documentation commerciale”) R.S.O. 1990, c. S.5, s. 50 (2); 2010, c. 26, Sched. 18, s. 27 (2).

Prohibition of advertising

(3) Where the Commission has issued an order pursuant to subsection (1), the Director may prohibit the use of the advertising and sales literature so delivered or may require that deletions or changes be made prior to its use. R.S.O. 1990, c. S.5, s. 50 (3).

(4) Repealed: 1994, c. 11, s. 365.

PART XIV PROSPECTING SYNDICATES

Prospecting syndicate agreements

51. (1) Upon the filing of a prospecting syndicate agreement and the issuance of a receipt therefor by the Director, the liability of the members of the syndicate or parties to the agreement is limited to the extent provided by the terms of the agreement where,

- (a) the sole purpose of the syndicate is the financing of prospecting expeditions, preliminary mining development, or the acquisition of mining properties, or any combination thereof;
- (b) the agreement clearly sets out,
 - (i) the purpose of the syndicate,
 - (ii) the particulars of any transaction effected or in contemplation involving the issue of units for a consideration other than cash,
 - (iii) the maximum amount, not exceeding 25 per cent of the sale price, that may be charged or taken by a person or company as commission upon the sale of units in the syndicate,
 - (iv) the maximum number of units in the syndicate, not exceeding 33 1/3 per cent of the total number of units of the syndicate, that may be issued in consideration of the transfer to the syndicate of mining properties,
 - (v) the location of the principal office of the syndicate and that the principal office shall at all times be maintained in Ontario and that the Director and the members of the syndicate shall be notified immediately of any change in the location of the principal office,
 - (vi) that a person or company holding mining properties for the syndicate shall execute a declaration of trust in favour of the syndicate with respect to such mining properties,
 - (vii) that after the sale for cash of any issued units of the syndicate no mining

properties shall be acquired by the syndicate other than by staking unless such acquisition is approved by members of the syndicate holding at least two-thirds of the issued units of the syndicate that have been sold for cash,

- (viii) that the administrative expenditures of the syndicate, including, in addition to any other items, salaries, office expenses, advertising and commissions paid by the syndicate with respect to the sale of its units, shall be limited to one-third of the total amount received by the treasury of the syndicate from the sale of its units,
 - (ix) that a statement of the receipts and disbursements of the syndicate shall be furnished to the Director and to each member annually,
 - (x) that 90 per cent of the vendor units of the syndicate shall be escrowed units and may be released upon the consent of the Director and that any release of such units shall not be in excess of one vendor unit for each unit of the syndicate sold for cash,
 - (xi) that no securities, other than those of the syndicate's own issue, and no mining properties owned by the syndicate or held in trust for the syndicate shall be disposed of unless such disposal is approved by members of the syndicate holding at least two-thirds of the issued units of the syndicate other than escrowed units; and
- (c) the agreement limits the capital of the syndicate to a sum not exceeding \$250,000.
R.S.O. 1990, c. S.5, s. 51 (1).

Receipt for filed agreement

[\(2\)](#) The Director may in his or her discretion issue a receipt for a prospecting syndicate agreement filed under this section and is not required to determine whether it is in conformity with clauses (1) (a), (b) and (c). R.S.O. 1990, c. S.5, s. 51 (2).

Application

[\(3\)](#) After a receipt is issued by the Director for a prospecting syndicate agreement, the requirements of the *Business Names Act* as to filing do not apply to the prospecting syndicate. R.S.O. 1990, c. S.5, s. 51 (3).

Prohibition of trading by dealer

[\(4\)](#) No registered dealer shall trade in a security issued by a prospecting syndicate either as agent for the prospecting syndicate or as principal. R.S.O. 1990, c. S.5, s. 51 (4).

Receipt

[\(5\)](#) The Director shall not refuse to issue a receipt under subsection (1) without giving the person or company who filed the prospecting syndicate agreement an opportunity to be heard. R.S.O. 1990, c. S.5, s. 51 (5).

PART XV PROSPECTUSES — DISTRIBUTION

“distribution” extended meaning

[52.](#) To but not including the 15th day of March, 1981, for the purposes of sections 54 to 64, “distribution” means only a distribution that is a distribution to the public. R.S.O. 1990, c. S.5,

s. 52.

Prospectus required

53. (1) No person or company shall trade in a security on his, her or its own account or on behalf of any other person or company if the trade would be a distribution of the security, unless a preliminary prospectus and a prospectus have been filed and receipts have been issued for them by the Director. 2006, c. 33, Sched. Z.5, s. 2.

Filing without distribution

(2) A preliminary prospectus and a prospectus may be filed in accordance with this Part to enable the issuer to become a reporting issuer, despite the fact that no distribution is contemplated. R.S.O. 1990, c. S.5, s. 53 (2).

Preliminary prospectus

54. (1) A preliminary prospectus shall substantially comply with the requirements of Ontario securities law respecting the form and content of a prospectus, except that the report or reports of the auditor or accountant required by the regulations need not be included. R.S.O. 1990, c. S.5, s. 54 (1); 1994, c. 11, s. 366.

Idem

(2) A preliminary prospectus may exclude information with respect to the price to the underwriter and offering price of any securities and other matters dependent upon or relating to such prices. R.S.O. 1990, c. S.5, s. 54 (2).

Receipt for preliminary prospectus

55. The Director shall issue a receipt for a preliminary prospectus forthwith upon the filing thereof. R.S.O. 1990, c. S.5, s. 55.

Full, true and plain disclosure required

56. (1) A prospectus shall provide full, true and plain disclosure of all material facts relating to the securities issued or proposed to be distributed and shall comply with the requirements of Ontario securities law. R.S.O. 1990, c. S.5, s. 56 (1); 1994, c. 11, s. 367.

Supplemental material

(2) The prospectus shall contain or be accompanied by such financial statements, reports or other documents as are required by this Act or the regulations. R.S.O. 1990, c. S.5, s. 56 (2).

Amendment to preliminary prospectus on material change

57. (1) Where a material adverse change occurs after a receipt is obtained for a preliminary prospectus filed in accordance with subsection 53 (1) and before the receipt for the prospectus is obtained or, where a material change occurs after the receipt for the prospectus is obtained but prior to the completion of the distribution under such prospectus, an amendment to such preliminary prospectus or prospectus, as the case may be, shall be filed as soon as practicable and in any event within ten days after the change occurs. R.S.O. 1990, c. S.5, s. 57 (1); 2007, c. 7, Sched. 38, s. 3 (1).

Same, additional securities

(2) If, after a receipt for a prospectus or for an amendment to a prospectus is issued but before the distribution under the prospectus or amendment is completed, securities in addition to those previously disclosed in the prospectus or amendment are to be distributed, the issuer making the distribution shall file an amendment to the prospectus disclosing the additional securities as

soon as practicable and, in any event, within 10 days after the decision to increase the number of securities offered is made. 2007, c. 7, Sched. 38, s. 3 (2).

Receipt

(2.1) The Director shall issue a receipt for an amendment to a prospectus that must be filed under subsection (1) or (2) unless the Director refuses in accordance with subsection 61 (2) to issue the receipt. 2007, c. 7, Sched. 38, s. 3 (2).

Restriction

(2.2) Unless otherwise permitted by regulation, an issuer shall not proceed with a distribution or an additional distribution until a receipt is issued for an amendment to the prospectus that must be filed under subsection (1) or (2). 2007, c. 7, Sched. 38, s. 3 (2).

Notice of amendment

(3) An amendment to a preliminary prospectus referred to in subsection (1) shall, forthwith after it has been filed, be forwarded to each recipient of the preliminary prospectus according to the record maintained under section 67. R.S.O. 1990, c. S.5, s. 57 (3).

Certificate by issuer

58. (1) Subject to subsection (3) of this section and subsection 63 (2), and subject to any waiver or variation consented to in writing by the Director, a prospectus filed under subsection 53 (1) or subsection 62 (1) shall contain a certificate in the prescribed form, signed by the chief executive officer, the chief financial officer, and, on behalf of the board of directors, any two directors of the issuer, other than the foregoing, duly authorized to sign, and any person or company who is a promoter of the issuer. R.S.O. 1990, c. S.5, s. 58 (1); 1999, c. 9, s. 206 (1); 2007, c. 7, Sched. 38, s. 4 (1).

Idem

(2) Subject to subsection (3) of this section and subsection 63 (2), a prospectus filed under subsection 53 (2) shall contain a certificate in the prescribed form, signed by the chief executive officer, the chief financial officer, and, on behalf of the board of directors, any two directors of the issuer, other than the foregoing, duly authorized to sign, and any person or company who is a promoter of the issuer. R.S.O. 1990, c. S.5, s. 58 (2); 2007, c. 7, Sched. 38, s. 4 (2).

Idem

(3) Where the issuer has only three directors, two of whom are the chief executive officer and the chief financial officer, the certificate may be signed by all the directors of the issuer. R.S.O. 1990, c. S.5, s. 58 (3).

Idem

(4) Where the Director is satisfied upon evidence or on submissions that either, or both of, the chief executive officer or chief financial officer of the issuer is for adequate cause not available to sign a certificate in a prospectus, the Director may permit the certificate to be signed by any other responsible officer or officers of the issuer in lieu of either, or both of, the chief executive officer or chief financial officer. R.S.O. 1990, c. S.5, s. 58 (4).

Idem

(5) With the consent of the Director, a promoter or a guarantor need not sign the certificate in a prospectus. R.S.O. 1990, c. S.5, s. 58 (5); 1999, c. 9, s. 206 (2).

Certificate of promoter

(6) The Director may, in his or her discretion, require any person or company who was a promoter of the issuer within the two preceding years or who is a guarantor of the securities being distributed to sign the certificate required by subsection (1) or (2) subject to such conditions as the Director may consider proper. R.S.O. 1990, c. S.5, s. 58 (6); 1999, c. 9, s. 206 (3).

Idem

(7) With the consent of the Director, a promoter or a guarantor may sign a certificate in a prospectus by his, her or its agent duly authorized in writing. R.S.O. 1990, c. S.5, s. 58 (7); 1999, c. 9, s. 206 (4).

Certificate of underwriter

59. (1) Subject to subsection 63 (2), where there is an underwriter, a prospectus shall contain a certificate in the prescribed form, signed by the underwriter or underwriters who, with respect to the securities offered by the prospectus, are in a contractual relationship with the issuer or security holder whose securities are being offered by the prospectus. R.S.O. 1990, c. S.5, s. 59 (1); 2007, c. 7, Sched. 38, s. 5.

Idem

(2) With the consent of the Director, an underwriter may sign a certificate in a prospectus by his, her or its agent duly authorized in writing. R.S.O. 1990, c. S.5, s. 59 (2).

Statement of rights

60. Every prospectus shall contain a statement of the rights given to a purchaser by sections 71 and 130. R.S.O. 1990, c. S.5, s. 60.

Issuance of receipt

61. (1) Subject to subsection (2) of this section and subsection 63 (4), the Director shall issue a receipt for a prospectus filed under this Part unless it appears to the Director that it is not in the public interest to do so. R.S.O. 1990, c. S.5, s. 61 (1).

Refusal of receipt

(2) The Director shall not issue a receipt for a prospectus or an amendment to a prospectus if it appears to the Director that,

- (a) the prospectus or any document required to be filed with it,
 - (i) does not comply in any substantial respect with any of the requirements of this Act or the regulations,
 - (ii) contains any statement, promise, estimate or forward-looking information that is misleading, false or deceptive, or
 - (iii) contains a misrepresentation;
- (b) an unconscionable consideration has been paid or given or is intended to be paid or given for any services or promotional purposes or for the acquisition of property;
- (c) the aggregate of,
 - (i) the proceeds from the sale of the securities under the prospectus that are to be paid into the treasury of the issuer, and
 - (ii) the other resources of the issuer,

- is insufficient to accomplish the purpose of the issue stated in the prospectus;
- (d) the issuer cannot reasonably be expected to be financially responsible in the conduct of its business because of the financial condition of,
 - (i) the issuer,
 - (ii) any of the issuer's officers, directors, promoters, or control persons, or
 - (iii) the investment fund manager of the issuer or any of the investment fund manager's officers, directors or control persons;
 - (e) the business of the issuer may not be conducted with integrity and in the best interests of the security holders of the issuer because of the past conduct of,
 - (i) the issuer,
 - (ii) any of the issuer's officers, directors, promoters, or control persons, or
 - (iii) the investment fund manager of the issuer or any of the investment fund manager's officers, directors or control persons;
 - (f) a person or company that has prepared or certified any part of the prospectus, or that is named as having prepared or certified a report or valuation used in connection with the prospectus, is not acceptable;
 - (g) an escrow or pooling agreement in the form that the Director considers necessary or advisable with respect to the securities has not been entered into; or
 - (h) adequate arrangements have not been made for the holding in trust of the proceeds payable to the issuer from the sale of the securities pending the distribution of the securities. 2006, c. 33, Sched. Z.5, s. 3.

Hearing

[\(3\)](#) The Director shall not refuse to issue a receipt under subsection (1) or (2) without giving the person or company who filed the prospectus an opportunity to be heard. R.S.O. 1990, c. S.5, s. 61 (3).

Referral to Commission

[\(4\)](#) Where it appears to the Director that a preliminary prospectus, *pro forma* prospectus, or prospectus raises a material question involving the public interest under subsection (1) or a new or novel question of interpretation under subsection (2) that might result in the Director refusing to issue a receipt under subsection (1) or (2), the Director may refer the question to the Commission for determination. R.S.O. 1990, c. S.5, s. 61 (4).

Form of question

[\(5\)](#) The Director shall state the question in writing setting out the facts upon which the question is based. R.S.O. 1990, c. S.5, s. 61 (5).

Filing of question

[\(6\)](#) The question, together with any additional material, shall be lodged by the Director with the Secretary of the Commission, and a copy of the question shall forthwith be served by the Secretary upon any interested person or company. R.S.O. 1990, c. S.5, s. 61 (6).

Hearing by Commission

(7) The Commission, after giving the parties an opportunity to be heard, shall consider and determine the question and refer the matter back to the Director for final consideration under subsections (1) and (2). R.S.O. 1990, c. S.5, s. 61 (7).

Decision of Commission

(8) Subject to any order of the Divisional Court made under section 9, the decision of the Commission on the question is binding on the Director. R.S.O. 1990, c. S.5, s. 61 (8).

Refiling of prospectus

62. (1) In this section,

“lapse date” means, with reference to a security that is being distributed under subsection 53 (1) or this section, the date that is 12 months after the date of the most recent prospectus relating to the security. 2001, c. 23, s. 212 (1).

Same

(1.1) No distribution of a security to which subsection 53 (1) applies shall continue after the lapse date, unless a new prospectus that complies with this Part is filed and a receipt for the new prospectus is obtained from the Director. 2001, c. 23, s. 212 (1).

Idem

(2) A distribution may be continued for a further twelve months after a lapse date if,

- (a) a *pro forma* prospectus prepared in accordance with the regulations is filed not less than thirty days prior to the lapse date of the previous prospectus;
- (b) a prospectus is filed not later than ten days following the lapse date of the previous prospectus; and
- (c) a receipt for the prospectus is obtained from the Director within the twenty days following the lapse date of the previous prospectus. R.S.O. 1990, c. S.5, s. 62 (2); 2001, c. 23, s. 212 (2).

Idem

(3) The continued distribution of securities after the lapse date does not contravene subsection (1.1) unless and until any of the conditions of subsection (2) are not complied with. R.S.O. 1990, c. S.5, s. 62 (3); 2001, c. 23, s. 212 (3).

Failure to refile

(4) Subject to any extension granted under subsection (5), all trades completed in reliance upon subsection (2) after the lapse date may be cancelled at the option of the purchaser within ninety days of the purchaser’s first knowledge of the failure to comply with such conditions where any of the conditions to the continuation of a distribution under subsection (2) are not complied with. R.S.O. 1990, c. S.5, s. 62 (4).

Extension of time

(5) The Commission may, upon an application of a reporting issuer, extend, subject to such terms and conditions as it may impose, the times provided by subsection (2) where in its opinion it would not be prejudicial to the public interest to do so. R.S.O. 1990, c. S.5, s. 62 (5).

Forms of prospectus

63. (1) A person or company may, if permitted by the regulations, file a short form of preliminary prospectus, short form of prospectus, pro forma prospectus, preliminary simplified

prospectus, simplified prospectus or pro forma simplified prospectus under section 53 or 62 in the prescribed form and any such prospectus that complies with the applicable regulations shall, for the purposes of section 56, be considered to provide sufficient disclosure of all material facts relating to the securities issued or proposed to be distributed under the prospectus. 2006, c. 33, Sched. Z.5, s. 4.

Alternative certificates

(2) A short form prospectus may contain one or more forms of certificate to be signed as alternatives to the forms of certificate set out in subsections 58 (1) and (2) and subsection 59 (1) and, where any such certificate in a short form prospectus is used in accordance with the regulations, it is not necessary to use the alternative certificate required by subsections 58 (1) and (2) and subsection 59 (1), as the case may be. R.S.O. 1990, c. S.5, s. 63 (2).

Summary statement

(3) A person or company may, if permitted by the regulations, file a summary statement as a separate document in the prescribed form together with a prospectus filed under section 53 or 62. R.S.O. 1990, c. S.5, s. 63 (3).

Refusal of summary statement

(4) Where a summary statement is filed with a prospectus, the Director shall not issue a receipt for the prospectus if it appears to the Director that the summary statement does not comply with the regulations applicable thereto. R.S.O. 1990, c. S.5, s. 63 (4).

Delivery of summary statement

(5) A summary statement filed with a prospectus for which a receipt has been issued may be sent or delivered by a dealer to a purchaser of securities instead of a prospectus as required in section 71, and, where a dealer so elects, the provisions of sections 71 and 133 with respect to a prospectus apply with necessary modifications to a summary statement. R.S.O. 1990, c. S.5, s. 63 (5).

Delivery of prospectus on request

(6) Every summary statement sent or delivered to a purchaser shall contain a statement informing the purchaser that a copy of the prospectus which was filed with the summary statement will be provided to the purchaser on request, and each person or company who signs or causes to be signed, as the case may be, the certificate contained in the prospectus shall ensure compliance with any such request. R.S.O. 1990, c. S.5, s. 63 (6).

Summary statement without force and effect

(7) Where, during the distribution or distribution to the public of a security under a prospectus, an order is made to cease trading in the security, or the receipt issued by the Director for the prospectus is revoked or the prospectus lapses or the use of a prospectus is otherwise prohibited by this Act, the regulations or by a decision of the Commission or an order of a court, a summary statement filed with the prospectus shall cease to have force and effect for the purposes of section 71 unless the Director otherwise orders. R.S.O. 1990, c. S.5, s. 63 (7).

Liability not affected

(8) Nothing in this section shall be construed to provide relief from liability arising under section 130 where a misrepresentation is contained in a prescribed short form prospectus and, for the purposes of section 130, where a misrepresentation is contained in a summary statement filed with a prospectus, the misrepresentation shall be deemed to be contained in the prospectus. R.S.O.

1990, c. S.5, s. 63 (8).

Orders to furnish information re distribution to public

64. (1) Where a person or company proposing to make a distribution of previously issued securities of an issuer is unable to obtain from the issuer of the securities information or material that is necessary for the purpose of complying with this Part or the regulations, the Director may order the issuer of the securities to furnish to the person or company that proposes to make the distribution such information and material as the Director considers necessary for the purposes of the distribution, upon such terms and subject to such conditions as the Director considers proper, and all such information and material may be used by the person or company to whom it is furnished for the purpose of complying with this Part and the regulations. R.S.O. 1990, c. S.5, s. 64 (1).

Idem

(2) Where a person or company proposing to make a distribution of previously issued securities of an issuer is unable to obtain any or all of the signatures to the certificates required by this Act or the regulations, or otherwise to comply with this Part or the regulations, the Director may, upon being satisfied that all reasonable efforts have been made to comply with this Part and the regulations and that no person or company is likely to be prejudicially affected by such failure to comply, make such order waiving any of the provisions of this Part or the regulations as the Director considers advisable, upon such terms and subject to such conditions as he or she considers proper. R.S.O. 1990, c. S.5, s. 64 (2).

Note: On a day to be named by proclamation of the Lieutenant Governor, the Act is amended by adding the following Part:

PART XV.1 TRADING IN DERIVATIVES

Disclosure document, designated derivative

64.1 (1) No person or company shall trade a designated derivative unless a disclosure document that satisfies the requirements prescribed by the regulations,

- (a) has been filed and accepted by the Director; and
- (b) has been delivered in accordance with the regulations. 2010, c. 26, Sched. 18, s. 28.

Exception

(2) Subsection (1) does not apply in respect of,

- (a) a trade described in clause (e) of the definition of “trade” or “trading” in subsection 1 (1); or
- (b) a trade that is otherwise exempt under this Act or the regulations. 2010, c. 26, Sched. 18, s. 28.

Acceptance of disclosure document

(3) The Director shall accept the filed disclosure document unless,

- (a) the Director considers that it would not be in the public interest to accept the disclosure document; or

(b) the Director is prohibited by the regulations from accepting it. 2010, c. 26, Sched. 18, s. 28.

Opportunity to be heard

(4) The Director shall not refuse to accept a disclosure document that satisfies the requirements prescribed by the regulations without giving the person or company that filed the disclosure document an opportunity to be heard. 2010, c. 26, Sched. 18, s. 28.

Part XV not applicable

(5) Part XV and the regulations made for the purposes of that Part do not apply in respect of,

(a) a designated derivative; or

(b) a derivative that is traded on,

(i) an exchange, under standardized terms determined by the exchange, or

(ii) any other marketplace, if any conditions prescribed by the regulations are satisfied. 2010, c. 26, Sched. 18, s. 28.

Deemed to be securities for certain purposes

64.2 (1) If authorized by the regulations, a derivative that belongs to a class of derivatives prescribed by the regulations is deemed to be a security for such purposes as may be prescribed by the regulations, and such provisions of this Act and the regulations as may be prescribed by the regulations apply to or in respect of the derivative in the manner and to the extent prescribed by the regulations. 2010, c. 26, Sched. 18, s. 28.

Not void for failure to comply with Act, etc.

(2) Unless the terms of the derivative provide otherwise, a derivative transaction is not void, voidable or unenforceable, and no counterparty to the transaction is entitled to rescind the transaction, solely by reason that the transaction failed to comply with this Act or the regulations. 2010, c. 26, Sched. 18, s. 28.

See: 2010, c. 26, Sched. 18, ss. 28, 47 (2).

PART XVI DISTRIBUTION — GENERALLY

“waiting period” defined

65. (1) In this section,

“waiting period” means the period prescribed by regulation or, if no period is prescribed, the period between the Director’s issuance of a receipt for a preliminary prospectus relating to the offering of a security and the Director’s issuance of a receipt for the prospectus. R.S.O. 1990, c. S.5, s. 65 (1); 2007, c. 7, Sched. 38, s. 6.

Distribution of material during waiting period

(2) Despite section 53, but subject to Part XIII, it is permissible during the waiting period,

(a) to distribute a notice, circular, advertisement or letter to or otherwise communicate with any person or company identifying the security proposed to be issued, stating the price thereof, if then determined, the name and address of a person or company from whom

purchases of the security may be made and containing such further information as may be permitted or required by the regulations, if every such notice, circular, advertisement, letter or other communication states the name and address of a person or company from whom a preliminary prospectus may be obtained;

- (b) to distribute a preliminary prospectus; and
- (c) to solicit expressions of interest from a prospective purchaser if, prior to such solicitation or forthwith after the prospective purchaser indicates an interest in purchasing the security, a copy of the preliminary prospectus is forwarded to him, her or it. R.S.O. 1990, c. S.5, s. 65 (2).

Distribution of preliminary prospectus

66. Any dealer distributing a security to which section 65 applies shall, in addition to the requirements of clause 65 (2) (c), send a copy of the preliminary prospectus to each prospective purchaser who, without solicitation, indicates an interest in purchasing the security and requests a copy of such preliminary prospectus. R.S.O. 1990, c. S.5, s. 66.

Distribution list

67. Any dealer distributing a security to which section 65 applies shall maintain a record of the names and addresses of all persons and companies to whom the preliminary prospectus has been forwarded. R.S.O. 1990, c. S.5, s. 67.

Defective preliminary prospectus

68. Where it appears to the Director that a preliminary prospectus is defective in that it does not substantially comply with the requirements of Ontario securities law as to form and content, the Director may, without giving notice, order that the trading permitted by subsection 65 (2) in the security to which the preliminary prospectus relates shall cease until a revised preliminary prospectus satisfactory to the Director is filed and forwarded to each recipient of the defective preliminary prospectus according to the record maintained under section 67. R.S.O. 1990, c. S.5, s. 68; 1994, c. 11, s. 368.

Material given on distribution

69. From the date of the issuance by the Director of a receipt for a prospectus relating to a security, a person or company trading in the security in a distribution, either on his, her or its own account or on behalf of any other person or company, may distribute the prospectus, any document filed with or referred to in the prospectus and any notice, circular, advertisement or letter of the nature described in clause 65 (2) (a) or in the regulations, but shall not distribute any other printed or written material respecting the security that is prohibited by the regulations. R.S.O. 1990, c. S.5, s. 69.

Order to cease trading

70. (1) Where it appears to the Commission, after the filing of a prospectus under this Part and the issuance of a receipt therefor, that any of the circumstances set out in subsection 61 (2) exist, the Commission may order that the distribution of the securities under the prospectus shall cease. R.S.O. 1990, c. S.5, s. 70 (1).

Hearing

(2) No order shall be made under subsection (1) without a hearing unless in the opinion of the Commission the length of time required for a hearing could be prejudicial to the public interest,

in which event a temporary order may be made which shall expire fifteen days from the date of the making thereof unless the hearing is commenced in which case the Commission may extend the order until the hearing is concluded. R.S.O. 1990, c. S.5, s. 70 (2).

Notice

(3) A notice of every order made under this section shall be served upon the issuer to whose securities the prospectus relates, and forthwith upon the receipt of the notice,

- (a) distribution of the securities under prospectus by the person or company named in the order shall cease; and
- (b) any receipt issued by the Director for the prospectus is revoked. R.S.O. 1990, c. S.5, s. 70 (3).

Obligation to deliver prospectus

71. (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 subsection 53 (1) or section 62 is applicable shall, unless the dealer has previously done so, send by prepaid mail or deliver to the purchaser the latest prospectus and any amendment to the prospectus filed either before entering into an agreement of purchase and sale resulting from the order or subscription or not later than midnight on the second day, exclusive of Saturdays, Sundays and holidays, after entering into such agreement. R.S.O. 1990, c. S.5, s. 71 (1).

Note: On a day to be named by proclamation of the Lieutenant Governor, section 71 is amended by adding the following subsection:

Same, investment fund securities

(1.1) Subsection (1) does not apply to the dealer in respect of a purchase and sale of an investment fund security offered in a distribution described in that subsection if the regulations prescribe a disclosure document that is required in respect of the purchase and sale and the time and manner in which the disclosure document is to be sent or delivered to a purchaser. 2011, c. 9, Sched. 38, s. 2 (1).

See: 2011, c. 9, Sched. 38, ss. 2 (1), 5 (2).

Withdrawal from purchase

(2) An agreement of purchase and sale referred to in subsection (1) is not binding upon the purchaser, if the dealer from whom the purchaser purchases the security receives written or telegraphic notice evidencing the intention of the purchaser not to be bound by the agreement of purchase and sale not later than midnight on the second day, exclusive of Saturdays, Sundays and holidays, after receipt by the purchaser of the latest prospectus and any amendment to the prospectus. R.S.O. 1990, c. S.5, s. 71 (2).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (2) is repealed and the following substituted:

Withdrawal from purchase

(2) An agreement of purchase and sale referred to in subsection (1) is not binding upon the purchaser if the dealer from whom the purchaser purchases the security receives written or telegraphic notice evidencing the intention of the purchaser not to be bound by the agreement of

purchase and sale not later than midnight on the second day, exclusive of Saturdays, Sundays and holidays, after receipt by the purchaser of,

- (a) the latest prospectus and any amendment to the prospectus; or
- (b) the prescribed disclosure document referred to in subsection (1.1). 2011, c. 9, Sched. 38, s. 2 (2).

See: 2011, c. 9, Sched. 38, ss. 2 (2), 5 (2).

Application of subs. (2)

(3) Subsection (2) does not apply if the purchaser is a registrant or if the purchaser sells or otherwise transfers beneficial ownership of the security referred to in subsection (2), otherwise than to secure indebtedness, before the expiration of the time referred to in subsection (2). R.S.O. 1990, c. S.5, s. 71 (3).

Time of receipt

(4) For the purpose of this section, where the latest prospectus and any amendment to the prospectus is sent by prepaid mail, the latest prospectus and any amendment to the prospectus shall be deemed conclusively to have been received in the ordinary course of mail by the person or company to whom it was addressed. R.S.O. 1990, c. S.5, s. 71 (4).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (4) is repealed and the following substituted:

Time of receipt

(4) For the purpose of this section, where the latest prospectus, any amendment to the prospectus or the prescribed disclosure document referred to in subsection (1.1) is sent by prepaid mail, it shall be deemed conclusively to have been received in the ordinary course of mail by the person or company to whom it was addressed. 2011, c. 9, Sched. 38, s. 2 (3).

See: 2011, c. 9, Sched. 38, ss. 2 (3), 5 2).

Receipt of prospectus by agent

(5) The receipt of the latest prospectus or any amendment to the prospectus by a dealer who is acting as agent of or who thereafter commences to act as agent of the purchaser with respect to the purchase of a security referred to in subsection (1) shall, for the purpose of this section, be receipt by the purchaser as of the date on which the agent received such latest prospectus and any amendment to the prospectus. R.S.O. 1990, c. S.5, s. 71 (5).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (5) is repealed and the following substituted:

Receipt of prospectus, disclosure document by agent

(5) The receipt of the latest prospectus, any amendment to the prospectus or the prescribed disclosure document referred to in subsection (1.1) by a dealer who is acting as agent of or who thereafter commences to act as agent of the purchaser with respect to the purchase of a security to which subsection (1) or (1.1) applies shall, for the purpose of this section, be receipt by the purchaser as of the date on which the agent received such latest prospectus, amendment to the prospectus or prescribed disclosure document, as the case may be. 2011, c. 9, Sched. 38, s. 2 (3).

See: 2011, c. 9, Sched. 38, ss. 2 (3), 5 (2).

Receipt of notice by agent

(6) The receipt of the notice referred to in subsection (2) by a dealer who acted as agent of the vendor with respect to the sale of the security referred to in subsection (1) shall, for the purpose of this section, be receipt by the vendor as of the date on which the agent received such notice. R.S.O. 1990, c. S.5, s. 71 (6).

Dealer as agent

(7) For the purpose of this section, a dealer shall not be considered to be acting as agent of the purchaser unless the dealer is acting solely as agent of the purchaser with respect to the purchase and sale in question and has not received and has no agreement to receive compensation from or on behalf of the vendor with respect to the purchase and sale. R.S.O. 1990, c. S.5, s. 71 (7).

Onus of proof

(8) The onus of proving that the time for giving notice under subsection (2) has expired is upon the dealer from whom the purchaser has agreed to purchase the security. R.S.O. 1990, c. S.5, s. 71 (8).

PART XVII EXEMPTIONS FROM THE PROSPECTUS REQUIREMENT

Definition

72. In this Part,

“prospectus requirement” means sections 53 and 62. 2009, c. 18, Sched. 26, s. 11.

Exemption

73. (1) The prospectus requirement does not apply to a distribution of securities,

- (a) that are referred to in subsections 35 (1) to (4) in the circumstances described in those subsections;
- (b) that are debt securities issued or guaranteed by a financial institution referred to in paragraph 1, 2 or 3 of subsection 35.1 (1); or
- (c) that are prescribed by the regulations and traded in accordance with the regulations. 2009, c. 18, Sched. 26, s. 12 (1).

Exception, subordinated debt securities

(2) The exemption under clause (1) (b) from the prospectus requirement does not apply to debt securities issued or guaranteed by a financial institution described in that clause that are subordinate in right of payment to deposits held by the issuer or guarantor of those debt securities. 2009, c. 18, Sched. 26, s. 12 (1).

Conditions and restrictions

(3) An exemption under clause (1) (b) is subject to such conditions and restrictions as may be prescribed by a regulation made by the Lieutenant Governor in Council. 2009, c. 18, Sched. 26, s. 12 (1).

Same

(4) An exemption under clause (1) (c) is subject to such conditions and restrictions as may be prescribed by the regulations. 2009, c. 18, Sched. 26, s. 12 (1).

Report

[\(5\)](#) Without limiting the generality of subsection (4), the regulations may prescribe reporting requirements that apply in connection with an exemption under clause (1) (c). 2009, c. 18, Sched. 26, s. 12 (1).

Note: On a day to be named by proclamation of the Lieutenant Governor, section 73 is repealed and the following substituted:

Exemption, debt securities of governments in Canada

[73.](#) The prospectus requirement does not apply to a distribution of any of the following debt securities:

1. Debt securities issued or guaranteed by the Government of Canada or the government of a province or territory of Canada.
2. Debt securities that are,
 - i. issued by a municipal corporation in Canada for elementary, secondary or vocational school purposes,
 - ii. issued or guaranteed by a municipal corporation in Canada, or
 - iii. secured by or payable out of rates or taxes levied under the law of a province or territory of Canada on property in the province or territory and collectible by or through the municipality in which the property is situated.
3. Debt securities that are issued by a corporation established under regulations made under subsection 248 (1) of the *Education Act*. 2009, c. 18, Sched. 26, s. 12 (2).

Exemption, securities of financial institutions

Debt securities

[73.1 \(1\)](#) The prospectus requirement does not apply to a distribution of a debt security that is issued or guaranteed by any of the following financial institutions:

1. A bank listed in Schedule I, II or III to the *Bank Act* (Canada).
2. An association to which the *Cooperative Credit Associations Act* (Canada) applies or a central cooperative credit society for which an order has been made under subsection 473 (1) of that Act.
3. A loan corporation, trust company, trust corporation, insurance company, treasury branch, credit union, caisse populaire, financial services cooperative or credit union league or federation that is authorized by a statute of Canada or Ontario to carry on business in Canada or Ontario, as the case may be.
4. Such other financial institutions as may be prescribed by the regulations. 2009, c. 18, Sched. 26, s. 12 (2).

Exception, subordinated debt securities

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

those debt securities. 2009, c. 18, Sched. 26, s. 12 (2).

Conditions and restrictions

[\(3\)](#) The exemption under subsection (1) with respect to a financial institution described in paragraph 1, 2 or 3 of that subsection is subject to such conditions and restrictions as may be prescribed by a regulation made by the Lieutenant Governor in Council. 2009, c. 18, Sched. 26, s. 12 (2).

Same

[\(4\)](#) The exemption under subsection (1) with respect to a financial institution referred to in paragraph 4 of that subsection is subject to such conditions and restrictions as may be prescribed by the regulations. 2009, c. 18, Sched. 26, s. 12 (2).

Report

[\(5\)](#) Without limiting the generality of subsection (4), the regulations may prescribe reporting requirements that apply in connection with the exemption under subsection (1) with respect to a financial institution referred to in paragraph 4 of that subsection. 2009, c. 18, Sched. 26, s. 12 (2).

Other securities

[\(6\)](#) The prospectus requirement does not apply to a distribution of any of the following securities:

1. Securities issued by a corporation to which the *Co-operative Corporations Act* applies.
2. Membership shares and patronage shares, within the meaning of the *Credit Unions and Caisses Populaires Act, 1994*, of a credit union.
3. Securities issued to its members by a credit union to which the *Credit Unions and Caisses Populaires Act, 1994* applies.
4. Securities issued to its members or to the members of its member credit unions by a league to which the *Credit Unions and Caisses Populaires Act, 1994* applies. 2009, c. 18, Sched. 26, s. 12 (2).

Exemption, where other legislation applies

Secured by or under a security agreement

[73.2 \(1\)](#) Subject to subsection (2), the prospectus requirement does not apply to a distribution of a security evidencing indebtedness that is secured by or under a security agreement, as defined in subsection 1 (1) of the *Personal Property Security Act*, or that is secured in a similar manner in accordance with comparable legislation of another province or territory of Canada that provides for the granting of security in personal property. 2009, c. 18, Sched. 26, s. 12 (2).

Exception to exemption

[\(2\)](#) The exemption under subsection (1) from the prospectus requirement does not apply to a distribution to an individual. 2009, c. 18, Sched. 26, s. 12 (2).

Distribution by licensed mortgage brokerage, etc.

[\(3\)](#) The prospectus requirement does not apply to a distribution of a security evidencing indebtedness secured by a mortgage or charge on real property in Canada if the distribution is made

by a person or company,

- (a) that is licensed under the *Mortgage Brokerages, Lenders and Administrators Act, 2006* or is exempt from the requirement to be licensed under that Act, if the real property is in Ontario; or
- (b) that is licensed or registered under comparable legislation in the province or territory of Canada, other than Ontario, in which the real property is located, or is exempt from any legislative requirement to be licensed or registered in the province or territory. 2009, c. 18, Sched. 26, s. 12 (2).

Exemption, accredited investor

Definition

73.3 (1) For the purposes of this section,

“accredited investor” means,

- (a) a financial institution described in paragraph 1, 2 or 3 of subsection 73.1 (1),
- (b) the Business Development Bank of Canada,
- (c) a subsidiary of any person or company referred to in clause (a) or (b), if the person or company owns all of the voting securities of the subsidiary, except the voting securities required by law to be owned by directors of that subsidiary,
- (d) a person or company registered under the securities legislation of a province or territory of Canada as an adviser or dealer, except as otherwise prescribed by the regulations,
- (e) the Government of Canada, the government of a province or territory of Canada, or any Crown corporation, agency or wholly owned entity of the Government of Canada or of the government of a province or territory of Canada,
- (f) a municipality, public board or commission in Canada and a metropolitan community, school board, the Comité de gestion de la taxe scolaire de l'Île de Montréal or an intermunicipal management board in Quebec,
- (g) any national, federal, state, provincial, territorial or municipal government of or in any foreign jurisdiction, or any agency of that government,
- (h) a pension fund that is regulated by either the Office of the Superintendent of Financial Institutions (Canada) or a pension commission or similar regulatory authority of a province or territory of Canada,
- (i) a person or company that is recognized or designated by the Commission as an accredited investor,
- (j) such other persons or companies as may be prescribed by the regulations. 2009, c. 18, Sched. 26, s. 12 (2).

Exemption

(2) The prospectus requirement does not apply to a distribution of a security if the purchaser purchases the security as principal and is an accredited investor. 2009, c. 18, Sched. 26, s. 12 (2).

Status as principal

[\(3\)](#) The regulations may prescribe circumstances in which a person or company is deemed to be purchasing a security as principal for the purposes of an exemption under this section. 2009, c. 18, Sched. 26, s. 12 (2).

Conditions and restrictions

[\(4\)](#) The regulations may prescribe conditions and restrictions that apply to an exemption under this section. 2009, c. 18, Sched. 26, s. 12 (2).

Report

[\(5\)](#) Without limiting the generality of subsection (4), the regulations may prescribe reporting requirements that apply in connection with an exemption under this section. 2009, c. 18, Sched. 26, s. 12 (2).

Interpretation

[\(6\)](#) For the purposes of the definition of “accredited investor” in subsection (1), the regulations may define “foreign jurisdiction” and “subsidiary”. 2009, c. 18, Sched. 26, s. 12 (2).

Exemption, private issuer

Definition

[73.4 \(1\)](#) For the purposes of this section,

“private issuer” has the meaning prescribed by the regulations. 2009, c. 18, Sched. 26, s. 12 (2).

Exemption

[\(2\)](#) The prospectus requirement does not apply to a distribution of a security of a private issuer to a person or company who purchases the security as principal and who satisfies the criteria prescribed by regulation. 2009, c. 18, Sched. 26, s. 12 (2).

Conditions and restrictions

[\(3\)](#) The regulations may prescribe conditions and restrictions that apply to an exemption under this section. 2009, c. 18, Sched. 26, s. 12 (2).

Exemption, government incentive securities

Definition

[73.5 \(1\)](#) For the purposes of this section,

“government incentive security” means a security that enables the holder to receive a grant or other monetary or tax benefit pursuant to a provision of an Act or regulation of Canada, Ontario or another province or territory of Canada, and that is prescribed by the regulations as a government incentive security. 2009, c. 18, Sched. 26, s. 12 (2).

Exemption

[\(2\)](#) The prospectus requirement does not apply to a distribution of a government incentive security. 2009, c. 18, Sched. 26, s. 12 (2).

Conditions and restrictions

[\(3\)](#) The regulations may prescribe conditions and restrictions that apply to an exemption under this section. 2009, c. 18, Sched. 26, s. 12 (2).

Report

[\(4\)](#) Without limiting the generality of subsection (3), the regulations may prescribe reporting requirements that apply in connection with an exemption under this section. 2009, c. 18, Sched. 26, s. 12 (2).

Additional exemptions by regulation

[73.6 \(1\)](#) The regulations may prescribe exemptions from the prospectus requirement in addition to the exemptions provided under sections 73 to 73.5. 2009, c. 18, Sched. 26, s. 12 (2).

Report

[\(2\)](#) Without limiting the generality of subsection (1), the regulations may prescribe reporting requirements that apply in connection with an exemption authorized by that subsection. 2009, c. 18, Sched. 26, s. 12 (2).

See: 2009, c. 18, Sched. 26, ss. 12 (2), 21 (2).

Resale of securities, deemed distribution

[73.7 \(1\)](#) The regulations may provide that the first trade in a security previously distributed under an exemption from the prospectus requirement is deemed to be a distribution unless it is carried out in accordance with the regulations. 2009, c. 18, Sched. 26, s. 13.

Distribution by a control person

[\(2\)](#) Without limiting the generality of subsection (1), the regulations shall prescribe the circumstances in which a distribution by a control person is exempted from the prospectus requirement. 2009, c. 18, Sched. 26, s. 13.

Exemption order

[74. \(1\)](#) Upon the application of an interested person or company, the Commission may make the following rulings if the Commission is satisfied that to do so would not be prejudicial to the public interest:

1. A ruling that any person or company is not subject to section 25.
2. A ruling that any trade, intended trade, security, person or company is not subject to section 53. 2009, c. 18, Sched. 26, s. 14.

Terms and conditions

[\(1.1\)](#) In a ruling under subsection (1), the Commission may impose such terms and conditions as are considered necessary. 2009, c. 18, Sched. 26, s. 14.

Determination of whether distribution has ceased

[\(2\)](#) Where doubt exists whether a distribution of any security has been concluded or is currently in progress, the Commission may determine the question and rule accordingly. R.S.O. 1990, c. S.5, s. 74 (2).

Ruling final

[\(3\)](#) A decision of the Commission under this section is final and there is no appeal therefrom. R.S.O. 1990, c. S.5, s. 74 (3).

PART XVIII

CONTINUOUS DISCLOSURE

Publication of material change

75. (1) Subject to subsection (3), where a material change occurs in the affairs of a reporting issuer, it shall forthwith issue and file a news release authorized by a senior officer disclosing the nature and substance of the change. R.S.O. 1990, c. S.5, s. 75 (1); 1994, c. 11, s. 349.

Report of material change

(2) Subject to subsection (3), the reporting issuer shall file a report of such material change in accordance with the regulations as soon as practicable and in any event within ten days of the date on which the change occurs. R.S.O. 1990, c. S.5, s. 75 (2).

Exception

(3) A reporting issuer may, instead of complying with subsection (1), promptly file with the Commission the report required under subsection (2), marked as confidential, and its written reasons for doing so if,

- (a) the reporting issuer reasonably believes that a disclosure required under subsections (1) and (2) would be unduly detrimental to its interests; or
- (b) the material change consists of a decision made by the senior management of the reporting issuer to implement a change and the senior management,
 - (i) believes that confirmation by the board of directors of the decision to implement the change is probable, and
 - (ii) has no reason to believe that any person or company with knowledge of the material change has purchased or sold the reporting issuer's securities or traded a related derivative. 2010, c. 26, Sched. 18, s. 29 (1).

Idem

(4) Where a report has been filed with the Commission under subsection (3), the reporting issuer shall advise the Commission in writing where it believes the report should continue to remain confidential within ten days of the date of filing of the initial report and every ten days thereafter until the material change is generally disclosed in the manner referred to in subsection (1) or, if the material change consists of a decision of the type referred to in clause (3) (b), until that decision has been rejected by the board of directors of the issuer. R.S.O. 1990, c. S.5, s. 75 (4).

Requirement to disclose subsequently

(5) A reporting issuer that has filed a report under subsection (3) shall promptly disclose the material change in the manner referred to in subsection (1) if the reporting issuer becomes aware or has reasonable grounds to believe that a person or company having knowledge of the material change is purchasing or selling securities of the reporting issuer or trading a related derivative. 2010, c. 26, Sched. 18, s. 29 (2).

Trading where undisclosed change

76. (1) No person or company in a special relationship with a reporting issuer shall purchase or sell securities of the reporting issuer with the knowledge of a material fact or material change with respect to the reporting issuer that has not been generally disclosed. R.S.O. 1990, c. S.5,

s. 76 (1).

Tipping

(2) No reporting issuer and no person or company in a special relationship with a reporting issuer shall inform, other than in the necessary course of business, another person or company of a material fact or material change with respect to the reporting issuer before the material fact or material change has been generally disclosed. R.S.O. 1990, c. S.5, s. 76 (2).

Idem

(3) No person or company that proposes,

- (a) to make a take-over bid, as defined in Part XX, for the securities of a reporting issuer;
- (b) to become a party to a reorganization, amalgamation, merger, arrangement or similar business combination with a reporting issuer; or
- (c) to acquire a substantial portion of the property of a reporting issuer,

shall inform another person or company of a material fact or material change with respect to the reporting issuer before the material fact or material change has been generally disclosed except where the information is given in the necessary course of business to effect the take-over bid, business combination or acquisition. R.S.O. 1990, c. S.5, s. 76 (3).

Defence

(4) No person or company shall be found to have contravened subsection (1), (2) or (3) if the person or company proves that the person or company reasonably believed that the material fact or material change had been generally disclosed. R.S.O. 1990, c. S.5, s. 76 (4).

Definition

(5) For the purposes of this section,

“person or company in a special relationship with a reporting issuer” means,

- (a) a person or company that is an insider, affiliate or associate of,
 - (i) the reporting issuer,
 - (ii) a person or company that is proposing to make a take-over bid, as defined in Part XX, for the securities of the reporting issuer, or
 - (iii) a person or company that is proposing to become a party to a reorganization, amalgamation, merger or arrangement or similar business combination with the reporting issuer or to acquire a substantial portion of its property,
- (b) a person or company that is engaging in or proposes to engage in any business or professional activity with or on behalf of the reporting issuer or with or on behalf of a person or company described in subclause (a) (ii) or (iii),
- (c) a person who is a director, officer or employee of the reporting issuer or of a person or company described in subclause (a) (ii) or (iii) or clause (b),
- (d) a person or company that learned of the material fact or material change with respect to the reporting issuer while the person or company was a person or company described in clause (a), (b) or (c),
- (e) a person or company that learns of a material fact or material change with respect to the

issuer from any other person or company described in this subsection, including a person or company described in this clause, and knows or ought reasonably to have known that the other person or company is a person or company in such a relationship; (“personne ou compagnie ayant des rapports particuliers avec un émetteur assujéti”)

“reporting issuer” includes an issuer that has a real and substantial connection to Ontario and whose securities are listed and posted for trading on the TSX Venture Exchange. (“émetteur assujéti”) R.S.O. 1990, c. S.5, s. 76 (5); 2010, c. 26, Sched. 18, s. 30 (1).

Idem

(6) For the purpose of subsection (1), a security of the reporting issuer shall be deemed to include,

- (a) a put, call, option or other right or obligation to purchase or sell securities of the reporting issuer;
- (b) a security, the market price of which varies materially with the market price of the securities of the issuer; or
- (c) a related derivative. R.S.O. 1990, c. S.5, s. 76 (6); 2010, c. 26, Sched. 18, s. 30 (2).

Interim financial reports

77. (1) Every reporting issuer that is not a mutual fund shall file within sixty days of the date to which it is made up an interim financial report,

- (a) where the reporting issuer has not completed its first financial year, for the periods commencing with the beginning of that year and ending nine, six and three months respectively before the date on which that year ends, but no interim financial report is required to be filed for any period that is less than three months in length;
- (b) where the reporting issuer has completed its first financial year, to the end of each of the three-month, six-month and nine-month periods of the current financial year that commenced immediately following the last financial year, including a comparative statement to the end of each of the corresponding periods in the last financial year,

made up and certified as required by the regulations and in accordance with generally accepted accounting principles. R.S.O. 1990, c. S.5, s. 77 (1); 2010, c. 1, Sched. 26, s. 4 (1, 2).

Idem

(2) Every mutual fund in Ontario shall file within sixty days of the date to which it is made up an interim financial report,

- (a) where the mutual fund in Ontario has not completed its first financial year, for the period commencing with the beginning of that year and ending six months before the date on which that year ends but, if the first financial year is less than six months in length, no interim financial report is required to be filed;
- (b) where the mutual fund in Ontario has completed its first financial year, for the six-month period of the current financial year that commenced immediately following the last financial year,

made up and certified as required by the regulations and in accordance with generally accepted accounting principles. R.S.O. 1990, c. S.5, s. 77 (2); 2002, c. 18, Sched. H, s. 9; 2010, c. 1,

Sched. 26, s. 4 (3, 4).

Comparative financial statements

78. (1) Every reporting issuer that is not a mutual fund and every mutual fund in Ontario shall file annually within 140 days from the end of its last financial year comparative financial statements relating separately to,

(a) the period that commenced on the date of incorporation or organization and ended as of the close of the first financial year or, if the reporting issuer or mutual fund has completed a financial year, the last financial year, as the case may be; and

(b) the period covered by the financial year next preceding the last financial year, if any, made up and certified as required by the regulations and in accordance with generally accepted accounting principles. R.S.O. 1990, c. S.5, s. 78 (1).

Auditor's report

(2) Every financial statement referred to in subsection (1) shall be accompanied by a report of the auditor of the reporting issuer or mutual fund prepared in accordance with the regulations. R.S.O. 1990, c. S.5, s. 78 (2).

Auditor's examination

(3) The auditor of a reporting issuer or mutual fund shall make such examinations as will enable the auditor to make the report required by subsection (2). R.S.O. 1990, c. S.5, s. 78 (3).

“auditor” defined

(4) For the purposes of this Part,

“auditor”, where used in relation to the reporting issuer or mutual fund, includes the auditor of the reporting issuer or mutual fund and any other independent public accountant. R.S.O. 1990, c. S.5, s. 78 (4); 2004, c. 8, s. 47 (1).

Delivery of financial statements to security holders

79. (1) Every reporting issuer or mutual fund in Ontario that is required to file a financial statement under section 77 or 78 shall send a true copy of the financial statement to every holder of its securities whose latest address, as shown on its books, is in Ontario. 2002, c. 18, Sched. H, s. 10.

Deadline

(2) The reporting issuer or mutual fund in Ontario shall send the true copy of the financial statement no later than the end of the period during which it is required to file the financial statement under section 77 or 78. 2002, c. 18, Sched. H, s. 10.

Exception

(3) Despite subsection (1), a reporting issuer or mutual fund in Ontario is not required to send a copy of the financial statement to a security holder who holds its evidence of indebtedness only. 2002, c. 18, Sched. H, s. 10.

Deemed compliance

(4) If the laws of a reporting issuer's jurisdiction of incorporation, organization or continuance impose requirements corresponding to the requirements in subsections (1) and (2), compliance with the requirements imposed by that jurisdiction shall be deemed to be compliance with the requirements in subsections (1) and (2). 2002, c. 18, Sched. H, s. 10.

Relief against certain requirement

80. Upon the application of a reporting issuer or other interested person or company or upon the motion of the Commission, the Commission may, where in the opinion of the Commission to do so would not be prejudicial to the public interest, make an order on such terms and conditions as the Commission may impose,

- (a) Repealed: 1999, c. 9, s. 208 (2).
- (b) exempting, in whole or in part, any reporting issuer from a requirement of this Part or the regulations relating to a requirement of this Part,
 - (i) if such requirement conflicts with a requirement of the laws of the jurisdiction under which the reporting issuer is incorporated, organized or continued,
 - (ii) if the reporting issuer ordinarily distributes financial information to holders of its securities in a form, or at times, different from those required by this Part, or
 - (iii) if otherwise satisfied in the circumstances of the particular case that there is adequate justification for so doing. R.S.O. 1990, c. S.5, s. 80; 1994, c. 33, s. 4; 1999, c. 9, s. 208.

Filing of information circular

81. (1) Where the management of a reporting issuer is required to send an information circular under clause 86 (1) (a), the reporting issuer shall forthwith file a copy of such information circular certified in accordance with the regulations. R.S.O. 1990, c. S.5, s. 81 (1).

Idem

(2) In any case where subsection (1) is not applicable, the reporting issuer shall file annually within 140 days from the end of its last financial year a report prepared and certified in accordance with the regulations. R.S.O. 1990, c. S.5, s. 81 (2).

Filing of documents filed in another jurisdiction

82. Where the laws of the jurisdiction in which the reporting issuer was incorporated, organized or continued require the reporting issuer to file substantially the same information in that jurisdiction as is required by this Part, the reporting issuer may comply with the filing requirements of this Part by filing copies of the news release, timely disclosure report, information circular or financial statements and auditor's report, as the case may be, required by that jurisdiction provided such releases, reports, circulars or statements are manually signed or certified in accordance with the regulations. R.S.O. 1990, c. S.5, s. 82; 1994, c. 11, s. 349.

List of reporting issuers in default

83. The Commission may publish a list of reporting issuers who are in default of any requirement of this Act or the regulations. 2010, c. 1, Sched. 26, s. 5.

83.1 Repealed: 2006, c. 33, Sched. Z.5, s. 6.

PART XIX PROXIES AND PROXY SOLICITATION

Definitions

84. In this Part,

“information circular” means an information circular prepared in accordance with the

regulations; (“circulaire d’information”)

“solicit” and “solicitation” include,

- (a) any request for a proxy whether or not accompanied by or included in a form of proxy,
- (b) any request to execute or not to execute a form of proxy or to revoke a proxy,
- (c) the sending or delivery of a form of proxy or other communication to a security holder under circumstances reasonably calculated to result in the procurement, withholding or revocation of a proxy,
- (d) the sending or delivery of a form of proxy to a security holder under section 85,

but do not include,

- (e) the sending or delivery of a form of proxy to a security holder in response to an unsolicited request made by the security holder or on the security holder’s behalf,
- (f) the performance by any person or company of ministerial acts or professional services on behalf of a person or company soliciting a proxy, or
- (g) such other activities as may be prescribed in the regulations. (“solliciter”, “sollicitation”) R.S.O. 1990, c. S.5, s. 84; 2005, c. 31, Sched. 20, s. 4.

Mandatory solicitation of proxies

85. Subject to section 88, if the management of a reporting issuer gives or intends to give to holders of its voting securities notice of a meeting, the management shall, concurrently with or prior to giving the notice to the security holders whose latest address as shown on the books of the reporting issuer is in Ontario, send to each such security holder who is entitled to notice of meeting, at the security holder’s latest address as shown on the books of the reporting issuer, a form of proxy for use at the meeting that complies with the regulations. R.S.O. 1990, c. S.5, s. 85; 2001, c. 23, s. 214.

Information circular

86. (1) Subject to subsection (2) and section 88, no person or company shall solicit proxies from holders of its voting securities whose latest address as shown on the books of the reporting issuer is in Ontario unless,

- (a) in the case of a solicitation by or on behalf of the management of a reporting issuer, an information circular, either as an appendix to or as a separate document accompanying the notice of the meeting, is sent to each such security holder of the reporting issuer whose proxy is solicited at the security holder’s latest address as shown on the books of the reporting issuer; or
- (b) in the case of any other solicitation, the person or company making the solicitation, concurrently with or prior thereto, delivers or sends an information circular to each such security holder whose proxy is solicited. R.S.O. 1990, c. S.5, s. 86 (1); 2001, c. 23, s. 215.

Application of subs. (1)

(2) Subsection (1) does not apply to,

- (a) any solicitation, otherwise than by or on behalf of the management of a reporting issuer,

where the total number of security holders whose proxies are solicited is not more than fifteen, two or more persons or companies who are the joint registered owners of one or more securities being counted as one security holder;

- (a.1) any solicitation, otherwise than by or on behalf of the management of a reporting issuer, in such other circumstances as may be prescribed in the regulations;
- (b) any solicitation by a person or company made under section 49; or
- (c) any solicitation by a person or company in respect of securities of which he, she or it is the beneficial owner. R.S.O. 1990, c. S.5, s. 86 (2); 2005, c. 31, Sched. 20, s. 5.

Voting where proxies

87. The chair at a meeting has the right not to conduct a vote by way of ballot on any matter or group of matters in connection with which the form of proxy has provided a means whereby the person or company whose proxy is solicited may specify how such person or company wishes the securities registered in his, her or its name to be voted unless,

- (a) a poll is demanded by any security holder present at the meeting in person or represented thereat by proxy; or
- (b) proxies requiring that the securities represented thereby be voted against what would otherwise be the decision of the meeting in relation to such matters or group of matters total more than 5 per cent of all the voting rights attached to all the securities entitled to be voted and be represented at the meeting. R.S.O. 1990, c. S.5, s. 87.

Compliance with laws of other jurisdiction

88. (1) Where a reporting issuer is complying with the requirements of the laws of the jurisdiction under which it is incorporated, organized or continued and the requirements are substantially similar to the requirements of this Part, the requirements of this Part do not apply. R.S.O. 1990, c. S.5, s. 88 (1).

Exemption by order

(2) Subject to subsection (1), upon the application of any interested person or company, the Commission may,

- (a) if a requirement of this Part conflicts with a requirement of the laws of the jurisdiction under which the reporting issuer is incorporated, organized or continued; or
- (b) if otherwise satisfied in the circumstances of the particular case that there is adequate justification for so doing,

make an order on such terms and conditions as the Commission may impose, exempting, in whole or in part, a person or company from the requirements of this Part and of section 81. R.S.O. 1990, c. S.5, s. 88 (2); 1994, c. 11, s. 370.

PART XX TAKE-OVER BIDS AND ISSUER BIDS

INTERPRETATION

Definitions

89. (1) In this Part,

“bid circular” means a bid circular prepared in accordance with section 94.2; (“circulaire d’offre”)

“business day” means a day other than a Saturday or holiday; (“jour ouvrable”)

“class of securities” includes a series of a class of securities; (“catégorie de valeurs mobilières”)

“equity security” means a security of an issuer that carries a residual right to participate in the earnings of the issuer and, on liquidation or winding up of the issuer, in its assets; (“titre de participation”)

“formal bid” means a formal take-over bid or a formal issuer bid; (“offre formelle”)

“formal bid requirements” means sections 93 to 99.1; (“exigences relatives aux offres formelles”)

“formal issuer bid” means an issuer bid that is not exempt from the formal bid requirements by sections 101 to 101.7; (“offre formelle de l’émetteur”)

“formal take-over bid” means a take-over bid that is not exempt from the formal bid requirements by sections 100 to 100.6; (“offre formelle d’achat visant à la mainmise”)

“issuer bid” means an offer to acquire or redeem securities of an issuer made by the issuer to one or more persons or companies, any of whom is in Ontario or whose last address as shown on the books of the offeree issuer is in Ontario, and also includes an acquisition or redemption of securities of the issuer by the issuer from those persons or companies, but does not include an offer to acquire or redeem or an acquisition or redemption,

- (a) if no valuable consideration is offered or paid by the issuer for the securities,
- (b) if the offer to acquire or redeem, or the acquisition or redemption is a step in an amalgamation, merger, reorganization or arrangement that requires approval in a vote of security holders, or
- (c) if the securities are debt securities that are not convertible into securities other than debt securities; (“offre de l’émetteur”)

“offeree issuer” means an issuer whose securities are the subject of a take-over bid, an issuer bid or an offer to acquire; (“pollicité”)

“offeror” means, except in sections 93 to 93.4, a person or company that makes a take-over bid, an issuer bid or an offer to acquire; (“pollicitant”)

“offeror’s securities” means securities of an offeree issuer beneficially owned, or over which control or direction is exercised, on the date of an offer to acquire, by an offeror or by any person or company acting jointly or in concert with the offeror; (“valeurs mobilières du pollicitant”)

“offer to acquire” means,

- (a) an offer to purchase, or a solicitation of an offer to sell, securities,
- (b) an acceptance of an offer to sell securities, whether or not the offer has been solicited, or
- (c) any combination of the above; (“offre d’acquisition”)

“published market” means, with respect to any class of securities, a market in Canada or outside of Canada on which the securities are traded, if the prices at which they have been traded on that market are regularly,

- (a) disseminated electronically, or
- (b) published in a newspaper or business or financial publication of general and regular paid circulation; (“marché organisé”)

“subsidiary” means an issuer that is controlled directly or indirectly by another issuer and includes a subsidiary of that subsidiary; (“filiale”)

“take-over bid” means an offer to acquire outstanding voting securities or equity securities of a class made to one or more persons or companies, any of whom is in Ontario or whose last address as shown on the books of the offeree issuer is in Ontario, where the securities subject to the offer to acquire, together with the offeror’s securities, constitute in the aggregate 20 per cent or more of the outstanding securities of that class of securities at the date of the offer to acquire but does not include an offer to acquire if the offer to acquire is a step in an amalgamation, merger, reorganization or arrangement that requires approval in a vote of security holders. (“offre d’achat visant à la mainmise”) 2007, c. 7, Sched. 38, s. 8.

Deemed affiliate of an issuer

(2) For the purposes of this Part, an issuer shall be deemed to be an affiliate of another issuer if one of them is the subsidiary of the other or if each of them is controlled by the same person or company. 2007, c. 7, Sched. 38, s. 8.

Control

- (3) For the purposes of this Part, a person or company controls a second person or company,
- (a) if the first person or company, directly or indirectly, beneficially owns or exercises control or direction over securities of the second person or company carrying votes which, if exercised, would entitle the first person or company to elect a majority of the directors of the second person or company, unless the first person or company holds the voting securities only to secure an obligation;
 - (b) if the second person or company is a partnership, other than a limited partnership, and the first person or company holds more than 50 per cent of the interests of the partnership; or
 - (c) if the second person or company is a limited partnership and the general partner of the limited partnership is the first person or company. 2007, c. 7, Sched. 38, s. 8.

Computation of time

(4) For the purposes of this Part, a period of days is to be computed as beginning on the day following the event that began the period and ending at 11:59 p.m. on the last day of the period if that day is a business day or at 11:59 p.m. on the next business day if the last day of the period does not fall on a business day. 2007, c. 7, Sched. 38, s. 8.

Deemed convertible securities

- (5) For the purposes of this Part,
- (a) a security shall be deemed to be convertible into a security of another class if, whether or not on conditions, it is or may be convertible into or exchangeable for, or if it carries

the right or obligation to acquire, a security of the other class, whether of the same or another issuer; and

- (b) a security that is convertible into a security of another class shall be deemed to be convertible into a security or securities of each class into which the second-mentioned security may be converted, either directly or through securities of one or more other classes of securities that are themselves convertible. 2007, c. 7, Sched. 38, s. 8.

Deemed beneficial ownership

90. (1) For the purposes of this Part, in determining the beneficial ownership of securities of an offeror or of any person or company acting jointly or in concert with the offeror, at any given date, the offeror or the person or company shall be deemed to have acquired and to be the beneficial owner of a security, including an unissued security, if the offeror or the person or company is the beneficial owner of a security convertible into the security within 60 days following that date or has a right or obligation permitting or requiring the offeror or the person or company, whether or not on conditions, to acquire beneficial ownership of the security within 60 days, by a single transaction or a series of linked transactions. 2007, c. 7, Sched. 38, s. 8.

Calculation of outstanding securities

(2) The number of outstanding securities of a class in respect of an offer to acquire includes securities that are beneficially owned as determined in accordance with subsection (1). 2007, c. 7, Sched. 38, s. 8.

Calculation of holdings, joint offerors

(3) If two or more offerors acting jointly or in concert make one or more offers to acquire securities of a class, the securities subject to the offer or offers to acquire shall be deemed to be securities subject to the offer to acquire of each offeror for the purpose of determining whether an offeror is making a take-over bid. 2007, c. 7, Sched. 38, s. 8.

Limitation

(4) For the purposes of this section, an offeror is not a beneficial owner of securities solely because there is an agreement, commitment or understanding that a security holder will tender the securities under a formal bid made by the offeror. 2007, c. 7, Sched. 38, s. 8.

Acting jointly or in concert

91. (1) For the purposes of this Part, it is a question of fact as to whether a person or company is acting jointly or in concert with an offeror and, without limiting the generality of the foregoing,

- (a) the following shall be deemed to be acting jointly or in concert with an offeror:
- (i) a person or company who, as a result of any agreement, commitment or understanding with the offeror or with any other person or company acting jointly or in concert with the offeror, acquires or offers to acquire securities of the same class as those subject to the offer to acquire, and
 - (ii) an affiliate of the offeror; and
- (b) the following shall be presumed to be acting jointly or in concert with an offeror:
- (i) a person or company who, as a result of any agreement, commitment or understanding with the offeror or with any other person or company acting jointly

or in concert with the offeror, intends to exercise jointly or in concert with the offeror or with any person or company acting jointly or in concert with the offeror any voting rights attaching to any securities of the offeree issuer, and

(ii) an associate of the offeror. 2007, c. 7, Sched. 38, s. 8.

Exception, registered dealers

(2) Subsection (1) does not apply to a registered dealer acting solely in an agency capacity for the offeror in connection with a bid and not executing principal transactions in the class of securities subject to the offer to acquire or performing services beyond the customary functions of a registered dealer. 2007, c. 7, Sched. 38, s. 8.

Exception, agreements to tender securities

(3) For the purposes of this section, a person or company is not acting jointly or in concert with an offeror solely because there is an agreement, commitment or understanding that the person or company will tender securities under a formal bid made by the offeror. 2007, c. 7, Sched. 38, s. 8.

Application to direct and indirect offers

92. For the purposes of this Part, a reference to an offer to acquire or to the acquisition or ownership of securities or to control or direction over securities includes a direct or indirect offer to acquire or the direct or indirect acquisition or ownership of securities, or the direct or indirect control or direction over securities, as the case may be. 2007, c. 7, Sched. 38, s. 8.

BID INTEGRATION RULES FOR FORMAL BIDS

Definition, offeror

93. In sections 93.1 to 93.4,

“offeror” means,

- (a) a person or company making a formal bid,
- (b) a person or company acting jointly or in concert with a person or company referred to in clause (a),
- (c) a control person of a person or company referred to in clause (a), or
- (d) a person or company acting jointly or in concert with the control person referred to in clause (c). 2007, c. 7, Sched. 38, s. 8.

Restrictions on acquisitions during formal take-over bid

93.1 (1) An offeror shall not offer to acquire, or make or enter into an agreement, commitment or understanding to acquire beneficial ownership of any securities of the class that are subject to a formal take-over bid or securities convertible into securities of that class otherwise than under the bid on and from the day of the announcement of the offeror’s intention to make the bid until the expiry of the bid. 2007, c. 7, Sched. 38, s. 8.

Exception

(2) Subsection (1) does not apply to an offeror’s acquisitions of beneficial ownership of five per cent or less, in the aggregate, of the outstanding securities of the class that is subject to the bid if the acquisitions satisfy such conditions as may be specified by regulation. 2007, c. 7, Sched. 38, s. 8.

Same

[\(3\)](#) For the purposes of subsection (2), the acquisition of beneficial ownership of securities that are convertible into securities of the class that is subject to the bid shall be deemed to be an acquisition of the securities as converted. 2007, c. 7, Sched. 38, s. 8.

Restrictions on acquisitions during formal issuer bid

[\(4\)](#) An offeror shall not offer to acquire, or make or enter into an agreement, commitment or understanding to acquire, beneficial ownership of any securities of the class that are subject to a formal issuer bid, or securities that are convertible into securities of that class, otherwise than under the bid on and from the day of the announcement of the offeror's intention to make the bid until the expiry of the bid. 2007, c. 7, Sched. 38, s. 8.

Exceptions by regulation

[\(5\)](#) Subsections (1) and (4) do not apply in such other circumstances as may be specified by regulation. 2007, c. 7, Sched. 38, s. 8.

Restrictions on acquisitions before formal take-over bid

[93.2 \(1\)](#) If, within the period of 90 days immediately preceding a formal take-over bid, an offeror acquired beneficial ownership of securities of the class subject to the bid in a transaction not generally available on identical terms to holders of that class of securities,

(a) the offeror shall offer,

(i) consideration for securities deposited under the bid at least equal to and in the same form as the highest consideration that was paid on a per security basis under any such prior transaction, or

(ii) at least the cash equivalent of that consideration; and

(b) the offeror shall offer to acquire under the bid that percentage of the securities of the class subject to the bid that is at least equal to the highest percentage that the number of securities acquired from a seller in any such prior transaction was of the total number of securities of that class beneficially owned by that seller at the time of that prior transaction. 2007, c. 7, Sched. 38, s. 8.

Exception

[\(2\)](#) Subsection (1) does not apply to trades effected in the normal course on a published market if the trades satisfy such conditions as may be specified by regulation. 2007, c. 7, Sched. 38, s. 8.

Same

[\(3\)](#) Subsection (1) does not apply in such other circumstances as may be specified by regulation. 2007, c. 7, Sched. 38, s. 8.

Restrictions on acquisitions after formal bid

[93.3 \(1\)](#) During the period beginning with the expiry of a formal bid and ending at the end of the 20th business day after that, whether or not any securities are taken up under the bid, an offeror shall not acquire or offer to acquire beneficial ownership of securities of the class that was subject to the bid except by way of a transaction that is generally available to holders of that class of securities on identical terms. 2007, c. 7, Sched. 38, s. 8.

Exception

[\(2\)](#) Subsection (1) does not apply to trades effected in the normal course on a published market if the trades satisfy such conditions as may be specified by regulation. 2007, c. 7, Sched. 38, s. 8.

Same

[\(3\)](#) Subsection (1) does not apply in such other circumstances as may be specified by regulation. 2007, c. 7, Sched. 38, s. 8.

Prohibition on sales during formal bid

[93.4 \(1\)](#) An offeror, except pursuant to the formal bid, shall not sell, or make or enter into an agreement, commitment or understanding to sell, any securities of the class subject to the bid, or securities that are convertible into securities of that class, beginning on the day of the announcement of the offeror's intention to make the bid until the expiry of the bid. 2007, c. 7, Sched. 38, s. 8.

Exception

[\(2\)](#) Despite subsection (1), an offeror may, before the expiry of a bid, make or enter into an agreement, commitment or understanding to sell securities that may be taken up by the offeror under the bid, after the expiry of the bid, if the intention to sell is disclosed in the bid circular. 2007, c. 7, Sched. 38, s. 8.

Same

[\(3\)](#) Subsection (1) does not apply in such other circumstances as may be specified by regulation. 2007, c. 7, Sched. 38, s. 8.

MAKING A FORMAL BID

Duty to make bid to all security holders

[94.](#) An offeror shall make a formal bid to all holders of the class of securities subject to the bid who are in Ontario by sending the bid,

- (a) to each holder of that class of securities whose last address as shown on the books of the offeree issuer is in Ontario; and
- (b) to each holder of securities that, before the expiry of the deposit period referred to in the bid, are convertible into securities of that class, whose last address as shown on the books of the offeree issuer is in Ontario. 2007, c. 7, Sched. 38, s. 8.

Commencement of formal bid

Take-over bid

[94.1 \(1\)](#) An offeror shall commence a formal take-over bid,

- (a) by publishing an advertisement containing a brief summary of the bid in at least one major daily newspaper of general and regular paid circulation in Ontario; or
- (b) by sending the bid to the security holders described in section 94. 2007, c. 7, Sched. 38, s. 8.

Issuer bid

[\(2\)](#) An offeror shall commence a formal issuer bid by sending the bid to the security holders described in section 94. 2007, c. 7, Sched. 38, s. 8.

Duty to prepare and send offeror's circular

94.2 (1) An offeror making a formal bid shall prepare a take-over bid circular or an issuer bid circular, as the case may be, containing the information required by the regulations and in the form required by the regulations and shall send the bid circular either as part of the bid or together with the bid. 2007, c. 7, Sched. 38, s. 8.

Formal take-over bid commenced by advertising

(2) An offeror commencing a formal take-over bid by means of an advertisement under clause 94.1 (1) (a) shall,

- (a) on or before the date of first publication of the advertisement, deliver the bid and the bid circular to the offeree issuer's principal office and file the bid, the bid circular and the advertisement;
- (b) on or before the date of first publication of the advertisement, request from the offeree issuer a list of security holders described in section 94; and
- (c) not later than two business days after receipt of the list of security holders referred to in clause (b), send the bid and the bid circular to those security holders. 2007, c. 7, Sched. 38, s. 8.

Filing and delivery of take-over bid circular

(3) An offeror commencing a take-over bid under clause 94.1 (1) (b) shall file the bid and the bid circular and deliver them to the offeree issuer's principal office on the day the bid is sent, or as soon as practicable after that. 2007, c. 7, Sched. 38, s. 8.

Filing of issuer bid circular

(4) An offeror making a formal issuer bid shall file the bid and the bid circular on the day the bid is sent, or as soon as practicable after that. 2007, c. 7, Sched. 38, s. 8.

Change in information

94.3 (1) If, before the expiry of a formal bid or after the expiry of a bid but before the expiry of all rights to withdraw the securities deposited under the bid, a change has occurred in the information contained in the bid circular or any notice of change or notice of variation that would reasonably be expected to affect the decision of the security holders of the offeree issuer to accept or reject the bid, the offeror shall promptly,

- (a) issue and file a news release; and
- (b) send a notice of the change to every person or company to whom the bid was required to be sent and whose securities were not taken up before the date of the change. 2007, c. 7, Sched. 38, s. 8.

Exception

(2) Subsection (1) does not apply to a change that is not within the control of the offeror or of an affiliate of the offeror unless it is a change in a material fact relating to the securities being offered in exchange for securities of the offeree issuer. 2007, c. 7, Sched. 38, s. 8.

Variation not a change

(3) For the purposes of this section, a variation in the terms of a bid does not constitute a change in information. 2007, c. 7, Sched. 38, s. 8.

Form and contents of notice

(4) A notice of change in relation to a bid circular shall contain the information required by

the regulations and be in the form required by the regulations. 2007, c. 7, Sched. 38, s. 8.

Variation of terms

94.4 (1) If there is a variation in the terms of a formal bid, including any extension of the period during which securities may be deposited under the bid, and whether or not that variation results from the exercise of any right contained in the bid, the offeror shall promptly issue and file a news release and send a notice of variation to every person or company to whom the bid was required to be sent and whose securities were not taken up before the date of the variation. 2007, c. 7, Sched. 38, s. 8.

Form and contents of notice

(2) A notice of variation in relation to a formal bid shall contain the information required by the regulations and be in the form required by the regulations. 2007, c. 7, Sched. 38, s. 8.

Expiry of bid after variation

(3) If there is a variation in the terms of a formal bid, the period during which securities may be deposited under the bid shall not expire before 10 days after the date of the notice of variation. 2007, c. 7, Sched. 38, s. 8.

Exception

(4) Subsections (1) and (3) do not apply to a variation in the terms of a bid consisting solely of the waiver of a condition in the bid and any extension of the bid resulting from the waiver where the consideration offered for the securities consists solely of cash, but in that case the offeror shall promptly issue and file a news release announcing the waiver. 2007, c. 7, Sched. 38, s. 8.

No variation after deposit period

(5) A variation in the terms of a formal bid, other than a variation that is the waiver by the offeror of a condition that is specifically stated in the bid as being waivable at the sole option of the offeror, shall not be made after the expiry of the period, including any extension of the period, during which the securities may be deposited under the bid. 2007, c. 7, Sched. 38, s. 8.

Filing and sending notice of change or variation

94.5 A notice of change or notice of variation in respect of a formal bid shall be filed and, in the case of a take-over bid, delivered to the offeree issuer's principal office on the day the notice of change or notice of variation is sent to security holders of the offeree issuer or as soon as practicable after that. 2007, c. 7, Sched. 38, s. 8.

Change or variation in advertised take-over bid

94.6 (1) If a change or variation occurs to a formal take-over bid that was commenced by means of an advertisement and if the offeror has complied with clauses 94.2 (2) (a) and (b) but has not yet sent the bid and the bid circular as required by clause 94.2 (2) (c), the offeror shall,

- (a) publish an advertisement that contains a brief summary of the change or variation in at least one major daily newspaper of general and regular paid circulation in Ontario;
- (b) concurrently with the date of first publication of the advertisement,
 - (i) file the advertisement, and
 - (ii) file and deliver a notice of change or notice of variation to the offeree issuer's principal office; and
- (c) subsequently send the bid, the bid circular and the notice of change or notice of variation

to the security holders of the offeree issuer before the expiration of the period set out in clause 94.2 (2) (c). 2007, c. 7, Sched. 38, s. 8.

Exemption from s. 94.5

(2) If an offeror satisfies the requirements of subsection (1), the notice of change or notice of variation is not required to be filed and sent under section 94.5. 2007, c. 7, Sched. 38, s. 8.

Consent of expert, bid circular

94.7 (1) If a report, valuation, statement or opinion of an expert is included in or accompanies a bid circular or any notice of change or notice of variation, the written consent of the expert to the use of the report, valuation, statement or opinion shall be filed concurrently with the bid circular or notice of change or notice of variation. 2007, c. 7, Sched. 38, s. 8.

Definition

(2) For the purposes of this section,

“expert” includes a notary in Quebec, a solicitor, an auditor, an accountant, an engineer, a geologist, an appraiser or any other person or company whose profession or business gives authority to a statement made in a professional capacity by that person or company. 2007, c. 7, Sched. 38, s. 8.

Delivery and date of bid documents

94.8 (1) A formal bid, a bid circular and every notice of change or notice of variation shall be mailed by pre-paid mail to the intended recipient or delivered to the intended recipient by personal delivery, courier or other manner acceptable to the Director. 2007, c. 7, Sched. 38, s. 8.

Same

(2) Except for a take-over bid commenced by means of an advertisement under clause 94.1 (1) (a), a bid, bid circular, notice of change or notice of variation sent in accordance with subsection (1) shall be deemed to be dated as of the date it was sent to all or substantially all of the persons and companies entitled to receive it. 2007, c. 7, Sched. 38, s. 8.

Same

(3) If a take-over bid is commenced by means of an advertisement under clause 94.1 (1) (a), the bid, bid circular, notice of change or notice of variation shall be deemed to have been dated as of the date of first publication of the relevant advertisement. 2007, c. 7, Sched. 38, s. 8.

OFFEREE ISSUER'S OBLIGATIONS

Duty to prepare and send directors' circular

95. (1) If a formal take-over bid has been made, the board of directors of the offeree issuer shall prepare and send, not later than 15 days after the date of the bid, a directors' circular to every person or company to whom the bid was required to be sent. 2007, c. 7, Sched. 38, s. 8.

Duty to evaluate and advise

(2) The board of directors of the offeree issuer shall evaluate the terms of a formal take-over bid and, in the directors' circular,

- (a) shall recommend to security holders that they accept or reject the bid and give reasons for the recommendation;
- (b) shall advise security holders that the board is unable to make, or is not making, a

recommendation and state the reasons for being unable to make a recommendation or for not making a recommendation; or

- (c) shall advise security holders that the board is considering whether to make a recommendation to accept or reject the bid, shall state the reasons for not making a recommendation in the directors' circular and may advise security holders that they should not deposit their securities under the bid until they receive further communication from the board in accordance with clause (a) or (b). 2007, c. 7, Sched. 38, s. 8.

Further communication

[\(3\)](#) If clause (2) (c) applies, the board of directors shall communicate to security holders a recommendation or the decision that it is unable to make, or is not making, a recommendation, together with the reasons for the recommendation or the decision, at least seven days before the scheduled expiry of the period during which securities may be deposited under the bid. 2007, c. 7, Sched. 38, s. 8.

Form and contents of circular

[\(4\)](#) A directors' circular shall contain the information required by the regulations and be in the form required by the regulations. 2007, c. 7, Sched. 38, s. 8.

Notice of change

[95.1 \(1\)](#) If, before the expiry of a take-over bid or after the expiry of a take-over bid but before the expiry of all rights to withdraw the securities deposited under the bid, a change has occurred in the information contained in the directors' circular or in any notice of change to the directors' circular that would reasonably be expected to affect the decision of the security holders to accept or reject the bid, the board of directors of the offeree issuer shall promptly issue and file a news release relating to the change and send a notice of the change to every person or company to whom the take-over bid was required to be sent disclosing the nature and substance of the change. 2007, c. 7, Sched. 38, s. 8.

Form and contents of notice

[\(2\)](#) A notice of change in relation to a directors' circular shall contain the information required by the regulations and be in the form required by the regulations. 2007, c. 7, Sched. 38, s. 8.

Filing directors' circular or notice of change

[95.2](#) The board of directors of the offeree issuer shall concurrently file the directors' circular or a notice of change in relation to it and deliver it to the principal office of the offeror not later than the date on which it is sent to the security holders of the offeree issuer, or as soon as practicable after that. 2007, c. 7, Sched. 38, s. 8.

Individual director's or officer's circular

[96. \(1\)](#) An individual director or officer may recommend acceptance or rejection of a take-over bid if the director or officer sends with the recommendation a separate director's or officer's circular to every person or company to whom the take-over bid was required to be sent. 2007, c. 7, Sched. 38, s. 8.

Notice of change

[\(2\)](#) If, before the expiry of a take-over bid or after the expiry of a take-over bid but before the

expiry of all rights to withdraw the securities deposited under the bid, a change has occurred in the information contained in a director's or officer's circular or any notice of change in relation to it that would reasonably be expected to affect the decision of the security holders to accept or reject the bid, other than a change that is not within the control of the director or officer, as the case may be, that director or officer shall promptly send a notice of change to every person or company to whom the take-over bid was required to be sent. 2007, c. 7, Sched. 38, s. 8.

Form and contents of circular

(3) A director's or officer's circular shall contain the information required by the regulations and be in the form required by the regulations. 2007, c. 7, Sched. 38, s. 8.

Delivery to offeree issuer

(4) A director's or officer's obligation to send a circular under subsection (1) or to send a notice of change under subsection (2) may be satisfied by sending the circular or the notice of change, as the case may be, to the board of directors of the offeree issuer. 2007, c. 7, Sched. 38, s. 8.

Circulation of documents

(5) If a director or officer sends to the board of directors of the offeree issuer a circular under subsection (1) or a notice of change under subsection (2), the board, at the offeree issuer's expense, shall promptly send a copy of the circular or notice to every person or company to whom the take-over bid was required to be sent. 2007, c. 7, Sched. 38, s. 8.

Filing

(6) The board of directors of the offeree issuer or the individual director or officer, as the case may be, shall concurrently file the director's or officer's circular or a notice of change in relation to it and send it to the principal office of the offeror not later than the date on which it is sent to the security holders of the offeree issuer, or as soon as practicable after that. 2007, c. 7, Sched. 38, s. 8.

Form and contents of notice

(7) A notice of change in relation to a director's or officer's circular shall contain the information required by the regulations and be in the form required by the regulations. 2007, c. 7, Sched. 38, s. 8.

Consent of expert, directors' circular, etc.

96.1 If a report, valuation, statement or opinion of an expert, as defined in subsection 94.7 (2), is included in or accompanies a directors' circular, an individual director's or officer's circular or a notice of change, the written consent of the expert to the use of the report, valuation, statement or opinion shall be filed concurrently with the circular or notice. 2007, c. 7, Sched. 38, s. 8.

Methods of delivery of offeree issuer's documents

96.2 (1) A directors' circular, an individual director's or officer's circular and every notice of change shall be mailed by pre-paid mail to the intended recipient or delivered to the intended recipient by personal delivery, courier or other manner acceptable to the Director. 2007, c. 7, Sched. 38, s. 8.

Date of documents

(2) Any circular or notice sent in accordance with this section shall be deemed to be dated as of the date it was sent to all or substantially all of the persons and companies entitled to receive it.

2007, c. 7, Sched. 38, s. 8.

OFFEROR'S OBLIGATIONS

Consideration

[97. \(1\)](#) If a formal bid is made, all holders of the same class of securities shall be offered identical consideration. 2007, c. 7, Sched. 38, s. 8.

Same

[\(2\)](#) Subsection (1) does not prohibit an offeror from offering an identical choice of consideration to all holders of the same class of securities. 2007, c. 7, Sched. 38, s. 8.

Increase in consideration

[\(3\)](#) If a variation in the terms of a formal bid before the expiry of the bid increases the value of the consideration offered for the securities subject to the bid, the offeror shall pay that increased consideration to each person or company whose securities are taken up under the bid, whether or not the securities were taken up by the offeror before the variation of the bid. 2007, c. 7, Sched. 38, s. 8.

Prohibition against collateral agreements

[97.1 \(1\)](#) If a person or company makes or intends to make a formal bid, the person or company or any person or company acting jointly or in concert with that person or company shall not enter into any collateral agreement, commitment or understanding that has the effect, directly or indirectly, of providing a security holder of the offeree issuer with consideration of greater value than that offered to the other security holders of the same class of securities. 2007, c. 7, Sched. 38, s. 8.

Exception, employment benefit arrangements

[\(2\)](#) Subsection (1) does not apply to such employment compensation arrangements, severance arrangements or other employment benefit arrangements as may be specified by regulation. 2007, c. 7, Sched. 38, s. 8.

Proportionate take up and payment

[97.2 \(1\)](#) If a formal bid is made for less than all of the class of securities subject to the bid and a greater number of securities is deposited under the bid than the offeror is bound or willing to acquire under the bid, the offeror shall take up and pay for the securities proportionately, disregarding fractions, according to the number of securities deposited by each security holder. 2007, c. 7, Sched. 38, s. 8.

Deemed deposit, pre-bid transactions

[\(2\)](#) For the purposes of subsection (1), any securities acquired in a pre-bid transaction to which subsection 93.2 (1) applies shall be deemed to have been deposited under the bid by the person or company who was the seller in the pre-bid transaction. 2007, c. 7, Sched. 38, s. 8.

Exceptions

[\(3\)](#) Subsection (1) does not apply in such circumstances as may be specified by regulation. 2007, c. 7, Sched. 38, s. 8.

Financing arrangements

[97.3 \(1\)](#) If a formal bid provides that the consideration for the securities deposited under the bid is to be paid in cash or partly in cash, the offeror shall make adequate arrangements before the

bid to ensure that the required funds are available to make full payment for the securities that the offeror has offered to acquire. 2007, c. 7, Sched. 38, s. 8.

Conditional financing arrangements

(2) The financing arrangements required to be made under subsection (1) may be subject to conditions if, at the time the bid is commenced, the offeror reasonably believes the possibility to be remote that, if the conditions of the bid are satisfied or waived, the offeror will be unable to pay for the securities deposited under the bid due to a financing condition not being satisfied. 2007, c. 7, Sched. 38, s. 8.

BID MECHANICS

Minimum deposit period

98. (1) An offeror shall allow securities to be deposited under a formal bid for at least 35 days from the date of the bid. 2007, c. 7, Sched. 38, s. 8.

Prohibition on take up

(2) An offeror shall not take up securities deposited under a formal bid until the expiration of 35 days from the date of the bid. 2007, c. 7, Sched. 38, s. 8.

Withdrawal of securities

98.1 (1) A security holder may withdraw securities deposited under a formal bid,

- (a) at any time before the securities have been taken up by the offeror;
- (b) at any time before the expiration of 10 days from the date of a notice of change under section 94.3 or a notice of variation under section 94.4; or
- (c) if the securities have not been paid for by the offeror within three business days after the securities have been taken up. 2007, c. 7, Sched. 38, s. 8.

Exceptions

(2) The right of withdrawal under clause (1) (b) does not apply if the securities have been taken up by the offeror before the date of the notice of change or notice of variation or if one or both of the following circumstances occur:

1. A variation in the terms of the bid consisting only of an increase in consideration offered for the securities and an extension of the time for deposit to not later than 10 days after the date of the notice of variation.
2. A variation in the terms of the bid consisting solely of the waiver of one or more of the conditions of the bid where the consideration offered for the securities subject to the bid consists solely of cash. 2007, c. 7, Sched. 38, s. 8.

Method of withdrawing

(3) The withdrawal of any securities under subsection (1) shall be made by sending a written notice to the depository designated in the bid circular and becomes effective on its receipt by the depository. 2007, c. 7, Sched. 38, s. 8.

Duty to return securities

(4) If notice is given in accordance with subsection (3), the offeror shall promptly return the securities to the security holder. 2007, c. 7, Sched. 38, s. 8.

Effect of market purchases

98.2 If an offeror purchases securities under an exemption to subsection 93.1 (1), those purchased securities shall be counted in determining whether a condition as to the minimum number of securities to be deposited under a bid has been fulfilled, but shall not reduce the number of securities the offeror is bound to take up under the bid. 2007, c. 7, Sched. 38, s. 8.

Obligation to take up and pay for deposited securities

98.3 (1) If all the terms and conditions of a formal bid have been complied with or waived, the offeror shall take up and pay for securities deposited under the bid not later than 10 days after the expiry of the bid or at the time required by subsection (2) or (3), whichever is earliest. 2007, c. 7, Sched. 38, s. 8.

Same

(2) An offeror shall pay for any securities taken up under a formal bid as soon as possible, and in any event not later than three business days after the securities deposited under the bid are taken up. 2007, c. 7, Sched. 38, s. 8.

Same

(3) Securities deposited under a formal bid subsequent to the date on which the offeror first takes up securities deposited under the bid shall be taken up and paid for by the offeror not later than 10 days after the deposit of the securities. 2007, c. 7, Sched. 38, s. 8.

Bid not to be extended

(4) An offeror may not extend its formal bid if all the terms and conditions of the bid have been complied with or waived, unless the offeror first takes up all securities deposited under the bid and not withdrawn. 2007, c. 7, Sched. 38, s. 8.

Maximum number of securities required to be taken up

(5) Despite subsections (3) and (4), if a formal bid is made for less than all of the class of securities subject to the bid, an offeror is only required to take up, by the times specified in those subsections, the maximum number of securities that the offeror can take up without contravening section 97 or 97.2 at the expiry of the bid. 2007, c. 7, Sched. 38, s. 8.

Effect of waiver of terms or conditions

(6) Despite subsection (4), if the offeror waives any terms or conditions of a formal bid and extends the bid in circumstances where the rights of withdrawal conferred by clause 98.1 (1) (b) are applicable, the bid shall be extended without the offeror first taking up the securities which are subject to the rights of withdrawal. 2007, c. 7, Sched. 38, s. 8.

Expiry of the bid

98.4 A formal bid expires at the later of,

- (a) the end of the period, including any extension, during which securities may be deposited under the bid; and
- (b) the time at which the offeror becomes obligated by the terms of the bid to take up or reject securities deposited under the bid. 2007, c. 7, Sched. 38, s. 8.

Return of deposited securities

98.5 If, following the expiry of a bid, an offeror knows that it will not take up securities deposited under the bid, the offeror shall promptly issue and file a news release to that effect and

return the securities to the security holders. 2007, c. 7, Sched. 38, s. 8.

News release on expiry of bid

98.6 If all the terms and conditions of a bid have been complied with or waived, the offeror shall issue and file a news release to that effect promptly after the expiry of the bid, and the news release shall disclose,

- (a) the approximate number of securities deposited; and
- (b) the approximate number that will be taken up. 2007, c. 7, Sched. 38, s. 8.

Filing of documents

98.7 An offeror making a formal bid, and an offeree issuer whose securities are the subject of a formal bid, shall file copies of the documents required by the regulations and any amendments to those documents, in accordance with the regulations, unless the documents and amendments have been previously filed. 2007, c. 7, Sched. 38, s. 8.

Certification of bid circulars

99. (1) A bid circular, or a notice of change or notice of variation in respect of the bid circular required under this Part shall contain a certificate of the offeror in the form required by the regulations and the certificate must be signed,

- (a) if the offeror is a person or company other than an individual, by each of the following:
 - (i) the chief executive officer or, in the case of a person or company that does not have a chief executive officer, the individual who performs similar functions to a chief executive officer,
 - (ii) the chief financial officer or, in the case of a person or company that does not have a chief financial officer, the individual who performs similar functions to a chief financial officer, and
 - (iii) two directors, other than the chief executive officer and the chief financial officer, who are duly authorized by the board of directors of that person or company to sign on behalf of the board of directors; or
- (b) if the offeror is an individual, by the individual. 2007, c. 7, Sched. 38, s. 8.

Same, fewer than four directors

(2) For the purposes of clause (1) (a), if the offeror has fewer than four directors and officers, the certificate must be signed by all of the directors and officers. 2007, c. 7, Sched. 38, s. 8.

Same, directors' circulars

(3) A directors' circular or a notice of change in respect of a directors' circular required under this Part must contain a certificate of the board of directors of the offeree issuer in the form required by the regulations and the certificate must be signed by two directors who are duly authorized by the board of directors of the offeree issuer to sign on behalf of the board of directors. 2007, c. 7, Sched. 38, s. 8.

Same, individual director's or officer's circular

(4) Every person who files and sends an individual director's or officer's circular or a notice of change in respect of an individual director's or officer's circular under this Part shall ensure that

the circular or notice contains a certificate in the form required by the regulations and the certificate must be signed by or on behalf of the director or officer sending the circular or notice. 2007, c. 7, Sched. 38, s. 8.

Substitute signatories

(5) If the Director is satisfied that either or both of the chief executive officer or chief financial officer cannot sign a certificate required under this Part, the Director may accept a certificate signed by another officer or director. 2007, c. 7, Sched. 38, s. 8.

Obligation to provide security holder list

99.1 (1) If a person or company makes or proposes to make a formal take-over bid for a class of securities of an issuer that is not otherwise required by law to provide a list of its security holders to the person or company, the issuer shall provide a list of holders of that class of securities, and any known holder of an option or right to acquire securities of that class, to enable the person or company to carry out the bid in compliance with this Part. 2007, c. 7, Sched. 38, s. 8.

Access to corporate records

(2) For the purposes of subsection (1), section 21 of the *Canada Business Corporations Act* applies with necessary modifications to the person or company making or proposing to make the take-over bid and to the issuer, except that the affidavit that accompanies the request for the list of security holders shall state that the list will not be used except in connection with a formal take-over bid for securities of the issuer. 2007, c. 7, Sched. 38, s. 8.

EXEMPT TAKE-OVER BIDS

Normal course purchase exemption

100. A take-over bid is exempt from the formal bid requirements if all of the following conditions are satisfied:

1. The bid is for not more than 5 per cent of the outstanding securities of a class of securities of the offeree issuer.
2. The aggregate number of securities acquired in reliance on this exemption by the offeror and any person or company acting jointly or in concert with the offeror within any period of 12 months, when aggregated with acquisitions otherwise made by the offeror and any person or company acting jointly or in concert with the offeror within the same 12-month period, other than under a formal bid, does not exceed 5 per cent of the outstanding securities of that class at the beginning of the 12-month period.
3. There is a published market for the class of securities that are the subject of the bid.
4. The value of the consideration paid for any of the securities acquired is not in excess of the market price at the date of acquisition as determined in accordance with the regulations, plus reasonable brokerage fees or commissions actually paid. 2007, c. 7, Sched. 38, s. 8.

Private agreement exemption

100.1 (1) A take-over bid is exempt from the formal bid requirements if all of the following conditions are satisfied:

1. Purchases are made from not more than five persons or companies in the aggregate, including persons or companies located outside of Ontario.

2. The bid is not made generally to security holders of the class of securities that is the subject of the bid, so long as there are more than five security holders of the class.
3. If there is a published market for the securities acquired, the value of the consideration paid for any of the securities, including brokerage fees or commissions, is not greater than 115 per cent of the market price of the securities at the date of the bid as determined in accordance with the regulations.
4. If there is no published market for the securities acquired, there is a reasonable basis for determining that the value of the consideration paid for any of the securities is not greater than 115 per cent of the value of the securities. 2007, c. 7, Sched. 38, s. 8.

Determination of number of security holders

[\(2\)](#) For the purposes of subsection (1), if an offeror makes an offer to acquire securities from a person or company and the offeror knows or ought to know after reasonable enquiry that the person or company acquired the securities in order that the offeror might make use of the exemption under subsection (1), then each person or company from whom those securities were acquired shall be included in the determination of the number of persons and companies to whom an offer to acquire has been made. 2007, c. 7, Sched. 38, s. 8.

Same

[\(3\)](#) For the purposes of subsection (1), if an offeror makes an offer to acquire securities from a person or company and the offeror knows or ought to know after reasonable enquiry that the person or company from whom the acquisition is being made is acting as a nominee, agent, trustee, executor, administrator or other legal representative for one or more other persons or companies having a direct beneficial interest in those securities, then each of those other persons or companies shall be included in the determination of the number of persons and companies to whom an offer to acquire has been made. 2007, c. 7, Sched. 38, s. 8.

Same

[\(4\)](#) Despite subsection (3), a trust or estate is to be considered a single security holder in the determination of the number of persons and companies to whom an offer to acquire has been made,

- (a) if an *inter vivos* trust has been established by a single settlor; or
- (b) if an estate has not vested in all who are beneficially entitled to it. 2007, c. 7, Sched. 38, s. 8.

Non-reporting issuer exemption

[100.2](#) A take-over bid is exempt from the formal bid requirements if the offeree issuer is not a reporting issuer and if such other conditions as may be specified by regulation are satisfied. 2007, c. 7, Sched. 38, s. 8.

Foreign take-over bid exemption

[100.3](#) Subject to section 100.5, a take-over bid is exempt from the formal bid requirements if all of the following conditions are satisfied:

1. Security holders whose last address as shown on the books of the offeree issuer is in Canada hold less than 10 per cent of the outstanding securities of the class subject to the bid at the commencement of the bid.
2. The offeror reasonably believes that security holders in Canada beneficially own less than

10 per cent of the outstanding securities of the class subject to the bid at the commencement of the bid.

3. The published market on which the greatest dollar volume of trading in securities of that class occurred during the 12 months immediately preceding the commencement of the bid was not in Canada.
4. Security holders in Ontario are entitled to participate in the bid on terms at least as favourable as the terms that apply to the general body of security holders of the same class. 2007, c. 7, Sched. 38, s. 8.

Exemption, fewer than 50 beneficial owners

100.4 Subject to section 100.5, a take-over bid is exempt from the formal bid requirements if both of the following conditions are satisfied:

1. The number of beneficial owners of securities of the class subject to the bid in Ontario is fewer than 50 and the securities held by them constitute, in aggregate, less than 2 per cent of the outstanding securities of that class.
2. Security holders in Ontario are entitled to participate in the bid on terms at least as favourable as the terms that apply to the general body of security holders of the same class. 2007, c. 7, Sched. 38, s. 8.

Restriction, required disclosure

100.5 A take-over bid described in section 100.3 or 100.4 is not exempt from the formal bid requirements unless,

- (a) the information and documents specified by regulation are provided to security holders in Ontario in accordance with the regulations; and
- (b) the information specified by regulation about the bid is made public in accordance with the regulations. 2007, c. 7, Sched. 38, s. 8.

Exemption by regulation

100.6 A take-over bid is exempt from the formal bid requirements if it is exempted by the regulations. 2007, c. 7, Sched. 38, s. 8.

EXEMPT ISSUER BIDS

Issuer acquisition or redemption exemption

101. An issuer bid for a class of securities is exempt from the formal bid requirements if any of the following conditions is satisfied:

1. The securities are purchased, redeemed or otherwise acquired in accordance with the terms and conditions attaching to the class of securities that permit the purchase, redemption or acquisition of the securities by the issuer without the prior agreement of the owners of the securities, or the securities are acquired to meet sinking fund or purchase fund requirements.
2. The purchase, redemption or other acquisition is required by the terms and conditions attaching to the class of securities or by the statute under which the issuer was incorporated, organized or continued.

3. The terms and conditions attaching to the class of securities contain a right of the owner to require the issuer of the securities to redeem, repurchase, or otherwise acquire the securities, and the securities are acquired pursuant to the exercise of the right. 2007, c. 7, Sched. 38, s. 8.

Employee, executive officer, director and consultant exemption

101.1 An issuer bid is exempt from the formal bid requirements if the securities are acquired from a current or former employee, executive officer, director or consultant of the issuer or of an affiliate of the issuer and, if there is a published market in respect of the securities,

- (a) the value of the consideration paid for any of the securities acquired is not greater than the market price of the securities at the date of the acquisition, determined in accordance with the regulations; and
- (b) the aggregate number of securities or, in the case of convertible debt securities, the aggregate principal amount of securities acquired by the issuer within any period of 12 months in reliance on the exemption provided by this subsection does not exceed 5 per cent of the securities of that class outstanding at the beginning of the 12-month period. 2007, c. 7, Sched. 38, s. 8.

Normal course issuer bid exemptions

Designated exchange

101.2 (1) An issuer bid that is made in the normal course through the facilities of a designated exchange is exempt from the formal bid requirements if the bid is made in accordance with the by-laws, rules, regulations and policies of that exchange. 2007, c. 7, Sched. 38, s. 8.

Other published markets

(2) An issuer bid that is made in the normal course on a published market, other than a designated exchange, is exempt from the formal bid requirements if all of the following conditions are satisfied:

1. The bid is for not more than 5 per cent of the outstanding securities of a class of securities of the issuer.
2. The aggregate number of securities or, in the case of convertible debt securities, the aggregate principal amount of securities acquired in reliance on this exemption by the issuer and any person or company acting jointly or in concert with the issuer within any period of 12 months does not exceed 5 per cent of the outstanding securities of that class at the beginning of the 12-month period.
3. The value of the consideration paid for any of the securities acquired is not in excess of the market price at the date of acquisition as determined in accordance with the regulations, plus reasonable brokerage fees or commissions actually paid. 2007, c. 7, Sched. 38, s. 8.

News release

(3) An issuer making a bid under subsection (1) shall promptly file any news releases that the designated exchange requires to be issued. 2007, c. 7, Sched. 38, s. 8.

Same

(4) An issuer making a bid under subsection (2) shall issue and file, at least five days before

the commencement of the bid, a news release containing the information prescribed by the regulations. 2007, c. 7, Sched. 38, s. 8.

Definition

[\(5\)](#) In this section,

“designated exchange” means the Toronto Stock Exchange, the TSX Venture Exchange or other exchange designated by the Commission for the purpose of this section. 2007, c. 7, Sched. 38, s. 8.

Non-reporting issuer exemption

[101.3](#) An issuer bid is exempt from the formal bid requirements if the issuer is not a reporting issuer and if such other conditions as may be specified by regulation are satisfied. 2007, c. 7, Sched. 38, s. 8.

Foreign issuer bid exemption

[101.4](#) Subject to section 101.6, an issuer bid is exempt from the formal bid requirements if all of the following conditions are satisfied:

1. Security holders whose last address as shown on the books of the offeree issuer is in Canada hold less than 10 per cent of the outstanding securities of the class subject to the bid at the commencement of the bid.
2. The offeror reasonably believes that security holders in Canada beneficially own less than 10 per cent of the outstanding securities of the class subject to the bid at the commencement of the bid.
3. The published market on which the greatest dollar volume of trading in securities of that class occurred during the 12 months immediately preceding the commencement of the bid was not in Canada.
4. Security holders in Ontario are entitled to participate in the bid on terms at least as favourable as the terms that apply to the general body of security holders of the same class. 2007, c. 7, Sched. 38, s. 8.

Exemption, fewer than 50 beneficial owners

[101.5](#) Subject to section 101.6, an issuer bid is exempt from the formal bid requirements if both of the following conditions are satisfied:

1. The number of beneficial owners of securities of the class subject to the bid in Ontario is fewer than 50 and the securities held by them constitute, in aggregate, less than 2 per cent of the outstanding securities of that class.
2. Security holders in Ontario are entitled to participate in the bid on terms at least as favourable as the terms that apply to the general body of security holders of the same class. 2007, c. 7, Sched. 38, s. 8.

Restriction, required disclosure

[101.6](#) An issuer bid described in section 101.4 or 101.5 is not exempt from the formal bid requirements unless,

- (a) the information and documents specified by regulation are provided to security holders in Ontario in accordance with the regulations; and

(b) the information specified by regulation about the bid is made public in accordance with the regulations. 2007, c. 7, Sched. 38, s. 8.

Exemption by regulation

101.7 An issuer bid is exempt from the formal bid requirements if it is exempted by the regulations. 2007, c. 7, Sched. 38, s. 8.

EARLY WARNING SYSTEM

Definitions

102. (1) For the purposes of this section and sections 102.1 and 102.2,

“acquiror” means a person or company who acquires a security other than by way of a formal bid; (“acquéreur”)

“acquiror’s securities” means securities of an offeree issuer that are beneficially owned, or over which control or direction is exercised, on the date of an offer to acquire, by an acquiror or by any person or company acting jointly or in concert with the acquiror. (“valeurs mobilières de l’acquéreur”) 2007, c. 7, Sched. 38, s. 8; 2009, c. 34, Sched. S, s. 5 (1).

Application of ss. 90 and 91

(2) Subsections 90 (1), (2) and (4) and section 91 apply for the purposes of this section and sections 102.1 and 102.2 as if the references in subsections 90 (1), (2) and (4) and section 91 to “offeror” were references to “acquiror”. 2009, c. 34, Sched. S, s. 5 (2).

Joint offers

(3) For the purposes of this section and sections 102.1 and 102.2, if an acquiror and one or more persons or companies acting jointly or in concert with the acquiror acquire securities, the securities are deemed to be acquired by the acquiror. 2009, c. 34, Sched. S, s. 5 (2).

10 per cent rule

102.1 (1) Every acquiror who acquires beneficial ownership of, or the power to exercise control or direction over, voting or equity securities of any class of a reporting issuer or securities convertible into voting or equity securities of any class of a reporting issuer that, when added to the acquiror’s securities of that class, would constitute 10 per cent or more of the outstanding securities of that class, shall disclose the acquisition in the manner and form required by regulation. 2007, c. 7, Sched. 38, s. 8.

Same, further 2 per cent rule

(2) An acquiror who is required to make disclosure under subsection (1) shall make further disclosure in the manner and form required by regulation each time any of the following events occur:

1. The acquiror or any person or company acting jointly or in concert with the acquiror acquires beneficial ownership of, or the power to exercise control or direction over,
 - i. an additional 2 per cent or more of the outstanding securities of the class to which the disclosure required under subsection (1) relates, or
 - ii. securities convertible into an additional 2 per cent or more of the outstanding securities referred to in subparagraph i.
2. There is a change in any material fact in the disclosure required under paragraph 1 or

under subsection (1). 2007, c. 7, Sched. 38, s. 8.

Period when acquisitions prohibited

(3) During the period beginning on the occurrence of an event in respect of which disclosure is required to be made under this section and ending on the expiry of one business day after the date that the disclosure is made, the acquiror required to make the disclosure or any person or company acting jointly or in concert with the acquiror shall not acquire or offer to acquire beneficial ownership of any securities of the class in respect of which the disclosure is made or any securities convertible into securities of that class. 2007, c. 7, Sched. 38, s. 8.

Exemption

(4) Subsection (3) does not apply to an acquiror who has beneficial ownership of, or the power to exercise control or direction over, securities that, together with the acquiror's securities of that class, constitute 20 per cent or more of the outstanding securities of that class. 2007, c. 7, Sched. 38, s. 8.

Acquisitions during a bid by an acquiror, 5 per cent rule

102.2 (1) If, after a formal bid has been made for voting or equity securities of a reporting issuer and before the expiry of the bid, an acquiror acquires beneficial ownership of, or the power to exercise control or direction over, securities of the class subject to the bid which, when added to the acquiror's securities of that class, constitute 5 per cent or more of the outstanding securities of that class, the acquiror shall disclose the acquisition in the manner and form required by regulation. 2007, c. 7, Sched. 38, s. 8.

Same, further 2 per cent rule

(2) An acquiror who is required to make disclosure under subsection (1) shall make further disclosure in the manner and form required by regulation each time the acquiror or any person or company acting jointly or in concert with the acquiror acquires beneficial ownership of, or the power to exercise control or direction over, an additional 2 per cent or more of the outstanding securities of the class to which the disclosure required under subsection (1) relates. 2007, c. 7, Sched. 38, s. 8.

APPLICATIONS AND EXEMPTIONS

Definition

103. In sections 104 and 105,

“interested person” means,

- (a) an offeree issuer,
- (b) a security holder, director or officer of an offeree issuer,
- (c) an offeror,
- (d) an acquiror as defined in section 102,
- (e) the Director, and
- (f) any person or company who in the opinion of the Commission or the Superior Court of Justice, as the case may be, is proper to make an application under section 104 or 105, as the case may be. 2007, c. 7, Sched. 38, s. 8.

Application to the Commission

104. (1) On application by an interested person, if the Commission considers that a person or company has not complied with, or is not complying with, a requirement under this Part or the regulations related to this Part, the Commission may make an order,

- (a) restraining the distribution of any document or any communication used or issued in connection with a take-over bid or an issuer bid;
- (b) requiring an amendment to or variation of any document or any communication used or issued in connection with a take-over bid or an issuer bid and requiring the distribution of amended, varied or corrected documents or communications;
- (c) directing any person or company to comply with a requirement under this Part or the regulations related to this Part;
- (d) restraining any person or company from contravening a requirement under this Part or the regulations related to this Part; and
- (e) directing the directors and officers of any person or company to cause the person or company to comply with or to cease contravening a requirement under this Part or the regulations related to this Part. 2007, c. 7, Sched. 38, s. 8.

Exemptions

(2) On application by an interested person and subject to such terms and conditions as the Commission may impose, if the Commission is satisfied that it would not be prejudicial to the public interest, the Commission may,

- (a) decide for the purposes of section 97.1 that an agreement, commitment or understanding with a selling security holder is made for reasons other than to increase the value of the consideration paid to the selling security holder for the securities of the selling security holder and that the agreement, commitment or understanding may be entered into despite that section;
- (b) vary any time period set out in this Part or the regulations related to this Part; and
- (c) exempt a person or company from any of the requirements of this Part or the regulations related to this Part. 2007, c. 7, Sched. 38, s. 8.

Application to the court

105. On application by an interested person, if the Superior Court of Justice is satisfied that a person or company has not complied with a requirement under this Part or the regulations related to this Part, the Superior Court of Justice may make such interim or final order as the 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 or the regulations related to this Part;
- (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 or company to dispose of any securities acquired under or in connection with a take-over bid or an issuer bid;

- (d) prohibiting any person or company from exercising any or all of the voting rights attaching to any securities; or
- (e) requiring the trial of an issue. 2007, c. 7, Sched. 38, s. 8.

TRANSITIONAL MATTERS

Transition

105.1 This Part and the regulations related to it, as they read immediately before this section comes into force, continue to apply in respect of every take-over bid and issuer bid commenced before this section comes into force. 2007, c. 7, Sched. 38, s. 8.

PART XXI INSIDER TRADING AND SELF-DEALING

Definitions

106. (1) In this Part,

“mutual fund” means, except in section 111, a mutual fund that is a reporting issuer; (“fonds mutuel”)

“related mutual funds” includes more than one mutual fund under common management; (“fonds mutuels liés”)

“related person or company” in relation to a mutual fund means a person in whom, or a company in which, the mutual fund, its management company and its distribution company are prohibited by the provisions of this Part from making any investment. (“personne ou compagnie liée”) R.S.O. 1990, c. S.5, s. 106 (1).

Idem

(2) For the purpose of this Part,

- (a) any issuer in which a mutual fund holds in excess of 10 per cent of the voting securities or in which the mutual fund and related mutual funds hold in excess of 20 per cent of the voting securities shall be deemed to be a related person or company of that mutual fund or of each of those mutual funds; and
- (b) the acquisition or disposition by an insider of a put, call or other transferable option with respect to a security shall be deemed a change in the beneficial ownership of the security to which such put, call or other transferable option relates.
- (c) Repealed: 2006, c. 33, Sched. Z.5, s. 9.

R.S.O. 1990, c. S.5, s. 106 (2); 2006, c. 33, Sched. Z.5, s. 9.

Insider reporting

107. (1) Within 10 days of becoming an insider or within such other time period as may be prescribed, a person or company who becomes an insider of a reporting issuer, other than a mutual fund, shall file a report disclosing, in the prescribed manner and form, any direct or indirect beneficial ownership of or control or direction over securities of the reporting issuer and any interest in, or right or obligation associated with, a related financial instrument and the insider shall make such other disclosure as may be required by the regulations. 2006, c. 33, Sched. Z.5, s. 10.

Same

(2) Within 10 days, or within such other time period as may be prescribed, of any change in the direct or indirect beneficial ownership of, or control or direction over, securities of the reporting issuer or any interest in, or right or obligation associated with, a related financial instrument, an insider of a reporting issuer, other than a mutual fund, shall file a report disclosing, in the prescribed manner and form, such change and the insider shall make such other disclosure as may be required by the regulations. 2006, c. 33, Sched. Z.5, s. 10.

108. Repealed: 2006, c. 33, Sched. Z.5, s. 10.

Report of transfer by insider

109. Where voting securities are registered in the name of a person or company other than the beneficial owner and the person or company knows that they are beneficially owned by an insider and that the insider has failed to file a report of such ownership with the Commission as required by this Part, the person or company shall file a report in accordance with the regulations except where the transfer was for the purpose of giving collateral for a genuine debt. R.S.O. 1990, c. S.5, s. 109.

“investment” defined

110. (1) For the purposes of sections 111, 112, 113, 114 and 115,

“investment” means a purchase of any security of any class of securities of an issuer including bonds, debentures, notes, or other evidences of indebtedness thereof, and a loan to persons or companies but does not include an advance or loan, whether secured or unsecured, that is made by a mutual fund, its management company or its distribution company that is merely ancillary to the main business of the mutual fund, its management company or its distribution company. R.S.O. 1990, c. S.5, s. 110 (1).

Interpretation

(2) For the purposes of sections 111, 112, 113, 114 and 115,

- (a) a person or company or a group of persons or companies has a significant interest in an issuer, if,
 - (i) in the case of a person or company, he, she or it, as the case may be, owns beneficially, either directly or indirectly, more than 10 per cent, or
 - (ii) in the case of a group of persons or companies, they own beneficially, either individually or together and either directly or indirectly, more than 50 per cent, of the outstanding shares or units of the issuer;
- (b) a person or company or a group of persons or companies is a substantial security holder of an issuer if that person or company or group of persons or companies owns beneficially, either individually or together or directly or indirectly, voting securities to which are attached more than 20 per cent of the voting rights attached to all the voting securities of the issuer for the time being outstanding, but in computing the percentage of voting rights attached to voting securities owned by an underwriter, there shall be excluded any voting securities acquired by the underwriter as such in a distribution of such securities but the exclusion ceases to have effect on completion or cessation of the distribution by the underwriter;
- (c) where a person or company or group of persons or companies owns beneficially, directly

or indirectly, or pursuant to this clause is deemed to own beneficially, voting securities of an issuer, that person or company or group of persons or companies shall be deemed to own beneficially a proportion of voting securities of any other issuer that are owned beneficially, directly or indirectly, by the first mentioned issuer, which proportion shall equal the proportion of the voting securities of the first mentioned issuer that are owned beneficially, directly or indirectly, or that pursuant to this clause are deemed to be owned beneficially, by that person or company or group of persons or companies. R.S.O. 1990, c. S.5, s. 110 (2).

Loans of mutual funds in Ontario

111. (1) No mutual fund in Ontario shall knowingly make an investment by way of loan to,

- (a) any officer or director of the mutual fund, its management company or distribution company or an associate of any of them;
 - (b) any individual, where the individual or an associate of the individual is a substantial security holder of the mutual fund, its management company or distribution company.
- R.S.O. 1990, c. S.5, s. 111 (1).

Investments of mutual funds, etc.

(2) No mutual fund in Ontario shall knowingly make an investment,

- (a) in any person or company who is a substantial security holder of the mutual fund, its management company or distribution company;
- (b) in any person or company in which the mutual fund, alone or together with one or more related mutual funds, is a substantial security holder; or
- (c) in an issuer in which,
 - (i) any officer or director of the mutual fund, its management company or distribution company or an associate of any of them, or
 - (ii) any person or company who is a substantial security holder of the mutual fund, its management company or its distribution company,has a significant interest. R.S.O. 1990, c. S.5, s. 111 (2).

Divesting of prohibited loans and investments

(3) No mutual fund in Ontario or its management company or its distribution company shall knowingly hold an investment made after the 15th day of September, 1979 that is an investment described in this section. R.S.O. 1990, c. S.5, s. 111 (3).

Indirect investment

112. No mutual fund or its management company or its distribution company shall knowingly enter into any contract or other arrangement that results in its being directly or indirectly liable or contingently liable in respect of any investment by way of loan to, or other investment in, a person or company to whom it is by section 111 prohibited from making a loan or in which it is prohibited from making any other investment, and for the purpose of section 111 any such contract or other arrangement shall be deemed to be a loan or an investment, as the case may be. R.S.O. 1990, c. S.5, s. 112.

Relieving orders

113. Upon an application of an interested person or company, the Commission may, where it is satisfied,

- (a) that a class of investment or a particular investment represents the business judgment of responsible persons uninfluenced by considerations other than the best interests of a mutual fund; or
- (b) that a particular investment is in fact in the best interests of a mutual fund,

order, subject to such terms and conditions as it may impose, that section 111 or 112 does not apply to the class of investment, particular investment, contract or other arrangement, as the case may be. R.S.O. 1990, c. S.5, s. 113.

Exception to cl. 110 (2) (c)

114. Despite clause 110 (2) (c), a mutual fund is not prohibited from making an investment in an issuer only because a person or company or a group of persons or companies who own beneficially, directly or indirectly, or are deemed to own beneficially, voting securities of the mutual fund or its management company or its distribution company are by reason thereof deemed to own beneficially voting securities of the issuer. R.S.O. 1990, c. S.5, s. 114.

Fees on investment

115. (1) No mutual fund shall make any investment in consequence of which a related person or company of the mutual fund will receive any fee or other compensation except fees paid pursuant to a contract which is disclosed in any preliminary prospectus or prospectus, or any amendment to either of them, that is filed by the mutual fund and is accepted by the Director. R.S.O. 1990, c. S.5, s. 115 (1).

Relieving orders

(2) The Commission may, upon the application of a mutual fund and where it is satisfied that it would not be prejudicial to the public interest to do so, order, subject to such terms and conditions as it may impose, that subsection (1) does not apply to the mutual fund. R.S.O. 1990, c. S.5, s. 115 (2).

Standard of care, investment fund managers

116. Every investment fund manager,

- (a) shall exercise the powers and discharge the duties of their office honestly, in good faith and in the best interests of the investment fund; and
- (b) shall exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances. 2006, c. 33, Sched. Z.5, s. 11.

Filing by management companies

117. (1) Every management company shall file a report prepared in accordance with the regulations of,

- (a) every transaction of purchase or sale of securities between the mutual fund and any related person or company;
- (b) every loan received by the mutual fund from, or made by the mutual fund to, any of its related persons or companies;
- (c) every purchase or sale effected by the mutual fund through any related person or

company with respect to which the related person or company received a fee either from the mutual fund or from the other party to the transaction or from both; and

- (d) any transaction in which, by arrangement other than an arrangement relating to insider trading in portfolio securities, the mutual fund is a joint participant with one or more of its related persons or companies,

in respect of each mutual fund to which it provides services or advice, within thirty days after the end of the month in which it occurs. R.S.O. 1990, c. S.5, s. 117 (1).

Relieving orders

(2) The Commission may, upon the application of the management company of a mutual fund and where it is of the opinion that it would not be prejudicial to the public interest to do so, order, subject to such terms and conditions as it may impose, that subsection (1) does not apply to any transaction or class of transactions. R.S.O. 1990, c. S.5, s. 117 (2).

118. Repealed: 2009, c. 18, Sched. 26, s. 15.

Trades by mutual fund insiders

119. No person or company that has access to information concerning the investment program of a mutual fund or the investment portfolio managed for a client by a registered adviser or registered dealer through discretionary authority provided by the client shall purchase or sell securities of an issuer for his, her or its own account if,

- (a) the portfolio securities of the mutual fund or the investment portfolio managed for the client by the registered adviser or registered dealer include securities of that issuer; and
- (b) the person or company has used the information for his, her or its direct benefit or advantage. 2009, c. 18, Sched. 26, s. 16.

Publication of summaries of reports

120. The Commission shall summarize in or as a part of a monthly periodical available to the public on payment of a reasonable fee the information contained in every report filed in compliance with this Part. R.S.O. 1990, c. S.5, s. 120.

Filing in other jurisdiction

121. (1) Where the laws of the jurisdiction in which the reporting issuer is incorporated, organized or continued require substantially the same reports in that jurisdiction as are required by this Part, the filing requirements of this Part may be complied with by filing the reports required by the laws of such jurisdiction manually signed or certified in accordance with the regulations. R.S.O. 1990, c. S.5, s. 121 (1).

Exemptions by order of Commission

(2) Subject to subsection (1), the Commission may,

- (a) upon the application of an interested person or company,
 - (i) if a requirement of this Part conflicts with a requirement of the laws of the jurisdiction under which the reporting issuer is incorporated, organized or continued, or
 - (ii) if otherwise satisfied in the circumstances of the particular case that there is adequate justification for so doing; or

(b) of its own motion,

make an order on such terms and conditions as seem to the Commission just and expedient, exempting in whole or in part, a person or company from the requirements of this Part. R.S.O. 1990, c. S.5, s. 121 (2); 1994, c. 33, s. 6.

Authorized exceptions to prohibitions

121.1 If the regulations so provide, a body established under subsection 121.4 (1) by an investment fund may approve a transaction that is prohibited under this Part and, in that case, the prohibition does not apply to the transaction. 2005, c. 31, Sched. 20, s. 6.

PART XXI.1 GOVERNANCE AND OTHER REQUIREMENTS

Definition

121.2 In this Part,

“prescribed” means prescribed in the regulations. 2005, c. 31, Sched. 20, s. 7.

Governance of reporting issuers

121.3 For the purposes of this Act, a reporting issuer shall comply with such requirements as may be prescribed with respect to the governance of reporting issuers, including requirements relating to,

- (a) the composition of its board of directors and qualifications for membership on the board, including matters respecting the independence of members;
- (b) the establishment of specified types of committees of the board of directors, the mandate, functioning and responsibilities of each committee, the composition of each committee and the qualifications for membership on the committee, including matters respecting the independence of members;
- (c) the establishment and enforcement of a code of business conduct and ethics applicable to its directors, officers and employees and applicable to persons or companies that are in a special relationship with the reporting issuer, including the minimum requirements for such a code; and
- (d) procedures to regulate conflicts of interest between the interests of the reporting issuer and those of a director or officer of the issuer. 2005, c. 31, Sched. 20, s. 7.

Oversight, etc., of investment funds

121.4 (1) If required to do so by the regulations, an investment fund shall establish and maintain a body for the purposes of overseeing activities of the investment fund and the investment fund manager, reviewing or approving prescribed matters affecting the investment fund, including transactions referred to in section 121.1, and disclosing information to security holders of the fund, to the investment fund manager and to the Commission. 2005, c. 31, Sched. 20, s. 7.

Same

(2) The body has such powers and duties as may be prescribed. 2005, c. 31, Sched. 20, s. 7.

PART XXII ENFORCEMENT

Offences, general

122. (1) Every person or company that,

- (a) makes a statement in any material, evidence or information submitted to the Commission, a Director, any person acting under the authority of the Commission or the Executive Director or any person appointed to make an investigation or examination under this Act that, in a material respect and at the time and in the light of the circumstances under which it is made, is misleading or untrue or does not state a fact that is required to be stated or that is necessary to make the statement not misleading;
- (b) makes a statement in any application, release, report, preliminary prospectus, prospectus, return, financial statement, information circular, take-over bid circular, issuer bid circular or other document required to be filed or furnished under Ontario securities law that, in a material respect and at the time and in the light of the circumstances under which it is made, is misleading or untrue or does not state a fact that is required to be stated or that is necessary to make the statement not misleading; or

Note: On a day to be named by proclamation of the Lieutenant Governor, clause (b) is amended by striking out “issuer bid circular” and substituting “issuer bid circular, disclosure document in respect of a designated derivative”. See: 2010, c. 26, Sched. 18, ss. 31 (1), 47 (2).

(c) contravenes Ontario securities law,

is guilty of an offence and on conviction is liable to a fine of not more than \$5 million or to imprisonment for a term of not more than five years less a day, or to both. 1994, c. 11, s. 373; 2002, c. 22, s. 181 (1).

Exemption

(1.1) Clauses (1) (a) and (b) do not apply to a statement made or given to the Commission in a submission in respect of a proposed rule or policy. 1994, c. 33, s. 7.

Defence

(2) Without limiting the availability of other defences, no person or company is guilty of an offence under clause (1) (a) or (b) if the person or company did not know and in the exercise of reasonable diligence could not have known that the statement was misleading or untrue or that it omitted to state a fact that was required to be stated or that was necessary to make the statement not misleading in light of the circumstances in which it was made. 1994, c. 11, s. 373.

Directors and officers

(3) Every director or officer of a company or of a person other than an individual who authorizes, permits or acquiesces in the commission of an offence under subsection (1) by the company or person, whether or not a charge has been laid or a finding of guilt has been made against the company or person in respect of the offence under subsection (1), is guilty of an offence and is liable on conviction to a fine of not more than \$5 million or to imprisonment for a term of not more than five years less a day, or to both. 1994, c. 11, s. 373; 2002, c. 22, s. 181 (2).

Fine for contravention of s. 76

(4) Despite subsection (1) and in addition to any imprisonment imposed under subsection (1), a person or company who is convicted of contravening subsection 76 (1), (2) or (3) is liable to

a minimum fine equal to the profit made or the loss avoided by the person or company by reason of the contravention and a maximum fine equal to the greater of,

- (a) \$5 million; and
- (b) the amount equal to triple the amount of the profit made or the loss avoided by the person or company by reason of the contravention. 2002, c. 18, Sched. H, s. 11; 2002, c. 22, s. 181 (3); 2002, c. 22, s. 188 (3).

Same

(5) If it is not possible to determine the profit made or loss avoided by the person or company by reason of the contravention, subsection (4) does not apply but subsection (1) continues to apply. 1994, c. 11, s. 373.

Definitions: “loss avoided”, “profit made”

(6) In subsections (4) and (5),

“loss avoided” means,

- (a) in respect of a security, other than anything deemed to be a security under subsection 76 (6), the amount by which the amount received for the security sold in contravention of subsection 76 (1) exceeds the average trading price of the security in the 20 trading days following general disclosure of the material fact or the material change, and
- (b) in respect of anything deemed to be a security under subsection 76 (6), such amount as may be prescribed by or determined in accordance with a regulation made by the Lieutenant Governor in Council; (“perte évitée”)

“profit made” means,

- (a) in respect of a security, other than anything deemed to be a security under subsection 76 (6), and except in respect of a short sale, the amount by which the average trading price of the security in the 20 trading days following general disclosure of the material fact or the material change exceeds the amount paid for the security purchased in contravention of subsection 76 (1),
- (b) in respect of a short sale, the amount by which the amount received for the security sold in contravention of subsection 76 (1) exceeds the average trading price of the security in the twenty trading days following general disclosure of the material fact or the material change,
- (b.1) in respect of anything deemed to be a security under subsection 76 (6), such amount as may be prescribed by or determined in accordance with a regulation made by the Lieutenant Governor in Council, or
- (c) the value of any consideration received for informing another person or company of a material fact or material change with respect to the reporting issuer in contravention of subsection 76 (2) or (3). (“profit réalisé”) 1994, c. 11, s. 373; 2010, c. 26, Sched. 18, s. 31 (2-4).

Consent of Commission

(7) No proceeding under this section shall be commenced except with the consent of the Commission. 1994, c. 11, s. 373.

Trial by provincial judge

[\(8\)](#) The Commission or an agent for the Commission may by notice to the clerk of the court having jurisdiction in respect of an offence under this Act require that a provincial judge preside over the proceeding. 1994, c. 11, s. 373.

Additional remedies

[122.1 \(1\)](#) If a person or company is convicted of an offence under this Act, the court may, in addition to any penalty, order the convicted person or company to make restitution or pay compensation in relation to the offence to an aggrieved person or company. 2006, c. 33, Sched. Z.5, s. 12.

Notice

[\(2\)](#) If a court makes an order for restitution or compensation, it shall cause a copy of the order or a notice of the content of the order to be given to the person or company to whom the restitution or compensation is ordered to be paid. 2006, c. 33, Sched. Z.5, s. 12.

Filing

[\(3\)](#) An order for restitution or compensation may be filed with a local registrar of the Superior Court of Justice and the responsibility for filing shall be on the person or company to whom the restitution or compensation is ordered to be paid. 2006, c. 33, Sched. Z.5, s. 12.

Enforcement

[\(4\)](#) An order for restitution or compensation filed under subsection (3) may be enforced as if it were an order of the court. 2006, c. 33, Sched. Z.5, s. 12.

Postjudgment interest

[\(5\)](#) Section 129 of the *Courts of Justice Act* applies in respect of an order for restitution or compensation filed under subsection (3) and, for that purpose, the date of filing shall be deemed to be the date of the order. 2006, c. 33, Sched. Z.5, s. 12.

Limitation

[\(6\)](#) A person or company is not entitled to participate in a proceeding in which an order may be made under this section solely on the basis that the person or company has a right of action against a defendant to the proceeding or that the person or company may be entitled to receive an amount under the order. 2006, c. 33, Sched. Z.5, s. 12.

Civil remedies protected

[\(7\)](#) A civil remedy for an act or omission is not affected by reason only that an order for restitution or compensation under this section has been made in respect of that act or omission. 2006, c. 33, Sched. Z.5, s. 12.

[123.](#) Repealed: 1994, c. 11, s. 373.

Information containing more than one offence

[124.](#) An information in respect of any contravention of this Act may be for one or more offences, and no information, summons, warrant, conviction or other proceeding in any prosecution is objectionable or insufficient by reason of the fact that it relates to two or more offences. R.S.O. 1990, c. S.5, s. 124.

Execution of warrant issued in another province

[125. \(1\)](#) Where a provincial judge, magistrate or justice of another province or territory of

Canada issues a warrant for the arrest of any person on a charge of contravening any provision of a statute of such province or territory similar to this Act, any provincial judge or justice of Ontario within whose jurisdiction that person is or is suspected to be, may, upon satisfactory proof of the handwriting of the provincial judge, magistrate or a justice who issued the warrant, make an endorsement thereon in the form prescribed by the regulations, and a warrant so endorsed is sufficient authority to the person bringing the warrant and to all other persons to whom it was originally directed and to all police officers to execute the warrant within that jurisdiction and to take the person arrested thereunder either out of or anywhere in Ontario and to rearrest such person anywhere in Ontario. R.S.O. 1990, c. S.5, s. 125 (1).

Prisoner in transit

(2) Any police officer of Ontario or of any other province or territory of Canada who is passing through Ontario and who has in custody a person arrested in another province or territory under a warrant endorsed under subsection (1) is entitled to hold, take and rearrest the accused anywhere in Ontario under such warrant without proof of the warrant or the endorsement thereof. R.S.O. 1990, c. S.5, s. 125 (2); 1994, c. 11, s. 374.

Interim preservation of property

126. (1) If the Commission considers it expedient,

- (a) for the due administration of Ontario securities law or the regulation of the capital markets in Ontario; or
- (b) to assist in the due administration of the securities laws or the regulation of the capital markets in another jurisdiction,

the Commission may direct a person or company having on deposit or under its control or for safekeeping any funds, securities or property of any person or company to retain those funds, securities or property and to hold them until the Commission in writing revokes the direction or consents to release a particular fund, security or property from the direction, or until the Superior Court of Justice orders otherwise. 1994, c. 11, s. 375; 2006, c. 19, Sched. C, s. 1 (1).

Application

(2) A direction under subsection (1) that names a bank or other financial institution shall apply only to the branches of the bank or other financial institution identified in the direction. 1994, c. 11, s. 375.

Exclusions

(3) A direction under subsection (1) shall not apply to funds, securities or property in a recognized clearing agency or to securities in process of transfer by a transfer agent unless the direction so states. 1994, c. 11, s. 375.

Certificate of pending litigation

(4) The Commission may order that a direction under subsection (1) be certified to a land registrar or mining recorder and that it be registered or recorded against the lands or claims identified in the direction, and on registration or recording of the certificate it shall have the same effect as a certificate of pending litigation. 1994, c. 11, s. 375.

Review by court

(5) As soon as practicable, but not later than 10 days after a direction is issued under subsection (1), the Commission shall serve and file a notice of application in the Superior Court of

Justice to continue the direction or for such other order as the court considers appropriate. 2010, c. 26, Sched. 18, s. 32.

Notice

[\(6\)](#) A direction under subsection (1) may be made without notice but, in that event, copies of the direction shall be sent forthwith by such means as the Commission may determine to all persons and companies named in the direction. 1994, c. 11, s. 375.

Clarification or revocation

[\(7\)](#) A person or company directly affected by a direction may apply to the Commission for clarification or to have the direction varied or revoked. 1994, c. 11, s. 375.

Fraud and market manipulation

[126.1](#) A person or company shall not, directly or indirectly, engage or participate in any act, practice or course of conduct relating to securities, derivatives or the underlying interest of a derivative that the person or company knows or reasonably ought to know,

- (a) results in or contributes to a misleading appearance of trading activity in, or an artificial price for, a security, derivative or underlying interest of a derivative; or
- (b) perpetrates a fraud on any person or company. 2010, c. 26, Sched. 18, s. 33.

Misleading or untrue statements

[126.2 \(1\)](#) A person or company shall not make a statement that the person or company knows or reasonably ought to know,

- (a) in a material respect and at the time and in the light of the circumstances under which it is made, is misleading or untrue or does not state a fact that is required to be stated or that is necessary to make the statement not misleading; and
- (b) would reasonably be expected to have a significant effect on the market price or value of a security, derivative or underlying interest of a derivative. 2002, c. 22, s. 182; 2004, c. 31, Sched. 34, s. 4 (1); 2010, c. 26, Sched. 18, s. 34.

Same

[\(2\)](#) A breach of subsection (1) does not give rise to a statutory right of action for damages otherwise than under Part XXIII or XXIII.1. 2004, c. 31, Sched. 34, s. 4 (2).

Orders in the public interest

[127. \(1\)](#) The Commission may make one or more of the following orders if in its opinion it is in the public interest to make the order or orders:

1. An order that the registration or recognition granted to a person or company under Ontario securities law be suspended or restricted for such period as is specified in the order or be terminated, or that terms and conditions be imposed on the registration or recognition.
2. An order that trading in any securities by or of a person or company or that trading in any derivatives by a person or company cease permanently or for such period as is specified in the order.
 - 2.1 An order that the acquisition of any securities by a particular person or company is prohibited permanently or for the period specified in the order.

3. An order that any exemptions contained in Ontario securities law do not apply to a person or company permanently or for such period as is specified in the order.
4. An order that a market participant submit to a review of his, her or its practices and procedures and institute such changes as may be ordered by the Commission.
5. If the Commission is satisfied that Ontario securities law has not been complied with, an order that a release, report, preliminary prospectus, prospectus, return, financial statement, information circular, take-over bid circular, issuer bid circular, offering memorandum, proxy solicitation or any other document described in the order,

Note: On a day to be named by proclamation of the Lieutenant Governor, paragraph 5 is amended by striking out the portion before subparagraph i and substituting the following:

5. If the Commission is satisfied that Ontario securities law has not been complied with, an order that a release, report, preliminary prospectus, prospectus, return, financial statement, information circular, take-over bid circular, issuer bid circular, offering memorandum, proxy solicitation, disclosure document in respect of a derivative or any other document described in the order,

See: 2010, c. 26, Sched. 18, ss. 35 (2), 47 (2).

- i. be provided by a market participant to a person or company,
 - ii. not be provided by a market participant to a person or company, or
 - iii. be amended by a market participant to the extent that amendment is practicable.
6. An order that a person or company be reprimanded.
 7. An order that a person resign one or more positions that the person holds as a director or officer of an issuer.
 8. An order that a person is prohibited from becoming or acting as a director or officer of any issuer.
 - 8.1 An order that a person resign one or more positions that the persons holds as a director or officer of a registrant.
 - 8.2 An order that a person is prohibited from becoming or acting as a director or officer of a registrant.
 - 8.3 An order that a person resign one or more positions that the person holds as a director or officer of an investment fund manager.
 - 8.4 An order that a person is prohibited from becoming or acting as a director or officer of an investment fund manager.
 - 8.5 An order that a person or company is prohibited from becoming or acting as a registrant, as an investment fund manager or as a promoter.
 9. If a person or company has not complied with Ontario securities law, an order requiring the person or company to pay an administrative penalty of not more than \$1 million for each failure to comply.
 10. If a person or company has not complied with Ontario securities law, an order requiring

the person or company to disgorge to the Commission any amounts obtained as a result of the non-compliance. 1994, c. 11, s. 375; 1999, c. 9, s. 215; 2002, c. 22, s. 183 (1); 2005, c. 31, Sched. 20, s. 8; 2010, c. 26, Sched. 18, s. 35 (1).

Terms and conditions

(2) An order under this section may be subject to such terms and conditions as the Commission may impose. 1994, c. 11, s. 375.

Cease trading order

(3) The Commission may make an order under paragraph 2 of subsection (1) despite the delivery of a report to it under subsection 75 (3). 1994, c. 11, s. 375.

Exception

(3.1) A person or company is not entitled to participate in a proceeding in which an order may be made under paragraph 9 or 10 of subsection (1) solely on the basis that the person or company may be entitled to receive any amount paid under the order. 2004, c. 31, Sched. 34, s. 5.

Hearing requirement

(4) No order shall be made under this section without a hearing, subject to section 4 of the *Statutory Powers Procedure Act*. 1994, c. 11, s. 375.

Temporary orders

(5) Despite subsection (4), if in the opinion of the Commission the length of time required to conclude a hearing could be prejudicial to the public interest, the Commission may make a temporary order under paragraph 1, 2 or 3 of subsection (1) or subparagraph ii of paragraph 5 of subsection (1). 1994, c. 11, s. 375.

Period of temporary order

(6) The temporary order shall take effect immediately and shall expire on the fifteenth day after its making unless extended by the Commission. 1994, c. 11, s. 375.

Extension of temporary order

(7) The Commission may extend a temporary order until the hearing is concluded if a hearing is commenced within the fifteen-day period. 1994, c. 11, s. 375.

Same

(8) Despite subsection (7), the Commission may extend a temporary order under paragraph 2 of subsection (1) for such period as it considers necessary if satisfactory information is not provided to the Commission within the fifteen-day period. 1994, c. 11, s. 375.

Notice of temporary order

(9) The Commission shall give written notice of every temporary order made under subsection (5), together with a notice of hearing, to any person or company directly affected by the temporary order. 1994, c. 11, s. 375.

Inter-jurisdictional enforcement

(10) Without limiting the generality of subsections (1) and (5), an order may be made under subsection (1) or (5) in respect of a person or company if any of the following circumstances exist:

1. The person or company has been convicted in any jurisdiction of an offence arising from a transaction, business or course of conduct related to securities or derivatives.
2. The person or company has been convicted in any jurisdiction of an offence under a law

respecting the buying or selling of securities or derivatives.

3. The person or company has been found by a court in any jurisdiction to have contravened the laws of the jurisdiction respecting the buying or selling of securities or derivatives.
4. The person or company is subject to an order made by a securities regulatory authority, derivatives regulatory authority or financial regulatory authority, in any jurisdiction, that imposes sanctions, conditions, restrictions or requirements on the person or company.
5. The person or company has agreed with a securities regulatory authority, derivatives regulatory authority or financial regulatory authority, in any jurisdiction, to be made subject to sanctions, conditions, restrictions or requirements. 2008, c. 19, Sched. R, s. 1; 2010, c. 26, Sched. 18, s. 35 (3-6).

Payment of investigation costs

127.1 (1) If, in respect of a person or company whose affairs were the subject of an investigation, the Commission,

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

the Commission may, after conducting a hearing, order the person or company to pay the costs of the investigation. 1999, c. 9, s. 216.

Payment of hearing costs

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

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

the Commission may order the person or company to pay the costs of or related to the hearing that are incurred by or on behalf of the Commission. 1999, c. 9, s. 216.

Payment of costs where offence

(3) Where a person or company is guilty of an offence under this Act or the regulations, the Commission may, after conducting a hearing, order the person or company to pay the costs of any investigation carried out in respect of that offence. 1999, c. 9, s. 216.

Costs

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

1. Costs incurred in respect of services provided by persons appointed or engaged under section 5, 11 or 12.
2. Costs of matters preliminary to the hearing.
3. Costs for time spent by the Commission or the staff of the Commission.
4. Any fee paid to a witness.

5. Costs of legal services provided to the Commission. 1999, c. 9, s. 216.

Applications to court

128. (1) The Commission may apply to the Superior Court of Justice for a declaration that a person or company has not complied with or is not complying with Ontario securities law. 1994, c. 11, s. 375; 2006, c. 19, Sched. C, s. 1 (1).

Prior hearing not required

(2) The Commission is not required, before making an application under subsection (1), to hold a hearing to determine whether the person or company has not complied with or is not complying with Ontario securities law. 1994, c. 11, s. 375.

Remedial powers of court

(3) If the court makes a declaration under subsection (1), the court may, despite the imposition of any penalty under section 122 and despite any order made by the Commission under section 127, make any order that the court considers appropriate against the person or company, including, without limiting the generality of the foregoing, one or more of the following orders:

1. An order that the person or company comply with Ontario securities law.
2. An order requiring the person or company to submit to a review by the Commission of his, her or its practices and procedures and to institute such changes as may be directed by the Commission.
3. An order directing that a release, report, preliminary prospectus, prospectus, return, financial statement, information circular, takeover bid circular, issuer bid circular, offering memorandum, proxy solicitation or any other document described in the order,
 - i. be provided by the person or company to another person or company,
 - ii. not be provided by the person or company to another person or company, or
 - iii. be amended by the person or company to the extent that amendment is practicable.
4. An order rescinding any transaction entered into by the person or company relating to trading in securities including the issuance of securities.
5. An order requiring the issuance, cancellation, purchase, exchange or disposition of any securities by the person or company.
6. An order prohibiting the voting or exercise of any other right attaching to securities by the person or company.
7. An order prohibiting the person from acting as officer or director or prohibiting the person or company from acting as promoter of any market participant permanently or for such period as is specified in the order.
8. An order appointing officers and directors in place of or in addition to all or any of the officers and directors of the company then in office.
9. An order directing the person or company to purchase securities of a security holder.
10. An order directing the person or company to repay to a security holder any part of the money paid by the security holder for securities.
11. An order requiring the person or company to produce to the court or an interested

person financial statements in the form required by Ontario securities law, or an accounting in such other form as the court may determine.

12. An order directing rectification of the registers or other records of the company.
13. An order requiring the person or company to compensate or make restitution to an aggrieved person or company.
14. An order requiring the person or company to pay general or punitive damages to any other person or company.
15. An order requiring the person or company to disgorge to the Minister any amounts obtained as a result of the non-compliance with Ontario securities law.
16. An order requiring the person or company to rectify any past non-compliance with Ontario securities law to the extent that rectification is practicable. 1994, c. 11, s. 375.

Interim orders

[\(4\)](#) On an application under this section the court may make such interim orders as it considers appropriate. 1994, c. 11, s. 375.

Appointment of receiver, etc.

[129. \(1\)](#) The Commission may apply to the Superior Court of Justice for an order appointing a receiver, receiver and manager, trustee or liquidator of all or any part of the property of any person or company. 1994, c. 11, s. 375; 2006, c. 19, Sched. C, s. 1 (1).

Grounds

- [\(2\)](#) No order shall be made under subsection (1) unless the court is satisfied that,
- (a) the appointment of a receiver, receiver and manager, trustee or liquidator of all or any part of the property of the person or company is in the best interests of the creditors of the person or company or of persons or companies any of whose property is in the possession or under the control of the person or company or the security holders of or subscribers to the person or company; or
 - (b) it is appropriate for the due administration of Ontario securities law. 1994, c. 11, s. 375.

Application without notice

[\(3\)](#) The court may make an order under subsection (1) on an application without notice, but the period of appointment shall not exceed fifteen days. 1994, c. 11, s. 375.

Motion to continue order

[\(4\)](#) If an order is made without notice under subsection (3), the Commission may make a motion to the court within fifteen days after the date of the order to continue the order or for the issuance of such other order as the court considers appropriate. 1994, c. 11, s. 375.

Powers of receiver, etc.

[\(5\)](#) A receiver, receiver and manager, trustee or liquidator of the property of a person or company appointed under this section shall be the receiver, receiver and manager, trustee or liquidator of all or any part of the property belonging to the person or company or held by the person or company on behalf of or in trust for any other person or company, and, if so directed by the court, the receiver, receiver and manager, trustee or liquidator has the authority to wind up or manage the business and affairs of the person or company and has all powers necessary or

incidental to that authority. 1994, c. 11, s. 375.

Directors' powers cease

(6) If an order is made appointing a receiver, receiver and manager, trustee or liquidator of the property of a person or company under this section, the powers of the directors of the company that the receiver, receiver and manager, trustee or liquidator is authorized to exercise may not be exercised by the directors until the receiver, receiver and manager, trustee or liquidator is discharged by the court. 1994, c. 11, s. 375.

Fees and expenses

(7) The fees charged and expenses incurred by a receiver, receiver and manager, trustee or liquidator appointed under this section in relation to the exercise of powers pursuant to the appointment shall be in the discretion of the court. 1994, c. 11, s. 375.

Variation or discharge of order

(8) An order made under this section may be varied or discharged by the court on motion. 1994, c. 11, s. 375.

Limitation period

129.1 Except where otherwise provided in this Act, no proceeding under this Act shall be commenced later than six years from the date of the occurrence of the last event on which the proceeding is based. 1999, c. 9, s. 217.

Directors and officers

129.2 For the purposes of this Act, if a company or a person other than an individual has not complied with Ontario securities law, a director or officer of the company or person who authorized, permitted or acquiesced in the non-compliance shall be deemed to also have not complied with Ontario securities law, whether or not any proceeding has been commenced against the company or person under Ontario securities law or any order has been made against the company or person under section 127. 2002, c. 22, s. 184.

PART XXIII CIVIL LIABILITY

Liability for misrepresentation in prospectus

130. (1) Where a prospectus, together with any amendment to the prospectus, contains a misrepresentation, a purchaser who purchases a security offered by the prospectus during the period of distribution or during distribution to the public has, without regard to whether the purchaser relied on the misrepresentation, a right of action for damages against,

- (a) the issuer or a selling security holder on whose behalf the distribution is made;
- (b) each underwriter of the securities who is required to sign the certificate required by section 59;
- (c) every director of the issuer at the time the prospectus or the amendment to the prospectus was filed;
- (d) every person or company whose consent to disclosure of information in the prospectus has been filed pursuant to a requirement of the regulations but only with respect to reports, opinions or statements that have been made by them; and

- (e) every person or company who signed the prospectus or the amendment to the prospectus other than the persons or companies included in clauses (a) to (d),

or, where the purchaser purchased the security from a person or company referred to in clause (a) or (b) or from another underwriter of the securities, the purchaser may elect to exercise a right of rescission against such person, company or underwriter, in which case the purchaser shall have no right of action for damages against such person, company or underwriter. R.S.O. 1990, c. S.5, s. 130 (1); 2004, c. 31, Sched. 34, s. 6; 2006, c. 33, Sched. Z.5, s. 13.

Defence

(2) No person or company is liable under subsection (1) if he, she or it proves that the purchaser purchased the securities with knowledge of the misrepresentation. R.S.O. 1990, c. S.5, s. 130 (2).

Idem

(3) No person or company, other than the issuer or selling security holder, is liable under subsection (1) if he, she or it proves,

- (a) that the prospectus or the amendment to the prospectus was filed without his, her or its knowledge or consent, and that, on becoming aware of its filing, he, she or it forthwith gave reasonable general notice that it was so filed;
- (b) that, after the issue of a receipt for the prospectus and before the purchase of the securities by the purchaser, on becoming aware of any misrepresentation in the prospectus or an amendment to the prospectus he, she or it withdrew the consent thereto and gave reasonable general notice of such withdrawal and the reason therefor;
- (c) that, with respect to any part of the prospectus or the amendment to the prospectus purporting to be made on the authority of an expert or purporting to be a copy of or an extract from a report, opinion or statement of an expert, he, she or it had no reasonable grounds to believe and did not believe that there had been a misrepresentation or that such part of the prospectus or the amendment to the prospectus did not fairly represent the report, opinion or statement of the expert or was not a fair copy of or extract from the report, opinion or statement of the expert;
- (d) that, with respect to any part of the prospectus or the amendment to the prospectus purporting to be made on his, her or its own authority as an expert or purporting to be a copy of or an extract from his, her or its own report, opinion or statement as an expert but that contains a misrepresentation attributable to failure to represent fairly his, her or its report, opinion or statement as an expert,
 - (i) the person or company had, after reasonable investigation, reasonable grounds to believe and did believe that such part of the prospectus or the amendment to the prospectus fairly represented his, her or its report, opinion or statement, or
 - (ii) on becoming aware that such part of the prospectus or the amendment to the prospectus did not fairly represent his, her or its report, opinion or statement as an expert, he, she or it forthwith advised the Commission and gave reasonable general notice that such use had been made and that he, she or it would not be responsible for that part of the prospectus or the amendment to the prospectus; or

- (e) that, with respect to a false statement purporting to be a statement made by an official person or contained in what purports to be a copy of or extract from a public official document, it was a correct and fair representation of the statement or copy of or extract from the document, and he, she or it had reasonable grounds to believe and did believe that the statement was true. R.S.O. 1990, c. S.5, s. 130 (3).

Idem

(4) No person or company, other than the issuer or selling security holder, is liable under subsection (1) with respect to any part of the prospectus or the amendment to the prospectus purporting to be made on his, her or its own authority as an expert or purporting to be a copy of or an extract from his, her or its own report, opinion or statement as an expert unless he, she or it,

- (a) failed to conduct such reasonable investigation as to provide reasonable grounds for a belief that there had been no misrepresentation; or
- (b) believed there had been a misrepresentation. R.S.O. 1990, c. S.5, s. 130 (4).

Idem

(5) No person or company, other than the issuer or selling security holder, is liable under subsection (1) with respect to any part of the prospectus or the amendment to the prospectus not purporting to be made on the authority of an expert and not purporting to be a copy of or an extract from a report, opinion or statement of an expert unless he, she or it,

- (a) failed to conduct such reasonable investigation as to provide reasonable grounds for a belief that there had been no misrepresentation; or
- (b) believed there had been a misrepresentation. R.S.O. 1990, c. S.5, s. 130 (5).

Limitation re underwriters

(6) No underwriter is liable for more than the total public offering price represented by the portion of the distribution underwritten by the underwriter. R.S.O. 1990, c. S.5, s. 130 (6).

Limitation in action for damages

(7) In an action for damages pursuant to subsection (1), the defendant is not liable for all or any portion of such damages that the defendant proves do not represent the depreciation in value of the security as a result of the misrepresentation relied upon. R.S.O. 1990, c. S.5, s. 130 (7).

Joint and several liability

(8) All or any one or more of the persons or companies specified in subsection (1) are jointly and severally liable, and every person or company who becomes liable to make any payment under this section may recover a contribution from any person or company who, if sued separately, would have been liable to make the same payment provided that the court may deny the right to recover such contribution where, in all the circumstances of the case, it is satisfied that to permit recovery of such contribution would not be just and equitable. R.S.O. 1990, c. S.5, s. 130 (8).

Limitation re amount recoverable

(9) In no case shall the amount recoverable under this section exceed the price at which the securities were offered to the public. R.S.O. 1990, c. S.5, s. 130 (9).

No derogation of rights

(10) The right of action for rescission or damages conferred by this section is in addition to and without derogation from any other right the purchaser may have at law. R.S.O. 1990, c. S.5,

s. 130 (10).

Liability for misrepresentation in offering memorandum

130.1 (1) Where an offering memorandum contains a misrepresentation, a purchaser who purchases a security offered by the offering memorandum during the period of distribution has, without regard to whether the purchaser relied on the misrepresentation, the following rights:

1. The purchaser has a right of action for damages against the issuer and a selling security holder on whose behalf the distribution is made.
2. If the purchaser purchased the security from a person or company referred to in paragraph 1, the purchaser may elect to exercise a right of rescission against the person or company. If the purchaser exercises this right, the purchaser ceases to have a right of action for damages against the person or company. 2004, c. 31, Sched. 34, s. 7.

Defence

(2) No person or company is liable under subsection (1) if he, she or it proves that the purchaser purchased the securities with knowledge of the misrepresentation. 1999, c. 9, s. 218.

Limitation in action for damages

(3) In an action for damages pursuant to subsection (1), the defendant is not liable for all or any portion of the damages that the defendant proves do not represent the depreciation in value of the security as a result of the misrepresentation relied upon. 1999, c. 9, s. 218.

Joint and several liability

(4) Subject to subsection (5), all or any one or more of the persons or companies specified in subsection (1) are jointly and severally liable, and every person or company who becomes liable to make any payment under this section may recover a contribution from any person or company who, if sued separately, would have been liable to make the same payment, unless the court rules that, in all the circumstances of the case, to permit recovery of the contribution would not be just and equitable. 1999, c. 9, s. 218.

Same

(5) Despite subsection (4), an issuer shall not be liable where it is not receiving any proceeds from the distribution of the securities being distributed and the misrepresentation was not based on information provided by the issuer, unless the misrepresentation,

- (a) was based on information that was previously publicly disclosed by the issuer;
- (b) was a misrepresentation at the time of its previous public disclosure; and
- (c) was not subsequently publicly corrected or superseded by the issuer prior to the completion of the distribution of the securities being distributed. 1999, c. 9, s. 218.

Limitation re amount recoverable

(6) In no case shall the amount recoverable under this section exceed the price at which the securities were offered. 1999, c. 9, s. 218.

No derogation of rights

(7) The right of action for rescission or damages conferred by this section is in addition to and without derogation from any other right the purchaser may have at law. 1999, c. 9, s. 218.

Application

[\(8\)](#) This section applies only with respect to an offering memorandum which has been furnished to a prospective purchaser in connection with a distribution of a security under an exemption from section 53 of the Act that is specified in the regulations for the purposes of this section. 2001, c. 23, s. 216.

Liability for misrepresentation in circular

[131. \(1\)](#) Where a take-over bid circular sent to the security holders of an offeree issuer as required by Part XX, or any notice of change or variation in respect of the circular, contains a misrepresentation, a security holder may, without regard to whether the security holder relied on the misrepresentation, elect to exercise a right of action for rescission or damages against the offeror or a right of action for damages against,

- (a) every person who at the time the circular or notice, as the case may be, was signed was a director of the offeror;
- (b) every person or company whose consent in respect of the circular or notice, as the case may be, has been filed pursuant to a requirement of the regulations but only with respect to reports, opinions or statements that have been made by the person or company; and
- (c) each person who signed a certificate in the circular or notice, as the case may be, other than the persons included in clause (a). R.S.O. 1990, c. S.5, s. 131 (1); 2004, c. 31, Sched. 34, s. 8 (1).

Same

[\(2\)](#) Where a directors' circular or a director's or officer's circular delivered to the security holders of an offeree issuer as required by Part XX, or any notice of change or variation in respect of the circular, contains a misrepresentation, a security holder has, without regard to whether the security holder relied on the misrepresentation, a right of action for damages against every director or officer who signed the circular or notice that contained the misrepresentation. 2004, c. 31, Sched. 34, s. 8 (2); 2007, c. 7, Sched. 38, s. 9 (1).

Idem

[\(3\)](#) Subsection (1) applies with necessary modifications where an issuer bid circular or any notice of change or variation in respect thereof contains a misrepresentation. R.S.O. 1990, c. S.5, s. 131 (3).

Defence

[\(4\)](#) No person or company is liable under subsection (1), (2) or (3) if the person or company proves that the security holder had knowledge of the misrepresentation. R.S.O. 1990, c. S.5, s. 131 (4).

Idem

[\(5\)](#) No person or company, other than the offeror, is liable under subsection (1), (2) or (3) if he, she or it proves,

- (a) that the take-over bid circular, issuer bid circular, directors' circular or director's or officer's circular, as the case may be, was sent without his, her or its knowledge or consent and that, on becoming aware of it, he, she or it forthwith gave reasonable general notice that it was so sent;
- (b) that, after the sending of the take-over bid circular, issuer bid circular, directors' circular

or director's or officer's circular, as the case may be, on becoming aware of any misrepresentation in the take-over bid circular, issuer bid circular, directors' circular or director's or officer's circular, he, she or it withdrew the consent thereto and gave reasonable general notice of the withdrawal and the reason therefor;

- (c) that, with respect to any part of the circular purporting to be made on the authority of an expert or purporting to be a copy of or an extract from a report, opinion or statement of an expert, he, she or it had no reasonable grounds to believe and did not believe that there had been a misrepresentation or that such part of the circular did not fairly represent the report, opinion or statement of the expert or was not a fair copy of or extract from the report, opinion or statement of the expert;
- (d) that, with respect to any part of the circular purporting to be made on his, her or its own authority as an expert or purporting to be a copy of or an extract from his, her or its own report, opinion or statement as an expert, but that contains a misrepresentation attributable to failure to represent fairly his, her or its report, opinion or statement as an expert,
 - (i) the person or company had, after reasonable investigation, reasonable grounds to believe and did believe that such part of the circular fairly represented his, her or its report, opinion or statement as an expert, or
 - (ii) on becoming aware that such part of the circular did not fairly represent his, her or its report, opinion or statement as an expert, he, she or it forthwith advised the Commission and gave reasonable general notice that such use had been made and that he, she or it would not be responsible for that part of the circular; or
- (e) that, with respect to a false statement purporting to be a statement made by an official person or contained in what purports to be a copy of or extract from a public official document, it was a correct and fair representation of the statement or copy of or extract from the document and he, she or it had reasonable grounds to believe and did believe that the statement was true. R.S.O. 1990, c. S.5, s. 131 (5); 2007, c. 7, Sched. 38, s. 9 (2, 3).

Idem

(6) No person or company, other than the offeror, is liable under subsection (1), (2) or (3) with respect to any part of the circular purporting to be made on his, her or its own authority as an expert or purporting to be a copy of or an extract from his, her or its own report, opinion or statement as an expert unless he, she or it,

- (a) failed to conduct such reasonable investigation as to provide reasonable grounds for a belief that there had been no misrepresentation; or
- (b) believed there had been a misrepresentation. R.S.O. 1990, c. S.5, s. 131 (6).

Idem

(7) No person or company, other than the offeror, is liable under subsection (1), (2) or (3) with respect to any part of the circular not purporting to be made on the authority of an expert and not purporting to be a copy of or an extract from a report, opinion or statement of an expert unless he, she or it,

- (a) failed to conduct such reasonable investigation as to provide reasonable grounds for a belief that there had been no misrepresentation; or
- (b) believed there had been a misrepresentation. R.S.O. 1990, c. S.5, s. 131 (7).

Joint and several liability

[\(8\)](#) All or any one or more of the persons or companies specified in subsection (1), (2) or (3) are jointly and severally liable, and every person or company who becomes liable to make any payment under this section may recover a contribution from any person or company who, if sued separately, would have been liable to make the same payment provided that the court may deny the right to recover such contribution where, in all the circumstances of the case, it is satisfied that to permit recovery of such contribution would not be just and equitable. R.S.O. 1990, c. S.5, s. 131 (8).

Limitation of damages

[\(9\)](#) In an action for damages pursuant to subsection (1), (2) or (3) based on a misrepresentation affecting a security offered by the offeror company in exchange for securities of the offeree company, the defendant is not liable for all or any portion of such damages that the defendant proves do not represent the depreciation in value of the security as a result of the misrepresentation. R.S.O. 1990, c. S.5, s. 131 (9).

Deemed issuer bid circular

[\(10\)](#) Where the offeror in an issuer bid that is exempted by subsection 101.2 (1) from the formal bid requirements of Part XX is required, by the by-laws, regulations or policies of the applicable designated exchange to file with it or deliver to security holders of the offeree issuer a disclosure document, the disclosure document shall be deemed, for the purposes of this section, to be an issuer bid circular delivered to the security holders as required by Part XX. 2007, c. 7, Sched. 38, s. 9 (4); 2010, c. 26, Sched. 18, s. 36.

No derogation of rights

[\(11\)](#) The right of action for rescission or damages conferred by this section is in addition to and without derogation from any other right the security holders of the offeree issuer may have at law. R.S.O. 1990, c. S.5, s. 131 (11).

Standard of reasonableness

[132.](#) In determining what constitutes reasonable investigation or reasonable grounds for belief for the purposes of sections 130 and 131, the standard of reasonableness shall be that required of a prudent person in the circumstances of the particular case. R.S.O. 1990, c. S.5, s. 132.

Defence to liability for misrepresentation

[132.1 \(1\)](#) A person or company is not liable in an action under section 130, 130.1 or 131 for a misrepresentation in forward-looking information if the person or company proves all of the following things:

1. The document 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.
2. The person or company had a reasonable basis for drawing the conclusions or making the forecasts and projections set out in the forward-looking information. 2004, c. 31, Sched. 34, s. 9.

Exception

[\(2\)](#) Subsection (1) does not relieve a person or company of liability respecting forward-looking information in a financial statement or forward-looking information in a document released in connection with an initial public offering. 2004, c. 31, Sched. 34, s. 9.

Liability of dealer or offeror

[133.](#) A purchaser of a security to whom a prospectus was required to be sent or delivered but was not sent or delivered in compliance with subsection 71 (1) or a security holder to whom a take-over bid and take-over bid circular or an issuer bid and an issuer bid circular, or any notice of change or variation to any such bid or circular, were required under Part XX to be sent or delivered but were not sent or delivered in accordance with that Part has a right of action for rescission or damages against the dealer or offeror who failed to comply with the applicable requirement. R.S.O. 1990, c. S.5, s. 133; 2007, c. 7, Sched. 38, s. 10.

Note: On a day to be named by proclamation of the Lieutenant Governor, section 133 is repealed and the following substituted:

Liability of dealer or offeror

[133.](#) Each of the following has a right of action for rescission or damages against the dealer or offeror who failed to comply with the applicable requirement:

1. A purchaser of a security to whom a prospectus was required to be sent or delivered but was not sent or delivered in compliance with subsection 71 (1).
2. A purchaser of an investment fund security to whom a prescribed disclosure document referred to in subsection 71 (1.1) was required to be sent or delivered but was not sent or delivered in compliance with the regulations.
3. A security holder to whom a take-over bid and take-over bid circular or an issuer bid and an issuer bid circular, or any notice of change or variation to any such bid or circular, were required under Part XX to be sent or delivered but were not sent or delivered in compliance with that Part. 2011, c. 9, Sched. 38, s. 3.

See: 2011, c. 9, Sched. 38, ss. 3, 5 (2).

Liability where material fact or change undisclosed

[134. \(1\)](#) Every person or company in a special relationship with a reporting issuer who purchases or sells securities of the reporting issuer with knowledge of a material fact or material change with respect to the reporting issuer that has not been generally disclosed is liable to compensate the seller or purchaser of the securities, as the case may be, for damages as a result of the trade unless,

- (a) the person or company in the special relationship with the reporting issuer proves that

the person or company reasonably believed that the material fact or material change had been generally disclosed; or

- (b) the material fact or material change was known or ought reasonably to have been known to the seller or purchaser, as the case may be. R.S.O. 1990, c. S.5, s. 134 (1).

Idem, tipping

(2) Every,

- (a) reporting issuer;
- (b) person or company in a special relationship with a reporting issuer; and
- (c) person or company that proposes,
- (i) to make a take-over bid, as defined in Part XX, for the securities of a reporting issuer,
 - (ii) to become a party to a reorganization, amalgamation, merger, arrangement or similar business combination with a reporting issuer, or
 - (iii) to acquire a substantial portion of the property of a reporting issuer,

and who informs another person or company of a material fact or material change with respect to the reporting issuer that has not been generally disclosed is liable to compensate for damages any person or company that thereafter sells securities of the reporting issuer to or purchases securities of the reporting issuer from the person or company that received the information unless,

- (d) the person or company who informed the other person or company proves that the informing person or company reasonably believed the material fact or material change had been generally disclosed;
- (e) the material fact or material change was known or ought reasonably to have been known to the seller or purchaser, as the case may be;
- (f) in the case of an action against a reporting issuer or a person in a special relationship with the reporting issuer, the information was given in the necessary course of business; or
- (g) in the case of an action against a person or company described in subclause (c) (i), (ii) or (iii), the information was given in the necessary course of business to effect the take-over bid, business combination or acquisition. R.S.O. 1990, c. S.5, s. 134 (2).

Liability for improper use of information, mutual funds

(3) A person or company is accountable to a mutual fund in Ontario for any benefit or advantage received or receivable as a result of a purchase or sale of securities of an issuer if,

- (a) the portfolio securities of the mutual fund include securities of that issuer; and
- (b) the person or company,
- (i) has access to information concerning the investment program of the mutual fund, and
 - (ii) uses that information for his, her or its direct benefit or advantage to purchase or sell securities of that issuer for his, her or its own account. 2009, c. 18, Sched. 26,

s. 17.

Same, discretionary investment portfolios

[\(3.1\)](#) A person or company is accountable to a client of a registrant for any benefit or advantage received or receivable as a result of a purchase or sale of securities of an issuer if,

- (a) an investment portfolio is managed for the client by the registrant through discretionary authority provided by the client;
- (b) the portfolio securities of the investment portfolio include securities of that issuer;
- (c) the registrant is a registered adviser or registered dealer; and
- (d) the person or company has,
 - (i) access to information concerning the investment portfolio, and
 - (ii) uses that information for his, her or its direct benefit or advantage to purchase or sell securities of that issuer. 2009, c. 18, Sched. 26, s. 17.

Accountability for gain

[\(4\)](#) Every person or company who is an insider, affiliate or associate of a reporting issuer that,

- (a) sells or purchases the securities of the reporting issuer with knowledge of a material fact or material change with respect to the reporting issuer that has not been generally disclosed; or
- (b) communicates to another person, other than in the necessary course of business, knowledge of a material fact or material change with respect to the reporting issuer that has not been generally disclosed,

is accountable to the reporting issuer for any benefit or advantage received or receivable by the person or company as a result of the purchase, sale or communication, as the case may be, unless the person or company proves that the person or company reasonably believed that the material fact or material change had been generally disclosed. R.S.O. 1990, c. S.5, s. 134 (4).

Liability, joint and several

[\(5\)](#) Where more than one person or company in a special relationship with a reporting issuer is liable under subsection (1) or (2) as to the same transaction or series of transactions, their liability is joint and several. R.S.O. 1990, c. S.5, s. 134 (5).

Measure of damages

[\(6\)](#) In assessing damages under subsection (1) or (2), the court shall consider,

- (a) if the plaintiff is a purchaser, the price paid by the plaintiff for the security less the average market price of the security in the twenty trading days following general disclosure of the material fact or material change; or
- (b) if the plaintiff is a vendor, the average market price of the security in the twenty trading days following general disclosure of the material fact or material change less the price received by the plaintiff for the security,

but the court may instead consider such other measures of damages as may be relevant in the circumstances. R.S.O. 1990, c. S.5, s. 134 (6).

Definitions

[\(7\)](#) For the purposes of this section,

“a person or company in a special relationship with a reporting issuer” has the same meaning as in subsection 76 (5); (“personne ou compagnie ayant des rapports particuliers avec un émetteur assujéti”)

“reporting issuer” includes an issuer that has a real and substantial connection to Ontario and whose securities are listed and posted for trading on the TSX Venture Exchange. (“émetteur assujéti”) R.S.O. 1990, c. S.5, s. 134 (7); 2010, c. 26, Sched. 18, s. 37 (1).

Idem

[\(8\)](#) For the purposes of subsections (1) and (2), a security of the reporting issuer shall be deemed to include,

- (a) a put, call, option or other right or obligation to purchase or sell securities of the reporting issuer;
- (b) a security, the market price of which varies materially with the market price of the securities of the issuer; or
- (c) a related derivative. R.S.O. 1990, c. S.5, s. 134 (8); 2010, c. 26, Sched. 18, s. 37 (2).

Action by Commission on behalf of issuer

[135. \(1\)](#) Upon application by the Commission or by any person or company who was at the time of a transaction referred to in subsection 134 (1) or (2) or is at the time of the application a security holder of the reporting issuer, a judge of the Superior Court of Justice may, if satisfied that,

- (a) the Commission or the person or company has reasonable grounds for believing that the reporting issuer has a cause of action under subsection 134 (4); and
- (b) either,
 - (i) the reporting issuer has refused or failed to commence an action under section 134 within sixty days after receipt of a written request from the Commission or such person or company so to do, or
 - (ii) the reporting issuer has failed to prosecute diligently an action commenced by it under section 134,

make an order, upon such terms as to security for costs and otherwise as to the judge seems fit, requiring the Commission or authorizing such person or company or the Commission to commence or continue an action in the name of and on behalf of the reporting issuer to enforce the liability created by subsection 134 (4). R.S.O. 1990, c. S.5, s. 135 (1); 2006, c. 19, Sched. C, s. 1 (1).

Action by Commission on behalf of mutual fund

[\(2\)](#) Upon the application by the Commission or any person or company who was at the time of a transaction referred to in subsection 134 (3) or is at the time of the application a security holder of the mutual fund, a judge of the Superior Court of Justice may, if satisfied that,

- (a) the Commission or the person or company has reasonable grounds for believing that the mutual fund has a cause of action under subsection 134 (3); and

(b) the mutual fund has either,

- (i) refused or failed to commence an action under subsection 134 (3) within sixty days after receipt of a written request from the Commission or the person or company so to do, or
- (ii) failed to prosecute diligently an action commenced by it under subsection 134 (3),

make an order, upon terms as to security for costs or otherwise as to the judge seems proper, requiring the Commission or authorizing the person or company or the Commission to commence and prosecute or to continue an action in the name of and on behalf of the mutual fund to enforce the liability created by subsection 134 (3). R.S.O. 1990, c. S.5, s. 135 (2); 2006, c. 19, Sched. C, s. 1 (1).

Costs

- (3) Where an action under subsection 134 (3), (3.1) or (4) is,
- (a) commenced;
 - (b) commenced and prosecuted; or
 - (c) continued,

by a board of directors of a reporting issuer, the trial judge or, on motion to the Superior Court of Justice, a judge of the Court may order that the costs properly incurred by the board of directors in commencing, commencing and prosecuting or continuing the action, as the case may be, shall be paid by the reporting issuer, if the judge is satisfied that there were apparent grounds for believing the action was in the best interests of the reporting issuer and the security holders thereof. R.S.O. 1990, c. S.5, s. 135 (3); 2006, c. 19, Sched. C, s. 1 (1); 2009, c. 18, Sched. 26, s. 18 (1).

Action by Commission on behalf of security holder of the reporting issuer

- (4) Where an action under subsection 134 (3), (3.1) or (4) is,
- (a) commenced;
 - (b) commenced and prosecuted; or
 - (c) continued,

by a person or company who is a security holder of the reporting issuer, the trial judge or, on motion to the Superior Court of Justice, a judge of the Court may order that the costs properly incurred by such person or company in commencing, commencing and prosecuting or continuing the action, as the case may be, shall be paid by the reporting issuer, if the judge is satisfied that,

- (d) the reporting issuer failed to commence the action or had commenced it but had failed to prosecute it diligently; and
- (e) there are apparent grounds for believing that the continuance of the action is in the best interests of the reporting issuer and the security holders thereof. R.S.O. 1990, c. S.5, s. 135 (4); 2006, c. 19, Sched. C, s. 1 (1); 2009, c. 18, Sched. 26, s. 18 (2).

Idem

- (5) Where an action under subsection 134 (3), (3.1) or (4) is,
- (a) commenced;

(b) commenced and prosecuted; or

(c) continued,

by the Commission, the trial judge or, on motion to the Superior Court of Justice, a judge of the Court shall order the reporting issuer to pay all costs properly incurred by the Commission in commencing, commencing and prosecuting or continuing the action, as the case may be. R.S.O. 1990, c. S.5, s. 135 (5); 2006, c. 19, Sched. C, s. 1 (1); 2009, c. 18, Sched. 26, s. 18 (3).

Idem

(6) In determining whether there are apparent grounds for believing that an action or its continuance is in the best interests of a reporting issuer and the security holders thereof, the judge shall consider the relationship between the potential benefit to be derived from the action by the reporting issuer and the security holders thereof and the cost involved in the prosecution of the action. R.S.O. 1990, c. S.5, s. 135 (6).

Notice of application

(7) Notice of every application under subsection (1) or (2) shall be given to the Commission, the reporting issuer or the mutual fund, as the case may be, and each of them may appear and be heard thereon. R.S.O. 1990, c. S.5, s. 135 (7).

Order to co-operate

(8) Every order made under subsection (1) or (2) requiring or authorizing the Commission to commence and prosecute or continue an action shall provide that the reporting issuer or mutual fund, as the case may be, shall co-operate fully with the Commission in the commencement and prosecution or continuation of the action, and shall make available to the Commission all books, records, documents and other material or information known to the reporting issuer or mutual fund or reasonably ascertainable by the reporting issuer or mutual fund relevant to such action. R.S.O. 1990, c. S.5, s. 135 (8).

Appeal

(9) An appeal lies to the Divisional Court from any order made under this section. R.S.O. 1990, c. S.5, s. 135 (9).

Disclosure of intended status as principal

136. (1) If, contrary to Ontario securities law, a registered dealer fails to disclose to a person or company with whom it effects a purchase or sale of a security that it intended to act as principal in respect of the purchase or sale, the person or company may rescind the contract effecting the purchase or sale by mailing or delivering written notice of the rescission to the registered dealer within 60 days after the date of delivery of the security to or by the person or company, as the case may be. 2009, c. 18, Sched. 26, s. 19.

Disclosure of actual status as principal

(2) If, contrary to Ontario securities law, a registered dealer fails to disclose to a person or company that it has acted as principal in respect of a purchase or sale of a security, the person or company may rescind the contract effecting the purchase or sale by mailing or delivering written notice of the rescission to the registered dealer within seven days after the date of the delivery to the person or company of the written confirmation of the contract. 2009, c. 18, Sched. 26, s. 19.

Service

(3) For the purposes of subsection (2), a confirmation sent by ordinary letter mail is deemed

to be delivered to the person or company to whom it was addressed in the ordinary course of mail. 2009, c. 18, Sched. 26, s. 19.

Exception

(4) Subsections (1) and (2) do not allow the rescission of a contract effecting the purchase of a security by a person or company if the person or company no longer owns the security. 2009, c. 18, Sched. 26, s. 19.

Onus

(5) In an action respecting a rescission to which subsection (1) or (2) applies, the onus of proving that a registered dealer disclosed that he, she or it acted or intended to act as principal is on the registered dealer. 2009, c. 18, Sched. 26, s. 19.

Limitation period

(6) No action respecting a rescission shall be commenced under this section after the expiration of a period of 90 days from the date of delivery of the notice under subsection (1) or (2). 2009, c. 18, Sched. 26, s. 19.

Rescission of purchase of mutual fund security

137. (1) Every purchaser of a security of a mutual fund in Ontario may, where the amount of the purchase does not exceed the sum of \$50,000, rescind the purchase by notice given to the registered dealer from whom the purchase was made within forty-eight hours after receipt of the confirmation for a lump sum purchase or within sixty days after receipt of the confirmation for the initial payment under a contractual plan but, subject to subsection (5), the amount the purchaser is entitled to recover on exercise of this right to rescind shall not exceed the net asset value of the securities purchased, at the time the right is exercised. R.S.O. 1990, c. S.5, s. 137 (1).

Idem

(2) The right to rescind a purchase made under a contractual plan may be exercised 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. R.S.O. 1990, c. S.5, s. 137 (2).

Notice

(3) The notice mentioned in subsection (1) shall be in writing, and may be given by prepaid mail, telegram or other means. R.S.O. 1990, c. S.5, s. 137 (3).

Service

(4) A confirmation sent by prepaid mail shall be deemed conclusively to have been received in the ordinary course of mail by the person or company to whom it was addressed. R.S.O. 1990, c. S.5, s. 137 (4).

Reimbursement

(5) Every registered dealer from whom the purchase was made shall reimburse the purchaser who has exercised the 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 shares or units of which the notice of exercise of the right of rescission was given. R.S.O. 1990, c. S.5, s. 137 (5).

Limitation periods

138. Unless otherwise provided in this Act, no action shall be commenced to enforce a right created by this Part more than,

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

PART XXIII.1
CIVIL LIABILITY FOR SECONDARY MARKET DISCLOSURE

INTERPRETATION AND APPLICATION

Definitions

138.1 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 such compensation is awarded; (“rémunération”)

“core document” means,

- (a) 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,
 - (i) a director of a responsible issuer who is not also an officer of the responsible issuer,
 - (ii) an influential person, other than an officer of the responsible issuer or an investment fund manager where the responsible issuer is an investment fund, or
 - (iii) a director or officer of an influential person who is not also an 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 a material change report required by subsection 75 (2) or the regulations of the responsible issuer, where used in relation to,
 - (i) a responsible issuer or an officer of the responsible issuer,
 - (ii) an investment fund manager, where the responsible issuer is an investment fund, or

(iii) an officer of an investment fund manager, where the responsible issuer is an investment fund, or

(c) such other documents as may be prescribed by regulation for the purposes of this definition; (“document essentiel”)

“document” means any written communication, including a communication prepared and transmitted only in electronic form,

(a) that is required to be filed with the Commission, or

(b) that is not required to be filed with the Commission and,

(i) that is filed with the Commission,

(ii) that is filed or required to be filed with a government or an agency of a government under applicable securities or corporate law or with any exchange or quotation and trade reporting system under its by-laws, rules or regulations, or

(iii) that is any other communication the content of which would reasonably be expected to affect the market price or value of a security of the responsible issuer; (“document”)

“expert” means a person or company whose profession gives authority to a statement made in a professional capacity by the person or company, including, without limitation, an accountant, actuary, appraiser, auditor, engineer, financial analyst, geologist or lawyer, but not including a designated credit rating organization; (“expert”)

“failure to make timely disclosure” means a failure to disclose a material change in the manner and at the time required under this Act or the regulations; (“non-respect des obligations d’information occasionnelle”)

“influential person” means, in respect of a responsible issuer,

(a) a control person,

(b) a promoter,

(c) an insider who is not a director or officer of the responsible issuer, or

(d) an investment fund manager, if the responsible issuer is an investment fund; (“personne influente”)

“issuer’s security” means a security of a responsible issuer and includes a security,

(a) the market price or value of which, or payment obligations under which, are derived from or based on a security of the responsible issuer, and

(b) which is created by a person or company on behalf of the responsible issuer or is guaranteed by the responsible issuer; (“valeur mobilière d’un émetteur”)

“liability limit” means,

(a) in the case of a responsible issuer, the greater of,

(i) 5 per cent of its market capitalization (as such term is defined in the regulations),
and

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

"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 Ontario securities law; ("rapport de gestion")

"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; ("déclaration orale publique")

"release" means, with respect to information or a document, to file with the Commission or any other securities regulatory authority in Canada or an exchange or to otherwise make available to the public; ("publication", "publier")

"responsible issuer" means,

- (a) a reporting issuer, or
- (b) any other issuer with a real and substantial connection to Ontario, any securities of which are publicly traded; (“émetteur responsable”)

“trading day” means a day during which the principal market (as defined in the regulations) for the security is open for trading. (“jour de Bourse”) 2002, c. 22, s. 185; 2004, c. 31, Sched. 34, s. 10; 2006, c. 33, Sched. Z.5, s. 14; 2007, c. 7, Sched. 38, s. 11; 2010, c. 1, Sched. 26, s. 6; 2010, c. 26, Sched. 18, s. 38.

Application

138.2 This Part does not apply to,

- (a) the purchase of a security offered by a prospectus during the period of distribution;
- (b) the acquisition of an issuer’s security pursuant to a distribution that is exempt from section 53 or 62, except as may be prescribed by regulation;
- (c) the acquisition or disposition of an issuer’s security in connection with or pursuant to a take-over bid or issuer bid, except as may be prescribed by regulation; or
- (d) such other transactions or class of transactions as may be prescribed by regulation. 2002, c. 22, s. 185; 2004, c. 31, Sched. 34, s. 11.

LIABILITY

Liability for secondary market disclosure

Documents released by responsible issuer

138.3 (1) Where a responsible issuer or a person or company with actual, implied or apparent authority to act on behalf of a responsible issuer releases a document that contains a misrepresentation, a person or company 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 or company relied on the misrepresentation, a right of action for damages against,

- (a) the responsible issuer;
- (b) each director of the responsible issuer at the time the document was released;
- (c) each officer of the responsible issuer who authorized, permitted or acquiesced in the release of the document;
- (d) each influential person, and each director and officer of an influential person, who knowingly influenced,
 - (i) the responsible issuer or any person or company acting on behalf of the responsible issuer to release the document, or
 - (ii) a director or officer of the responsible issuer to authorize, permit or acquiesce in the release of the document; and
- (e) each expert where,
 - (i) the misrepresentation is also contained in a report, statement or opinion made by the expert,

- (ii) the document includes, summarizes or quotes from the report, statement or opinion of the expert, and
- (iii) if the document was released by a person or company other than the expert, the expert consented in writing to the use of the report, statement or opinion in the document. 2002, c. 22, s. 185; 2004, c. 31, Sched. 34, s. 12 (1, 2).

Public oral statements by responsible issuer

(2) Where 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 or company 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 or company relied on the misrepresentation, a right of action for damages against,

- (a) the responsible issuer;
- (b) the person who made the public oral statement;
- (c) each director and officer of the responsible issuer who authorized, permitted or acquiesced in the making of the public oral statement;
- (d) each influential person, and each director and officer of the influential person, who knowingly influenced,
 - (i) the person who made the public oral statement to make the public oral statement, or
 - (ii) a director or officer of the responsible issuer to authorize, permit or acquiesce in the making of the public oral statement; and
- (e) each expert where,
 - (i) the misrepresentation is also contained in a report, statement or opinion made by the expert,
 - (ii) the person making the public oral statement includes, summarizes or quotes from the report, statement or opinion of the expert, and
 - (iii) if the public oral statement was made by a person other than the expert, the expert consented in writing to the use of the report, statement or opinion in the public oral statement. 2002, c. 22, s. 185; 2004, c. 31, Sched. 34, s. 12 (3).

Influential persons

(3) Where an influential person or a person or company with actual, implied or apparent authority to act or speak on behalf of the influential person releases a document or makes a public oral statement that relates to a responsible issuer and that contains a misrepresentation, a person or company 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 or company relied on the misrepresentation, a right of action for damages against,

- (a) the responsible issuer, if a director or officer of the responsible issuer, or 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;

- (b) the person who made the public oral statement;
- (c) each director and officer of the responsible issuer who authorized, permitted or acquiesced in the release of the document or the making of the public oral statement;
- (d) the influential person;
- (e) each director and officer of the influential person who authorized, permitted or acquiesced in the release of the document or the making of the public oral statement; and
- (f) each expert where,
 - (i) the misrepresentation is also contained in a report, statement or opinion made by the expert,
 - (ii) the document or public oral statement includes, summarizes or quotes from the report, statement or opinion of the expert, and
 - (iii) if the document was released or the public oral statement was made by a person other than the expert, the expert consented in writing to the use of the report, statement or opinion in the document or public oral statement. 2002, c. 22, s. 185; 2004, c. 31, Sched. 34, s. 12 (4).

Failure to make timely disclosure

[\(4\)](#) Where a responsible issuer fails to make a timely disclosure, a person or company who acquires 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 or the regulations and the subsequent disclosure of the material change has, without regard to whether the person or company relied on the responsible issuer having complied with its disclosure requirements, a right of action for damages against,

- (a) the responsible issuer;
- (b) each director and officer of the responsible issuer who authorized, permitted or acquiesced in the failure to make timely disclosure; and
- (c) each influential person, and each director and officer of an influential person, who knowingly influenced,
 - (i) the responsible issuer or any person or company acting on behalf of the responsible issuer in the failure to make timely disclosure, or
 - (ii) a director or officer of the responsible issuer to authorize, permit or acquiesce in the failure to make timely disclosure. 2002, c. 22, s. 185; 2004, c. 31, Sched. 34, s. 12 (5); 2006, c. 33, Sched. Z.5, s. 15.

Multiple roles

[\(5\)](#) In an action under this section, a person who is a director or officer of an influential person is not liable in that capacity if the person is liable as a director or officer of the responsible

issuer. 2002, c. 22, s. 185; 2004, c. 31, Sched. 34, s. 12 (6).

Multiple misrepresentations

(6) In an action under this section,

- (a) multiple misrepresentations having common subject matter or content may, in the discretion of the court, be treated as a single misrepresentation; and
- (b) multiple instances of failure to make timely disclosure of a material change or material changes concerning common subject matter may, in the discretion of the court, be treated as a single failure to make timely disclosure. 2002, c. 22, s. 185; 2004, c. 31, Sched. 34, s. 12 (7).

No implied or actual authority

(7) In an action under subsection (2) or (3), if the person who made the public oral 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. 2004, c. 31, Sched. 34, s. 12 (8).

Burden of proof and defences

Non-core documents and public oral statements

138.4 (1) In an action under section 138.3 in relation to a misrepresentation in a document that is not a core document, or a misrepresentation in a public oral statement, a person or company is not liable, subject to subsection (2), unless the plaintiff proves that the person or company,

- (a) knew, at the time that the document was released or public oral statement was made, that the document or public oral statement contained the misrepresentation;
- (b) at or before the time that the document was released or public oral statement was made, deliberately avoided acquiring knowledge that the document or public oral statement contained the misrepresentation; or
- (c) was, through action or failure to act, guilty of gross misconduct in connection with the release of the document or the making of the public oral statement that contained the misrepresentation. 2002, c. 22, s. 185; 2004, c. 31, Sched. 34, s. 13 (1).

Same

(2) A plaintiff is not required to prove any of the matters set out in subsection (1) in an action under section 138.3 in relation to an expert. 2002, c. 22, s. 185; 2004, c. 31, Sched. 34, s. 13 (2).

Failure to make timely disclosure

(3) In an action under section 138.3 in relation to a failure to make timely disclosure, a person or company is not liable, subject to subsection (4), unless the plaintiff proves that the person or company,

- (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. 2002, c. 22, s. 185; 2004, c. 31, Sched. 34, s. 13 (3).

Same

(4) A plaintiff is not required to prove any of the matters set out in subsection (3) in an action under section 138.3 in relation to,

- (a) a responsible issuer;
- (b) an officer of a responsible issuer;
- (c) an investment fund manager; or
- (d) an officer of an investment fund manager. 2002, c. 22, s. 185; 2004, c. 31, Sched. 34, s. 13 (4).

Knowledge of the misrepresentation or material change

(5) A person or company is not liable in an action under section 138.3 in relation to a misrepresentation or a failure to make timely disclosure if that person or company proves that the plaintiff acquired or disposed of the issuer's security,

- (a) with knowledge that the document or public oral statement contained a misrepresentation; or
- (b) with knowledge of the material change. 2002, c. 22, s. 185; 2004, c. 31, Sched. 34, s. 13 (5).

Reasonable investigation

(6) A person or company is not liable in an action under section 138.3 in relation to,

- (a) a misrepresentation if that person or company proves that,
 - (i) before the release of the document or the making of the public oral statement containing the misrepresentation, the person or company 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 or company had no reasonable grounds to believe that the document or public oral statement contained the misrepresentation; or
- (b) a failure to make timely disclosure if that person or company proves that,
 - (i) before the failure to make timely disclosure first occurred, the person or company conducted or caused to be conducted a reasonable investigation, and
 - (ii) the person or company had no reasonable grounds to believe that the failure to make timely disclosure would occur. 2002, c. 22, s. 185; 2004, c. 31, Sched. 34, s. 13 (6).

Factors to be considered by court

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

- (a) the nature of the responsible issuer;

- (b) the knowledge, experience and function of the person or company;
- (c) the office held, if the person was an officer;
- (d) the presence or absence of another relationship with the responsible issuer, if the person was a director;
- (e) the existence, if any, and the nature of any system designed to ensure that the responsible issuer meets its continuous disclosure obligations;
- (f) the reasonableness of reliance by the person or company on the responsible issuer's 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;
- (g) the period within which disclosure was required to be made under the applicable law;
- (h) in respect of a report, statement or opinion of an expert, any professional standards applicable to the expert;
- (i) the extent to which the person or company knew, or should reasonably have known, the content and medium of dissemination of the document or public oral statement;
- (j) in the case of a misrepresentation, the role and responsibility of the person or company 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
- (k) in the case of a failure to make timely disclosure, the role and responsibility of the person or company involved in a decision not to disclose the material change. 2002, c. 22, s. 185; 2004, c. 31, Sched. 34, s. 13 (7, 8).

Confidential disclosure

(8) A person or company is not liable in an action under section 138.3 in respect of a failure to make timely disclosure if,

- (a) the person or company proves that the material change was disclosed by the responsible issuer in a report filed on a confidential basis with the Commission under subsection 75 (3) or the regulations;
- (b) the responsible issuer had a reasonable basis for making the disclosure on a confidential basis;
- (c) where the information contained in the report filed on a 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 company 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 or the regulations, the responsible issuer promptly disclosed the material change in the manner required under this Act or the regulations. 2002, c. 22,

s. 185; 2004, c. 31, Sched. 34, s. 13 (9); 2006, c. 33, Sched. Z.5, s. 16 (1, 2).

Forward-looking information

[\(9\)](#) A person or company is not liable in an action under section 138.3 for a misrepresentation in forward-looking information if the person or company proves all of the following things:

1. 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.
2. The person or company had a reasonable basis for drawing the conclusions or making the forecasts and projections set out in the forward-looking information. 2004, c. 31, Sched. 34, s. 13 (10).

Same

[\(9.1\)](#) The person or company shall be deemed to have satisfied the requirements of paragraph 1 of subsection (9) with 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. 2004, c. 31, Sched. 34, s. 13 (10).

Same

[\(9.2\)](#) For the purposes of clause (9.1) (c), a document filed with the Commission or otherwise generally disclosed shall be deemed to be readily available. 2004, c. 31, Sched. 34,

s. 13 (10).

Exception

(10) Subsection (9) does not relieve a person or company of liability respecting forward-looking information in a financial statement required to be filed under this Act or the regulations or forward-looking information in a document released in connection with an initial public offering. 2004, c. 31, Sched. 34, s. 13 (10); 2006, c. 33, Sched. Z.5, s. 16 (3).

Expert report, statement or opinion

(11) A person or company, other than an expert, is not liable in an action under section 138.3 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 or company proves that,

- (a) the person or company 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. 2002, c. 22, s. 185; 2004, c. 31, Sched. 34, s. 13 (11).

Same

(12) An expert is not liable in an action under section 138.3 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. 2002, c. 22, s. 185; 2004, c. 31, Sched. 34, s. 13 (12).

Release of documents

(13) A person or company is not liable in an action under section 138.3 in respect of a misrepresentation in a document, other than a document required to be filed with the Commission, if the person or company proves that, at the time of release of the document, the person or company did not know and had no reasonable grounds to believe that the document would be released. 2002, c. 22, s. 185; 2004, c. 31, Sched. 34, s. 13 (13).

Derivative information

(14) A person or company is not liable in an action under section 138.3 for a misrepresentation in a document or a public oral statement, if the person or company proves that,

- (a) the misrepresentation was also contained in a document filed by or on behalf of another person or company, other than the responsible issuer, with the Commission or any other securities regulatory authority in Canada or an exchange and was not corrected in another document filed by or on behalf of that other person or company with the Commission or that other securities regulatory authority in Canada 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 or company did not know and had no reasonable grounds to believe that the document or public oral statement contained a misrepresentation. 2002, c. 22, s. 185; 2004, c. 31, Sched. 34, s. 13 (14); 2010, c. 26, Sched. 18, s. 39.

Where corrective action taken

(15) A person or company, other than the responsible issuer, is not liable in an action under section 138.3 if the misrepresentation or failure to make timely disclosure was made without the knowledge or consent of the person or company and, if, after the person or company 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 or the regulations,

- (a) the person or company promptly notified the board of directors of the responsible issuer or other persons acting in a similar capacity of the misrepresentation or the failure to make timely disclosure; and
- (b) if no correction of the misrepresentation or no subsequent disclosure of the material change in the manner required under this Act or the regulations was made by the responsible issuer within two business days after the notification under clause (a), the person or company, 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. 2002, c. 22, s. 185; 2004, c. 31, Sched. 34, s. 13 (15); 2006, c. 33, Sched. Z.5, s. 16 (4).

DAMAGES

Assessment of damages

138.5 (1) Damages shall be assessed in favour of a person or company 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:

1. In respect of any of the securities of the responsible issuer that the person or company 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 or the regulations, assessed damages shall equal the difference between the average price paid for those securities (including any commissions paid in respect thereof) 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 result of hedging or other risk limitation transactions.
2. In respect of any of the securities of the responsible issuer that the person or company 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 or the regulations, assessed damages shall equal the lesser of,
 - i. an amount equal to the difference between the average price paid for those securities (including any commissions paid in respect thereof) 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 result of hedging or other risk limitation transactions, and

- ii. an amount equal to the number of securities that the person disposed of, multiplied by the difference between the average price per security paid for those securities (including any commissions paid in respect thereof determined on a per security basis) and,
 - A. if the issuer's securities trade on a published market, the 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 the regulations, or
 - B. if there is no published market, the amount that the court considers just.
- 3. In respect of any of the securities of the responsible issuer that the person or company has not disposed of, assessed damages shall equal the number of securities acquired, multiplied by the difference between the average price per security paid for those securities (including any commissions paid in respect thereof determined on a per security basis) and,
 - i. if the issuer's securities trade on a published market, the 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 the regulations, or
 - ii. if there is no published market, the amount that the court considers just. 2002, c. 22, s. 185; 2006, c. 33, Sched. Z.5, s. 17; 2007, c. 7, Sched. 38, s. 12 (1-4).

Same

[\(2\)](#) Damages shall be assessed in favour of a person or company that disposed of securities after a document was released or a public oral statement made containing a misrepresentation or after a failure to make timely disclosure as follows:

1. In respect of any of the securities of the responsible issuer that the person or company 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 or the regulations, assessed damages shall 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 result of hedging or other risk limitation transactions.
2. In respect of any of the securities of the responsible issuer that the person or company 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 or the regulations, assessed damages shall equal the lesser of,
 - i. an amount equal to 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 result of

- hedging or other risk limitation transactions, and
- ii. an amount equal to 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,
 - A. if the issuer's securities trade on a published market, the 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 the regulations, or
 - B. if there is no published market, the amount that the court considers just.
3. In respect of any of the securities of the responsible issuer that the person or company has not acquired, assessed damages shall equal the number of securities that the person or company 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,
- i. if the issuer's securities trade on a published market, the trading price of the issuer's securities on the principal market (as such 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 the regulations, or
 - ii. if there is no published market, then the amount that the court considers just. 2002, c. 22, s. 185; 2004, c. 31, Sched. 34, s. 14; 2006, c. 33, Sched. Z.5, s. 17; 2007, c. 7, Sched. 38, s. 12 (5-8).

Same

[\(3\)](#) Despite subsections (1) and (2), assessed damages shall not include any amount that the defendant proves is attributable to a change in the market price of securities that is unrelated to the misrepresentation or the failure to make timely disclosure. 2002, c. 22, s. 185.

Proportionate liability

[138.6 \(1\)](#) In an action under section 138.3, the court shall 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 shall be liable, subject to the limits set out in subsection 138.7 (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. 2002, c. 22, s. 185; 2004, c. 31, Sched. 34, s. 15 (1).

Same

[\(2\)](#) Despite subsection (1), where, in an action under section 138.3 in respect of a misrepresentation or a failure to make timely disclosure, a court determines that a particular defendant, other than the responsible issuer, authorized, permitted 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. 2002, c. 22, s. 185; 2004, c. 31,

Sched. 34, s. 15 (2).

Same

(3) Each defendant in respect of whom the court has made a determination under subsection (2) is jointly and severally liable with each other defendant in respect of whom the court has made a determination under subsection (2). 2002, c. 22, s. 185.

Same

(4) Any defendant against whom recovery is obtained under subsection (2) is entitled to claim contribution from any other defendant who is found liable in the action. 2002, c. 22, s. 185.

Limits on damages

138.7 (1) Despite section 138.5, the damages payable by a person or company in an action under section 138.3 is the lesser of,

- (a) the aggregate damages assessed against the person or company in the action; and
- (b) the liability limit for the person or company less the aggregate of all damages assessed after appeals, if any, against the person or company in all other actions brought under section 138.3, and under comparable legislation in other provinces or territories in Canada in respect of that misrepresentation or failure to make timely disclosure, and less any amount paid in settlement of any such actions. 2002, c. 22, s. 185; 2004, c. 31, Sched. 34, s. 16.

Same

(2) Subsection (1) does not apply to a person or company, other than the responsible issuer, if the plaintiff proves that the person or company 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. 2002, c. 22, s. 185.

PROCEDURAL MATTERS

Leave to proceed

138.8 (1) No action may be commenced under section 138.3 without leave of the court granted upon motion with notice to each defendant. The court shall grant leave only where it is satisfied that,

- (a) the action is being brought in good faith; and
- (b) there is a reasonable possibility that the action will be resolved at trial in favour of the plaintiff. 2002, c. 22, s. 185; 2004, c. 31, Sched. 34, s. 17.

Same

(2) Upon an application under this section, the plaintiff and each defendant shall serve and file one or more affidavits setting forth the material facts upon which each intends to rely. 2002, c. 22, s. 185.

Same

(3) The maker of such an affidavit may be examined on it in accordance with the rules of court. 2002, c. 22, s. 185.

Copies to be sent to the Commission

[\(4\)](#) A copy of the application for leave to proceed and any affidavits and factums filed with the court shall be sent to the Commission when filed. 2009, c. 34, Sched. S, s. 6 (1).

Requirement to provide notice

[\(5\)](#) The plaintiff shall provide the Commission with notice in writing of the date on which the application for leave is scheduled to proceed, at the same time such notice is given to each defendant. 2009, c. 34, Sched. S, s. 6 (2).

Same, appeal of leave decision

[\(6\)](#) If any party appeals the decision of the court with respect to whether leave to commence an action under section 138.3 is granted,

- (a) each party to the appeal shall provide a copy of its factum to the Commission when it is filed; and
- (b) the appellant shall provide the Commission with notice in writing of the date on which the appeal is scheduled to be heard, at the same time such notice is given to each respondent. 2009, c. 34, Sched. S, s. 6 (2); 2010, c. 1, Sched. 26, s. 7.

Notice

[138.9 \(1\)](#) A person or company that has been granted leave to commence an action under section 138.3 shall,

- (a) promptly issue a news release disclosing that leave has been granted to commence an action under section 138.3;
- (b) send a written notice to the Commission within seven days, together with a copy of the news release;
- (c) send a copy of the statement of claim or other originating document to the Commission when filed; and
- (d) provide the Commission with notice in writing of the date on which the trial of the action is scheduled to proceed, at the same time such notice is given to each defendant. 2002, c. 22, s. 185; 2004, c. 31, Sched. 34, s. 18; 2009, c. 34, Sched. S, s. 7 (1).

Appeal

[\(2\)](#) If any party to an action under section 138.3 appeals the decision of the court,

- (a) each party shall provide a copy of its factum to the Commission when it is filed; and
- (b) the appellant shall provide the Commission with notice in writing of the date on which the appeal is scheduled to be heard, at the same time such notice is given to each respondent. 2009, c. 34, Sched. S, s. 7 (2).

Restriction on discontinuation, etc., of action

[138.10](#) An action under section 138.3 shall 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 shall consider, among other things, whether there are any other actions outstanding under section 138.3 or under comparable legislation in other provinces or territories in Canada in respect of the same misrepresentation or failure to make timely disclosure. 2004, c. 31, Sched. 34, s. 19.

Costs

138.11 Despite the *Courts of Justice Act* and the *Class Proceedings Act, 1992*, the prevailing party in an action under section 138.3 is entitled to costs determined by a court in accordance with applicable rules of civil procedure. 2002, c. 22, s. 185; 2004, c. 31, Sched. 34, s. 20.

Power of the Commission

138.12 The Commission may intervene in an action under section 138.3, in an application for leave to commence the action under section 138.8 and in any appeal from the decision of the court in the action or with respect to whether leave is granted to commence the action. 2009, c. 34, Sched. S, s. 8.

No derogation from other rights

138.13 The right of action for damages and the defences to an action under section 138.3 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. 2004, c. 31, Sched. 34, s. 22.

Limitation period

138.14 No action shall be commenced under section 138.3,

- (a) in the case of misrepresentation in a document, later than the earlier of,
 - (i) three years after the date on which the document containing the misrepresentation was first released, and
 - (ii) six months after the issuance of a news release disclosing that leave has been granted to commence an action under section 138.3 or under comparable legislation in the other provinces or territories in Canada in respect of the same misrepresentation;
- (b) in the case of a misrepresentation in a public oral statement, later than the earlier of,
 - (i) three years after the date on which the public oral statement containing the misrepresentation was made, and
 - (ii) six months after the issuance of a news release disclosing that leave has been granted to commence an action under section 138.3 or under comparable legislation in another province or territory of Canada in respect of the same misrepresentation; and
- (c) in the case of a failure to make timely disclosure, later than the earlier of,
 - (i) three years after the date on which the requisite disclosure was required to be made, and
 - (ii) six months after the issuance of a news release disclosing that leave has been granted to commence an action under section 138.3 or under comparable legislation in another province or territory of Canada in respect of the same failure to make timely disclosure. 2002, c. 22, s. 185; 2004, c. 31, Sched. 34, s. 23.

PART XXIV GENERAL PROVISIONS

Admissibility in evidence of certified statements

139. A statement as to,

- (a) the registration or non-registration of any person or company;
- (b) the filing or non-filing of any document or material required or permitted to be filed;
- (c) any other matter pertaining to such registration, non-registration, filing or non-filing, or to any such person, company, document or material; or
- (d) the date the facts upon which any proceedings are to be based first came to the knowledge of the Commission,

purporting to be certified by the Commission or a member thereof or by the Director is, without proof of the office or signature of the person certifying, admissible in evidence, so far as relevant, for all purposes in any action, proceeding or prosecution. R.S.O. 1990, c. S.5, s. 139.

Filing and inspection of material

140. (1) Where Ontario securities law requires that material be filed, the filing shall be effected by depositing the material, or causing it to be deposited, with the Commission and all material so filed shall, subject to subsection (2), be made available by the Commission for public inspection during the normal business hours of the Commission. R.S.O. 1990, c. S.5, s. 140 (1); 1994, c. 11, s. 376.

Idem

(2) Despite subsection (1), the Commission may hold material or any class of material required to be filed by Ontario securities law in confidence so long as the Commission is of the opinion that the material so held discloses intimate financial, personal or other information and that the desirability of avoiding disclosure thereof in the interests of any person or company affected outweighs the desirability of adhering to the principle that material filed with the Commission be available to the public for inspection. R.S.O. 1990, c. S.5, s. 140 (2); 1999, c. 9, s. 219.

Immunity of Commission and officers

141. (1) No action or other proceeding for damages shall be instituted against the Commission or any member thereof, or any employee or agent of the Commission for any act done in good faith in the performance or intended performance of any duty or in the exercise or the intended exercise of any power under Ontario securities law, or for any neglect or default in the performance or exercise in good faith of such duty or power. R.S.O. 1990, c. S.5, s. 141 (1); 1994, c. 11, s. 377 (1).

Immunity re intended compliance

(2) No person or company has any rights or remedies and no proceedings lie or shall be brought against any person or company for any act or omission of the last-mentioned person or company done or omitted in compliance with Ontario securities law. R.S.O. 1990, c. S.5, s. 141 (2); 1994, c. 11, s. 377 (2).

Liability of Crown

(3) Subsection (1) does not, by reason of subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, relieve the Crown of liability in respect of a tort committed by the Commission or any person referred to in subsection (1) to which the Crown would otherwise be subject. 2010, c. 26, Sched. 18, s. 40.

Application to Her Majesty

142. (1) Subject to subsection (2), this Act applies to,

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (1) is amended by striking out “Subject to subsection (2)” at the beginning and substituting “Subject to subsections (2) and (3)”. See: 2010, c. 26, Sched. 18, ss. 41 (1), 47 (2).

- (a) Her Majesty in right of Canada;
- (b) Her Majesty in right of Ontario; and
- (c) Her Majesty in right of any other province or territory of Canada,

and agents and servants thereof. R.S.O. 1990, c. S.5, s. 142 (1).

Exceptions

(2) Subsections 13 (1), (3) and (4), sections 60, 122, 126, 126.1, 126.2, 129, 130, 130.1, 131, 134 and 135, Part XXIII.1 and section 139 do not apply to,

- (a) Her Majesty in right of Canada;
- (b) Her Majesty in right of Ontario;
- (c) Her Majesty in right of any other province or territory of Canada; or
- (d) an agent or servant of Her Majesty, as referred to in clause (a), (b) or (c), where the matter arises from the performance of a duty or the exercise of a power as an agent or servant thereof or from any neglect or default in the performance or exercise of such duty or power. R.S.O. 1990, c. S.5, s. 142 (2); 1994, c. 11, s. 378; 2002, c. 22, s. 186; 2004, c. 31, Sched. 34, s. 24.

Note: On a day to be named by proclamation of the Lieutenant Governor, section 142 is amended by adding the following subsection:

Exception, derivatives

(3) Rules made under paragraph 11 and subparagraphs 35 iii, iv and v of subsection 143 (1) do not apply to derivatives traded by,

- (a) Her Majesty in right of Ontario or the Ontario Financing Authority when acting as agent for Her Majesty in right of Ontario;
- (b) Her Majesty in right of Canada; or
- (c) Her Majesty in right of any other province or territory of Canada. 2010, c. 26, Sched. 18, s. 41 (2).

See: 2010, c. 26, Sched. 18, ss. 41 (2), 47 (2).

Rules

143. (1) The Commission may make rules in respect of the following matters:

1. Prescribing requirements in respect of applications for registration and the renewal, amendment, expiration or surrender of registration and in respect of suspension, revocation or reinstatement of registration.

- 1.1 Requiring registered dealers, registered advisers or registered investment fund managers

- to designate an ultimate designated person and prescribing classes of individuals or the qualifications required of individuals who are eligible to be designated as ultimate designated persons.
- 1.2 Prescribing additional functions required to be performed by an ultimate designated person in respect of the registrant by whom he or she is designated, including requiring the ultimate designated person,
 - i. to supervise the activities of the registrant that are directed towards ensuring compliance with Ontario securities law by the registrant and individuals acting on the registrant's behalf,
 - ii. to otherwise promote compliance by the registrant and by individuals acting on the registrant's behalf with Ontario securities law.
 - 1.3 Requiring registered dealers, registered advisers or registered investment fund managers to designate a chief compliance officer and prescribing classes of individuals or the qualifications required of individuals who are eligible to be designated as chief compliance officers.
 - 1.4 Prescribing additional functions required to be performed by a chief compliance officer in respect of the registrant by whom he or she is designated, including requiring the chief compliance officer,
 - i. to establish and maintain policies and procedures for assessing compliance with Ontario securities law by the registrant and individuals acting on the registrant's behalf,
 - ii. to monitor and assess compliance by the registrant and by individuals acting on the registrant's behalf with Ontario securities law,
 - iii. to report to the registrant's ultimate designated person or to its board of directors or partners with respect to compliance matters,
 - iv. to submit an annual report to the board of directors of the registrant or to the registrant's partners setting out the chief compliance officer's assessment of the level of compliance by the registrant and the individuals acting on its behalf with Ontario securities law.
 - 1.5 Prescribing circumstances in which a suspended registration is or may be reinstated.
 - 1.6 Prescribing activities in which a person or company whose registration is suspended or restricted may engage or activities in which he, she or it is prohibited from engaging.
 2. Prescribing categories or subcategories of registration, classifying registrants into categories or sub-categories, prescribing the criteria a person or company must satisfy to qualify for registration in a particular category or sub-category of registration, prescribing requirements for registrants or prescribing terms and conditions on registration, reinstatement of registration, amendment of registration or registration in a particular category or sub-category of registration, including,
 - i. standards of practice and business conduct of registrants in dealing with their customers and clients and prospective customers and clients,

- ii. requirements that are advisable for the prevention or regulation of conflicts of interest,
 - iii. requirements in respect of membership in a self-regulatory organization, and
 - iv. requirements that persons and companies registered under this Act be bonded or insured on terms acceptable to the Director.
3. Extending any requirements prescribed under paragraph 2 to unregistered directors, partners, representatives and officers of registrants.
4. Prescribing requirements in respect of the residence in Ontario or Canada of registrants.
5. Governing the provision of notice to the Director of,
 - i. a proposed change in beneficial ownership of, or direct or indirect control or direction over, securities of a person or company registered under this Act,
 - ii. a proposed change in beneficial ownership of, or direct or indirect control or direction over, securities of a person or company of which a person or company registered under this Act is a subsidiary, or
 - iii. a proposed change in ownership of a substantial portion of the assets of a person or company registered under this Act.
- 5.1 Authorizing the Director to make an order that a proposed change described in subparagraph 5 i or iii must not be effected until the change has been approved by the Director.
6. Prescribing requirements for persons and companies in respect of calling at or telephoning to residences for the purposes of trading in securities.
7. Prescribing requirements in respect of the disclosure or furnishing of information to the public or the Commission by persons and companies registered under this Act, by their directors, partners or officers or by persons or companies that beneficially own, directly or indirectly, or exercise direct or indirect control or direction over at least 10 per cent of the voting securities of persons and companies registered under this Act or providing for exemptions from or varying the requirements under this Act in respect of the disclosure or furnishing of information to the public or the Commission by any of them.
8. Prescribing any matter referred to in Part XII (Exemptions from Registration Requirements) as required by the regulations or prescribed by or in the regulations, other than the matters referred to in subsection 35.1 (2).
- 8.1 Respecting the exemption of any person or company from any requirement under this Act or the regulations that is comparable to a requirement established by a self-regulatory organization and prescribing conditions that must be satisfied for the exemption to apply.
- 8.2 Exempting registered dealers from the requirement under subsection 36 (1) to send a customer a written confirmation of a transaction.
9. Repealed: 2009, c. 18, Sched. 26, s. 20 (11).
10. Prescribing requirements in respect of the books, records and other documents required

by subsection 19 (1) to be kept by market participants, including the form in which and the period for which the books, records and other documents are to be kept.

- 10.1 Prescribing a class of instruments, certificates, agreements, documents or other things that are not securities for the purposes of the Act.
11. Regulating the listing or trading of publicly traded securities or the trading of derivatives, including rules,
 - i. relating to clearing and settling trades,
 - ii. requiring the reporting of trades and quotations, and
 - iii. prescribing classes of derivatives in respect of which trades must be cleared or settled through a clearing agency.
12. Regulating recognized exchanges, recognized self-regulatory organizations, recognized quotation and trade reporting systems, alternative trading systems, recognized clearing agencies and designated trade repositories, including,
 - i. prescribing requirements in respect of the review or approval by the Commission of any by-law, rule, regulation, policy, procedure, interpretation or practice,
 - ii. prescribing restrictions on the ownership, control and direction of a recognized exchange, clearing agency or alternative trading system.
13. Regulating trading in or advising about securities or derivatives to prevent trading or advising that is fraudulent, manipulative, deceptive or unfairly detrimental to investors.
14. Regulating trading or advising in penny stocks, including prescribing requirements in respect of additional disclosure and suitability for investment.
15. Prescribing categories or subcategories of issuers for purposes of the prospectus requirements under this Act, the regulations and the rules and classifying issuers into categories or subcategories.
16. Regulating in respect of, or varying this Act to facilitate, expedite or regulate in respect of, the distribution of securities, or the issuing of receipts, including by establishing,
 - i. requirements in respect of distributions of securities by means of a prospectus incorporating other documents by reference,
 - ii. requirements in respect of distributions of securities by means of a simplified or summary prospectus or other form of disclosure document,
 - iii. requirements in respect of distributions of securities on a continuous or delayed basis,
 - iv. requirements in respect of pricing of distributions of securities after the issuance of a receipt for the prospectus filed in relation thereto,
 - v. procedures for the issuing of receipts for prospectuses after expedited or selective review thereof,
 - vi. provisions for the incorporation by reference of certain documents in a prospectus and the effect, including from a liability and evidentiary perspective, of modifying

- or superseding statements,
- vii. requirements for the form of a prospectus certificate, including providing for alternative forms in circumstances other than those referred to in subsection 63 (2) of this Act,
 - viii. provisions for eligibility requirements to obtain a receipt for, or distribute under, a particular form of prospectus and the loss of that eligibility, and
 - ix. provisions for varying withdrawal rights.
- 16.1 Prescribing requirements for the certification of prospectuses by persons and companies in relation to the following:
- i. if the issuer is a trust, requiring individuals who perform functions for the issuer similar to those performed by a chief executive officer or chief financial officer of an issuer to certify the prospectus,
 - ii. if the issuer is a trust and its business or a material part of its business is conducted through a person or company other than the issuer, requiring a director and the chief executive officer and the chief financial officer of the person or company, or individuals who perform functions for the person or company similar to those performed by a chief executive officer or chief financial officer, to certify the prospectus,
 - iii. if the issuer is a limited partnership, requiring the general partner of the issuer and individuals who perform functions for the issuer similar to those performed by a chief executive officer or a chief financial officer of an issuer to certify the prospectus, and
 - iv. if the issuer is not organized as a company, trust or limited partnership, requiring persons or companies that perform functions similar to those performed by persons or companies described in subparagraph i, ii or iii or section 58 to certify the prospectus.
17. Prescribing requirements for the escrow of securities in connection with distributions.
18. Designating activities, including the use of documents or advertising, in which registrants or issuers are permitted to engage or are prohibited from engaging in connection with distributions.
19. Prescribing which distributions and trading in relation to the distributions are distributions and trading outside Ontario.

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (1) is amended by adding the following paragraphs:

19.1 Prescribing one or more classes of contracts or instruments that are not derivatives for the purpose of prescribed provisions of Ontario securities law and prescribing those provisions.

19.2 Prescribing one or more classes of derivatives that are designated derivatives for the purposes of prescribed provisions of Ontario securities law and prescribing those

provisions.

19.3 Prescribing registration requirements in respect of persons or companies trading in derivatives.

19.4 Prescribing derivatives or classes of derivatives that are deemed to be securities for the purposes of prescribed provisions of this Act, the regulations and the rules and prescribing those provisions.

19.5 Prescribing circumstances in which a material interest in a derivative's underlying interest is not a financial or other interest for the purposes of section 34.

19.6 Prescribing one or more classes of derivatives for the purpose of clause 38 (4) (b).

19.7 Prescribing one or more conditions for the purposes of subclause 64.1 (5) (b) (ii).

See: 2010, c. 26, Sched. 18, ss. 42 (6), 47 (2).

20. Prescribing any matter referred to in Part XVII (Exemptions from Prospectus Requirements) as required by the regulations or prescribed by or in the regulations, other than the matters referred to in subsection 73.1 (3).
21. Prescribing the circumstances in which the Director must refuse to issue a receipt for a prospectus and prohibiting the Director from issuing a receipt in those circumstances.
22. Prescribing requirements in respect of the preparation and dissemination and other use, by reporting issuers, of documents providing for continuous disclosure that are in addition to the requirements under this Act, including requirements in respect of,
 - i. an annual report,
 - ii. an annual information form, and
 - iii. supplemental analysis of financial statements.
- 22.1 Respecting the preparation, form and content requirements applicable to the public dissemination of forward-looking information by reporting issuers where the dissemination is not part of a required filing.
23. Exempting reporting issuers from any requirement of Part XVIII (Continuous Disclosure),
 - i. if the requirement conflicts with a requirement of the laws of the jurisdiction under which the reporting issuers are incorporated, organized or continued,
 - ii. if the reporting issuers ordinarily distribute financial information to holders of their securities in a form, or at times, different from those required by Part XVIII, or
 - iii. under circumstances that the Commission considers justify the exemption.
24. Requiring issuers or other persons and companies to comply, in whole or in part, with Part XVIII (Continuous Disclosure), or rules made under paragraph 22.
25. Prescribing requirements in respect of financial accounting, reporting and auditing for purposes of this Act, the regulations and the rules, including,
 - i. defining accounting principles and auditing standards acceptable to the Commission,

- ii. financial reporting requirements for the preparation and dissemination of future-oriented financial information and *pro forma* financial statements,
 - iii. standards of independence and other qualifications for auditors,
 - iv. requirements respecting a change in auditors by a reporting issuer or a registrant,
 - v. requirements respecting a change in the financial year of an issuer or in an issuer's status as a reporting issuer under this Act, and
 - vi. defining auditing standards for attesting to and reporting on a reporting issuer's internal controls.
26. Prescribing requirements for the validity and solicitation of proxies, prescribing activities for the purposes of clause (g) of the definition of "solicit" and "solicitation" in section 84 and prescribing circumstances for the purposes of clause 86 (2) (a.1).
27. Providing for the application of Part XVIII (Continuous Disclosure) and Part XIX (Proxies and Proxy Solicitation) in respect of registered holders or beneficial owners of voting securities or equity securities of reporting issuers or other persons or companies on behalf of whom the securities are held, including requirements for reporting issuers, recognized clearing agencies, registered holders, registrants and other persons or companies who hold securities on behalf of persons or companies but who are not the registered holders.
28. Regulating take-over bids, issuer bids, insider bids, going-private transactions, business combinations and related party transactions, including,
- i. providing for the matters that, under Part XX, may be specified by regulation or required by the regulations or that, under Part XX, must or may be determined or done in accordance with the regulations,
 - ii. varying the requirements of sections 93.1 to 93.4, providing exemptions from any of those sections or removing any exemption set out in those sections,
 - iii. varying the requirements of sections 94 to 99.1 or providing exemptions from any of those sections,
 - iv. removing any exemption set out in sections 100 to 100.4 or 101 to 101.5,
 - v. establishing exemptions under sections 100.6 and 101.7,
 - vi. varying the requirements of sections 102.1 and 102.2 or providing exemptions from either of those sections,
 - vii. prescribing requirements in respect of issuer bids, insider bids, going-private transactions and related party transactions, for disclosure, valuations, review by independent committees of boards of directors and approval by minority security holders,
 - viii. prescribing requirements respecting defensive tactics in connection with take-over bids, and
 - ix. varying any or all of the time periods in Part XX.
29. Providing for exemptions from any requirement of section 76 or from liability under

section 134 and prescribing standards or criteria for determining when a material fact or material change has been generally disclosed.

30. Prescribing time periods under section 107 of the Act or varying or providing for exemptions from any requirement of Part XXI (Insider Trading and Self-Dealing).
- 30.1 Regulating the disclosure or furnishing of information to the public or the Commission by insiders, including,
 - i. prescribing filing requirements for the reporting by insiders of their respective direct or indirect beneficial ownership of, or control or direction over, securities of a reporting issuer or changes in ownership, control or direction,
 - ii. prescribing requirements respecting the reporting by insiders of any interest in or right or obligation associated with a related financial instrument or changes in such interests, rights or obligations,
 - iii. prescribing requirements respecting the reporting by insiders of any agreement, arrangement or understanding that alters, directly or indirectly, an insider's economic interest in a security or an insider's economic exposure to a reporting issuer or changes in such agreements, arrangements or understandings.
- 30.2 Prescribing requirements in respect of a reporting issuer to facilitate compliance by insiders of the reporting issuer with this Act and with the rules made under paragraph 30.1.
- 30.3 Requiring that reports under paragraph 30.1 shall also provide information for the period of up to six months before a person or company became an insider.
31. Regulating investment funds and the distribution and trading of the securities of investment funds, including,
 - i. varying Part XV or Part XVIII by prescribing additional disclosure requirements in respect of investment funds and requiring or permitting the use of particular forms or types of additional offering or other documents in connection with the funds,
 - ii. prescribing permitted investment policy and investment practices for investment funds and prohibiting or restricting certain investments or investment practices for investment funds,

Note: On a day to be named by proclamation of the Lieutenant Governor, paragraph 31 is amended by adding the following subparagraph:

- ii.1 prescribing requirements for investment funds in respect of derivatives,

See: 2010, c. 26, Sched. 18, ss. 42 (7), 47 (2).

- iii. prescribing requirements governing the custodianship of assets of investment funds,
 - iv. prescribing minimum initial capital requirements for investment funds making a distribution and prohibiting or restricting the reimbursement of costs in connection with the organization of a fund,

- v. prescribing matters affecting investment funds that require the approval of security holders of the fund, the Commission or the Director, including, in the case of security holders, the level of approval,
 - vi. prescribing requirements in respect of the calculation of the net asset value of investment funds,
 - vii. prescribing requirements in respect of the content and use of sales literature, sales communications or advertising relating to investment funds or the securities of investment funds,
 - viii. designating mutual funds as private mutual funds and prescribing requirements for private mutual funds,
 - ix. respecting sales charges imposed by a distribution company or contractual plan service company under a contractual plan on purchasers of shares or units of an investment fund, and commissions or sales incentives to be paid to registrants in connection with the securities of an investment fund,
 - x. prescribing the circumstances in which a plan holder under a contractual plan has the right to withdraw from the contractual plan,
 - xi. prescribing procedures applicable to investment funds, registrants and any other person or company in respect of sales and redemptions of investment fund securities and payments for sales and redemptions,
 - xii. prescribing requirements in respect of, or in relation to, promoters, advisers or persons and companies who administer or participate in the administration of the affairs of investment funds.
32. Respecting fees payable by an issuer to an adviser as consideration for investment advice, alone or together with administrative or management services provided to a mutual fund or non-redeemable investment fund.
33. Prescribing requirements relating to the qualification of a registrant to act as an adviser to an investment fund.
34. Regulating commodity pools, including,
- i. varying Part XV (Prospectuses — Distribution) or XVIII (Continuous Disclosure) to prescribe additional disclosure requirements in respect of commodity pools and requiring or permitting the use of particular forms or types of additional offering or other documents in connection with commodity pools,
 - ii. prescribing requirements in respect of, or in relation to, promoters, advisers, persons and companies who administer or participate in the administration of the affairs of commodity pools,
 - iii. prescribing standards in relation to the suitability of investors in commodity pools,
 - iv. prohibiting or restricting the payment of fees, commissions or compensation by commodity pools or holders of securities of commodity pools and restricting the reimbursement of costs in connection with the organization of commodity pools,

- v. prescribing requirements with respect to the voting rights of security holders, and
 - vi. prescribing requirements in respect of the redemption of securities of a commodity pool.
35. Regulating or varying this Act in respect of derivatives, including,
- i. providing exemptions from any requirement of this Act,
 - ii. prescribing disclosure requirements and requiring or prohibiting the use of particular forms or types of offering documents or other documents, and
 - iii. prescribing requirements that apply to investment funds, commodity pools or other issuers.

Note: On a day to be named by proclamation of the Lieutenant Governor, paragraph 35 is repealed and the following substituted:

35. Prescribing requirements relating to derivatives, including,
- i. requirements for disclosure documents relating to designated derivatives,
 - ii. record keeping, reporting and transparency requirements relating to derivatives,
 - iii. requirements in respect of persons or companies trading in derivatives, including requirements in respect of margin, collateral, capital, clearing and settlement,
 - iv. requirements that one or more classes of derivatives be traded on a recognized exchange or an alternative trading system,
 - v. requirements relating to position limits for derivatives transactions,
 - vi. requirements that one or more classes of derivatives not be traded in Ontario.

See: 2010, c. 26, Sched. 18, ss. 42 (8), 47 (2).

36. Varying this Act with respect to foreign issuers to facilitate distributions, compliance with requirements applicable or relating to reporting issuers and the making of take-over bids, issuer bids, insider bids, going-private transactions, business combinations and related party transactions where the foreign issuers are subject to requirements of the laws of other jurisdictions that the Commission considers are adequate in light of the purposes and principles of this Act.
37. Regulating labour sponsored investment fund corporations registered under Part III (Labour Sponsored Investment Fund Corporations) of the *Community Small Business Investment Funds Act, 1992*, and the distribution and trading of the securities of the corporations and varying this Act in respect of the corporations and,
- i. prescribing proficiency requirements that apply in respect of registrants trading in securities of the corporations,
 - ii. requiring or prohibiting the use of particular forms or types of offering documents for or in respect of the securities of the corporations,
 - iii. prescribing disclosure requirements for or in respect of the securities of the

- corporations,
- iv. exempting the corporations from specified requirements or restrictions that ordinarily apply to or in respect of mutual funds, and
 - v. prescribing insider reporting requirements for or in respect of the corporations.
38. Prescribing requirements in respect of reverse take-overs including requirements for disclosure that are substantially equivalent to that provided by a prospectus.
39. Requiring or respecting the media, format, preparation, form, content, execution, certification, dissemination and other use, filing and review of all documents required under or governed by this Act, the regulations or the rules and all documents determined by the regulations or the rules to be ancillary to the documents, including,
- i. applications for registration and other purposes,
 - ii. preliminary prospectuses and prospectuses,
 - iii. interim financial reports and financial statements,
 - iv. proxies and information circulars, and
 - v. take-over bid circulars, issuer bid circulars and directors' circulars.
- 39.1 Governing the approval of any document described in paragraph 39.
40. Respecting the designation or recognition of any person, company or jurisdiction if advisable for purposes of this Act, including,
- i. recognizing exchanges, self-regulatory organizations and clearing agencies,
 - ii. designating, for purposes of subsection 88 (1), the jurisdictions whose requirements are substantially similar to the requirements of Part XIX,
 - iii. designating a person or company for the purpose of the definition of "market participant",
 - iv. designating classes of persons or companies not to be insiders for the purpose of the definition of "insider", and
 - v. designating classes of persons or companies for the purpose of clause (f) of the definition of "insider" in subsection 1 (1), if the persons or companies would reasonably be expected to have, in the ordinary course, access to material information about the business, operations, assets or revenue of the issuer, to be insiders.
41. Respecting the conduct of the Commission and its employees in relation to duties and responsibilities and discretionary powers under this Act, including,
- i. the conduct of investigations and examinations carried out under Part VI (Investigations and Examinations), and
 - ii. the conduct of hearings.
42. Establishing conditions for any exemption that the Commission is authorized to give by subsection 46 (4) or 190 (6) or section 113 of the *Business Corporations Act* and,

despite those provisions, dispensing with applications for exemption when the conditions are met.

43. Prescribing the fees payable to the Commission, including those for filing, for applications for registration or exemptions, for trades in securities, in respect of audits made by the Commission, and in connection with the administration of Ontario securities law.
44. Varying this Act to permit or require the use of an electronic or computer-based system for the filing, delivery or deposit of,
 - i. documents or information required under or governed by this Act, the regulations or rules, and
 - ii. documents determined by the regulations or rules to be ancillary to documents required under or governed by this Act, the regulations or rules.
45. Establishing requirements for and procedures in respect of the use of an electronic or computer-based system for the filing, delivery or deposit of documents or information.
46. Providing for electronic signatures for the signing of documents and prescribing the circumstances in which persons or companies shall be deemed to have signed or certified documents on an electronic or computer-based system for any purpose of this Act, the regulations or the rules.
47. Regulating scholarship plans and the distribution and trading of the securities of scholarship plans.
48. Specifying the conditions under which any particular type of trade that would not otherwise be a distribution shall be a distribution.
49. Permitting or requiring, or varying this Act to permit or require, methods of filing or delivery, to or by the Commission, issuers, registrants, security holders or others, of documents, information, notices, books, records, things, reports, orders, authorizations or other communications required under or governed by Ontario securities law.
50. Providing for exemptions from or varying the requirements set out in Part XIII.
51. Repealed: 2009, c. 18, Sched. 26, s. 20 (13).
52. Providing for exemptions from or varying the requirements under this Act in respect of amendments to prospectuses or preliminary prospectuses, or prescribing circumstances under which an amendment to a preliminary prospectus or prospectus must be filed.
 - 52.1 Permitting a distribution or additional distribution under subsection 57 (2.2) to proceed without a receipt for an amendment.
53. Providing for exemptions from or varying the requirements of section 62, 65 or 71.
54. Repealed: 2009, c. 18, Sched. 26, s. 20 (15).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (1) is amended by adding the following paragraph:

54. Prescribing the disclosure document that is required in respect of the purchase and

sale of an investment fund security for the purpose of subsection 71 (1.1), requiring dealers to provide the disclosure document to purchasers and prescribing the time and manner for sending or delivering the disclosure document.

See: 2011, c. 9, Sched. 38, ss. 4, 5 (2).

- 55. Specifying exemptions and circumstances that shall be subject to section 130.1.
- 55.1 Prescribing documents for the purposes of the definition of “core document” in subsection 138.1 (1).
- 55.2 Providing for the application of Part XXIII.1 to the acquisition of an issuer’s security pursuant to a distribution that is exempt from section 53 or 62 and to the acquisition or disposition of an issuer’s security in connection with or pursuant to a takeover bid or issuer bid.
- 55.2.1 Prescribing transactions or classes of transactions for the purposes of clause 138.2 (d).
- 55.3 Prescribing the meaning of “market capitalization”, “trading price” and “principal market” and such other terms as are used in Part XXIII.1 and are not otherwise defined in this Act.
- 56. Prescribing, providing for exemptions from or varying any or all of the time periods in this Act or the regulations.
- 56.1 Prescribing requirements with respect to the governance of reporting issuers for the purposes of section 121.3.
- 57. Requiring reporting issuers to appoint audit committees and prescribing requirements relating to the functioning and responsibilities of audit committees, including requirements in respect of,
 - i. the standard of review to be applied by audit committees in their review of documents filed under Ontario securities law,
 - ii. the certification or other evidence of review by audit committees,
 - iii. the scope and content of an audit committee’s review, and
 - iv. the composition of audit committees and the qualifications of audit committee members, including independence requirements.
- 58. Requiring reporting issuers to devise and maintain a system of internal controls related to the effectiveness and efficiency of their operations, including financial reporting and asset control, sufficient to provide reasonable assurances that,
 - i. transactions are executed in accordance with management’s general or specific authorization,
 - ii. transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles or any other criteria applicable to those statements,
 - iii. transactions are recorded as necessary to maintain accountability for assets,

- iv. access to assets is permitted only in accordance with management's general or specific authorization, and
 - v. the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences.
59. Requiring reporting issuers to devise and maintain disclosure controls and procedures sufficient to provide reasonable assurances that,
- i. information required to be disclosed under Ontario securities law is recorded, processed, summarized and reported, within the time periods specified under Ontario securities law, and
 - ii. information required to be disclosed under Ontario securities law is accumulated and communicated to the reporting issuer's management, including its chief executive and financial officers, as appropriate, to allow timely decisions regarding required disclosure.
60. Requiring chief executive officers and chief financial officers of reporting issuers, or persons performing similar functions, to provide a certification that addresses the reporting issuer's internal controls, including a certification that addresses,
- i. the establishment and maintenance of the internal controls,
 - ii. the design of the internal controls, and
 - iii. the evaluation of the effectiveness of the internal controls.
61. Requiring chief executive officers and chief financial officers of reporting issuers, or persons performing similar functions, to provide a certification that addresses the reporting issuer's disclosure controls and procedures, including a certification that addresses,
- i. the establishment and maintenance of the disclosure controls and procedures,
 - ii. the design of the disclosure controls and procedures, and
 - iii. the evaluation of the effectiveness of the disclosure controls and procedures.
62. Requiring investment funds to establish and maintain a body for the purposes described in subsection 121.4 (1), prescribing its powers and duties and prescribing requirements relating to,
- i. the mandate and functioning of the body,
 - ii. the composition of the body and qualifications for membership on the body, including matters respecting the independence of members, and the process for selecting the members,
 - iii. the standard of care that applies to members of the body when exercising their powers, performing their duties and carrying out their responsibilities,
 - iv. the disclosure of information to security holders of the investment fund, to the investment fund manager and to the Commission, and
 - v. matters affecting the investment fund that require review by the body or the approval

of the body.

63. Prescribing requirements in respect of credit rating organizations, including requirements relating to,
- i. the disclosure or furnishing of information to the Commission by a credit rating organization,
 - ii. the establishment, publication and enforcement of a code of conduct applicable to directors, officers and employees of credit rating organizations, including minimum requirements to be included in the code,
 - iii. prohibitions against and procedures regarding conflicts of interest between a credit rating organization and the person or company whose securities it is rating,
 - iv. the maintenance of books and records necessary for the conduct of a credit rating organization's business and the issuance and maintenance of credit ratings,
 - v. the appointment by credit rating organizations of one or more compliance officers and any minimum standards that must be met or qualifications a compliance officer must have. 1994, c. 33, s. 8; 1997, c. 19, s. 23 (13); 1997, c. 43, Sched. F, s. 13; 1999, c. 9, s. 220; 2001, c. 23, s. 217; 2002, c. 18, Sched. H, s. 12; 2002, c. 22, s. 187 (1-3); 2004, c. 16, Sched. D, Table; 2004, c. 31, Sched. 34, s. 25; 2005, c. 31, Sched. 20, s. 9 (1, 2); 2006, c. 33, Sched. Z.5, s. 18; 2007, c. 7, Sched. 38, s. 13; 2009, c. 18, Sched. 26, s. 20 (1-15); 2010, c. 1, Sched. 26, s. 8; 2010, c. 26, Sched. 18, s. 42 (1-5, 9, 10).

Regulations

(2) The Lieutenant Governor in Council may make regulations in respect of,

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (2) is amended by adding the following clause:

(0.a) any matter referred to in this Act as being prescribed by or determined in accordance with regulations made by the Lieutenant Governor in Council;

See: 2010, c. 26, Sched. 18, ss. 42 (11), 47 (2).

(a) any matter in respect of which the Commission may make rules, with necessary modifications;

(a.0.1) the matters described in subsections 35.1 (2) and 73 (3);

Note: On a day to be named by proclamation of the Lieutenant Governor, clause (a.0.1) is amended by striking out "73 (3)" at the end and substituting "73.1 (3)". See: 2009, c. 18, Sched. 26, ss. 20 (17), 21 (2).

(a.1) the administration and distribution of amounts disgorged under paragraph 10 of subsection 127 (1);

(b) any matter advisable for carrying out the purposes of this Act. 1994, c. 33, s. 8; 2002, c. 22, s. 187 (4); 2009, c. 18, Sched. 26, s. 20 (16); 2009, c. 34, Sched. S, s. 9.

Revoking or amending regulations

(3) Subject to the approval of the Minister, the Commission, concurrently with making a rule, may make a regulation that amends or revokes any provision of a regulation made by the Lieutenant Governor in Council under this Act or by the Commission under this subsection that in the opinion of the Commission is necessary or advisable to effectively implement the rule. 1997, c. 19, s. 23 (14).

Effective date

(4) A regulation made under subsection (3) is not effective before the rule referred to in that subsection comes into force. 1997, c. 19, s. 23 (15).

Retroactive

(5) Subject to subsection (4), a regulation made under subsection (3), if it so provides, is effective with reference to a period before it was filed. 1994, c. 33, s. 8.

Incorporation by reference

(6) A regulation or rule may incorporate by reference, and require compliance with, one or more provisions of an Act or regulation and all or part of any standard, procedure or guideline. 2005, c. 31, Sched. 20, s. 9 (3).

Classes

(7) Regulations or rules in respect of registrants, issuers, other persons or companies, securities, trades, or other matters or things, may be made in respect of any class or category of registrants, issuers, other persons or companies, securities, trades or other matters or things. 1994, c. 33, s. 8.

Scope

(8) A regulation or a rule may be general or particular in its application, may be limited as to time or place or both and may exclude any place from the application of the regulation or rule. 1994, c. 33, s. 8.

Exemptions

(9) Without limiting the authority of the Commission under section 147, a regulation or rule may authorize the Commission or the Director to grant an exemption to it. 1994, c. 33, s. 8; 2009, c. 18, Sched. 26, s. 20 (18).

Same

- (10) An exemption or a removal of an exemption,
- (a) may be granted or made in whole or in part; and
 - (b) may be granted or made subject to conditions or restrictions. 1994, c. 33, s. 8.

Legislation Act, 2006, Part III

(11) Part III (Regulations) of the *Legislation Act, 2006* does not apply to the rules. 1994, c. 33, s. 8; 2006, c. 21, Sched. F, s. 136 (1).

Same

(12) A regulation made under subsection (3) is subject to Part III (Regulations) of the *Legislation Act, 2006*. 1994, c. 33, s. 8; 2006, c. 21, Sched. F, s. 136 (1).

L.G. in C. prevails

(13) If there is a conflict or an inconsistency between a regulation made by the Lieutenant Governor in Council under this Act and a rule, the regulation prevails but in all other respects a rule

has the same force and effect as a regulation. 1994, c. 33, s. 8.

Deemed rules

143.1 (1) Every order and ruling of the Commission and every policy relating to an order or ruling that is listed in the Schedule shall be deemed to be a rule validly made under this Act and to have come into force on the day this section comes into force. 1994, c. 33, s. 8.

Amended orders or rulings

(2) For the purposes of subsection (1), a reference to an order, ruling or policy, whether or not it is referred to in the Schedule as amended, is a reference to the order, ruling or policy as it existed on November 16, 1994. 1994, c. 33, s. 8.

Revocation

(3) Every rule that became a rule by virtue of subsection (1) is revoked on the second anniversary of the day on which this section comes into force. 1994, c. 33, s. 8.

Publication of proposed rules

143.2 (1) The Commission shall publish in its Bulletin notice of every rule that it proposes to make under section 143. 1994, c. 33, s. 8.

Notice

(2) The notice must include the following:

1. The proposed rule.
2. A statement of the substance and purpose of the proposed rule.
3. A summary of the proposed rule.
4. A reference to the authority under which the rule is proposed or a statement that the Commission is seeking legislative amendments to provide the requisite rule-making authority.
5. A discussion of all alternatives to the proposed rule that were considered by the Commission and the reasons for not proposing the adoption of the alternatives considered.
6. A reference to any significant unpublished study, report or other written materials on which the Commission relies in proposing the rule.
7. A description of the anticipated costs and benefits of the proposed rule.
8. A reference to every regulation or provision in a regulation to be amended or revoked under subsection 143 (3). 1994, c. 33, s. 8; 1997, c. 19, s. 23 (16); 2006, c. 33, Sched. Z.5, s. 19.

Exception

(3) The Commission does not have to make reference to written material that, in the opinion of the Commission, should be held in confidence because it discloses intimate financial, personal or other information and the desirability of avoiding disclosure of the substance of it or its existence in the interests of any person or company affected outweighs the desirability of making it or knowledge of its existence available to the public. 1994, c. 33, s. 8.

Representations

(4) Upon publication of a notice under subsection (1), the Commission shall invite, and shall give a reasonable opportunity to, interested persons and companies to make written representations with respect to the proposed rule within a period of at least 90 days after the publication. 1994, c. 33, s. 8.

Exceptions to notice requirement

(5) Publication of a notice is not required if,

- (a) all persons and companies who would be subject to the proposed rule are named, the information set out in subsection (2) is sent to each of them and they and any other person or company whose interests are likely to be substantially affected by the proposed rule are given an opportunity to make written representations with respect to it;
- (b) the proposed rule grants an exemption or removes a restriction and is not likely to have a substantial effect on the interests of persons or companies other than those who benefit under it;
- (c) what is proposed is only an amendment that does not materially change an existing rule;
- (d) the Commission,
 - (i) believes that there is an urgent need for the proposed rule and that, without it, there is a substantial risk of material harm to investors or to the integrity of the capital markets, and
 - (ii) has the approval of the Minister to make the rule without publication of notice; or
- (e) the proposed rule remakes an order, ruling or policy that was deemed to be a rule by the operation of section 143.1 without materially changing the effect or intent of the rule. 1994, c. 33, s. 8.

Publication

(6) When a rule to which clause (5) (d) applies comes into force, the Commission shall publish in its Bulletin a statement setting out the substance and purpose of the rule and the nature of the urgency and the risk. 1994, c. 33, s. 8.

Changes to proposal

(7) If, following publication of the notice and consideration of the submissions, the Commission proposes material changes to the proposed rule, the Commission shall publish in its Bulletin notice of the proposed changes. 1994, c. 33, s. 8.

Notice

(8) The notice must include the following:

1. The proposed rule with the changes incorporated.
2. A concise statement of the purpose of the changes.
3. The reasons for the changes. 1994, c. 33, s. 8.

Representations re changes

(9) Upon publication of a notice of changes, the Commission shall invite, and shall give a reasonable opportunity to, interested persons and companies to make written representations with

respect to the changes within such period as the Commission considers appropriate. 1994, c. 33, s. 8.

Making rule

[\(10\)](#) In cases where a notice and comment process is required, the Commission may make the rule only at the end of the notice and comment process and after considering all representations made as a result of that process. 1994, c. 33, s. 8.

Inspection of material

[\(11\)](#) Section 140 applies to all written representations made under this section as if they were material required to be filed. 1994, c. 33, s. 8.

Interpretation

[\(12\)](#) In this section and in section 143.3,

“rule” includes an amendment to and a revocation of a rule. 1994, c. 33, s. 8.

Delivery of rules to Minister

[143.3 \(1\)](#) The Commission must deliver to the Minister a copy of every rule made by it together with the following:

1. A copy of the notices published under section 143.2, unless publication of notice was not required, and copies of all documents referred to in the notices.
2. A summary of the representations made and other documents submitted in respect of the rule as proposed.
3. All other material information that was considered by the Commission in connection with the making of the rule. 1994, c. 33, s. 8.

Publication

[\(2\)](#) The Commission shall publish in its Bulletin every rule made by it as soon after the rule is made as practicable together with the following:

1. The date on which a rule and the material required under subsection (1) were delivered to the Minister.
2. The date the rule is to come into force if an action is not taken by the Minister under subsection (3).
3. A statement of the substance and purpose of the rule.
4. A summary of the written comments received during the comment periods if notice and comment were required.
5. A statement of the Commission setting out its response to the significant issues and concerns brought to the attention of the Commission during the comment periods. 1994, c. 33, s. 8.

Action by Minister

[\(3\)](#) Within 60 days after a rule is delivered to the Minister, the Minister may,

- (a) approve the rule;
- (b) reject the rule; or

(c) return it to the Commission for further consideration. 1994, c. 33, s. 8.

When rules effective

143.4 (1) A rule that is approved by the Minister comes into force 15 days after it is approved unless there is a later day specified in the rule in which case it comes into force on that later day. 1994, c. 33, s. 8.

Same

(2) If the Minister does not approve a rule, reject it or return it to the Commission for further consideration and a coming into force day,

- (a) that is at least 75 days after the rule is delivered to the Minister is specified in the rule, the rule comes into force on the specified day;
- (b) is not specified in the rule, the rule comes into force on the 75th day after the rule is delivered to the Minister; or
- (c) that is within 75 days after the rule is delivered to the Minister is specified in the rule, the rule comes into force on the 75th day after the rule is delivered to the Minister. 1994, c. 33, s. 8.

Same

(3) A rule that is returned to the Commission for further consideration cannot come into force until it is returned by the Commission to the Minister at which time this section applies as if the rule were delivered for the first time. 1994, c. 33, s. 8.

Same

(4) A rule that is rejected by the Minister does not come into force. 1994, c. 33, s. 8.

Same

(5) A rule to which clause 143.2 (5) (d) (urgency provision) applies that is approved by the Minister comes into force on the day it is published in the Commission's Bulletin. 1994, c. 33, s. 8.

Revocation by operation of law

(6) Every rule to which clause 143.2 (5) (d) applies is revoked on the 275th day after it comes into force. 1994, c. 33, s. 8.

Publication

(7) The Commission shall publish every rule that comes into force in *The Ontario Gazette* and in its Bulletin. 1994, c. 33, s. 8.

Deemed notice

(8) Every person or company affected by a rule shall be deemed to have notice of it when it is published in the Commission's Bulletin. 1994, c. 33, s. 8.

Returned for consideration

143.5 (1) If the Minister returns a rule to the Commission for further consideration, the Minister may specify what is to be considered, the conditions that apply and the process to be followed. 1994, c. 33, s. 8.

Same

(2) Subject to any instruction that the Commission receives under subsection (1), the

Commission shall consider any rule returned to it in the manner and following the process that it feels is appropriate. 1994, c. 33, s. 8.

Publication

[143.6](#) The Commission shall publish in its Bulletin notice of,

- (a) any action taken by the Minister under subsection 143.3 (3) in respect of every rule that the Commission has delivered to the Minister; and
- (b) any matters specified by the Minister under subsection 143.5 (1) to be considered. 1994, c. 33, s. 8.

Studies

[143.7 \(1\)](#) The Minister may in writing require the Commission,

- (a) to study and make recommendations in respect of any matter of a general nature under or affecting this Act, the regulations or the rules; and
- (b) to consider making a rule in respect of a matter specified by the Minister. 1994, c. 33, s. 8.

Publication

[\(2\)](#) The Commission shall publish in its Bulletin notice of every requirement from the Minister made under subsection (1). 1994, c. 33, s. 8.

Notice

[\(3\)](#) The notice must include the following:

1. A statement of the substance of the requirement.
2. A reference to every unpublished study, report or other written materials provided to the Commission by the Minister other than materials that the Minister has asked the Commission to treat as confidential. 1994, c. 33, s. 8.

Policies of the Commission

[143.8 \(1\)](#) In this Act,

“policy” means a written statement of the Commission of,

- (a) principles, standards, criteria or factors that relate to a decision or exercise of a discretion by the Commission or the Director under this Act, the regulations or the rules,
- (b) the manner in which a provision of this Act, the regulations or the rules is interpreted or applied by the Commission or the Director,
- (c) the practices generally followed by the Commission or the Director in the performance of duties and responsibilities under this Act, and
- (d) something that is not of a legislative nature. 1994, c. 33, s. 8.

Publication

[\(2\)](#) The Commission shall publish in its Bulletin notice of the proposed adoption of a policy. 1994, c. 33, s. 8.

Notice

(3) The notice must include the following:

1. The proposed policy.
2. A statement of the purpose of the proposed policy.
3. A summary of the proposed policy.
4. A reference to any significant unpublished study, report, decision or other written materials on which the Commission relies in proposing the policy.
5. A reference to any provision of this Act, a regulation or a rule to which the proposed policy relates. 1994, c. 33, s. 8.

Exception

(4) The Commission does not have to make reference to written material that, in the opinion of the Commission, should be held in confidence because it discloses intimate financial, personal or other information and the desirability of avoiding disclosure of the substance of it or its existence in the interests of any person or company affected outweighs the desirability of making it or knowledge of its existence available to the public. 1994, c. 33, s. 8.

Representations

(5) Upon publication of the notice, the Commission shall invite, and shall give a reasonable opportunity to, interested persons and companies to make written representations with respect to the proposed policy within a period of at least 60 days after the publication. 1994, c. 33, s. 8.

Exceptions to notice requirement

(6) Publication of a notice is not required if the proposed policy would make no material substantive change to an existing policy. 1994, c. 33, s. 8.

Changes to proposal

(7) If, following publication of the notice, the Commission proposes material changes to the proposed policy, the Commission shall publish in its Bulletin,

- (a) the proposed policy with the changes incorporated;
- (b) a concise statement of the purpose for the changes; and
- (c) the reasons for the changes. 1994, c. 33, s. 8.

Representations re changes

(8) Upon publication of a notice of change, the Commission shall invite, and shall give a reasonable opportunity to, interested persons and companies to make written representations with respect to the change within such period as the Commission considers appropriate. 1994, c. 33, s. 8.

Publication in Bulletin

(9) The Commission shall publish in its Bulletin every policy adopted by it as soon after the policy is adopted as practicable together with the following:

1. The date the policy comes into effect.
2. A statement of the substance and purpose of the policy.
3. A summary of the written comments received during the comment periods.

4. A statement of the Commission setting out its response to the significant issues and concerns brought to the attention of the Commission during the comment periods and the reasons for any changes made to the proposed policy following its publication. 1994, c. 33, s. 8.

Inspection of material

[\(10\)](#) Section 140 applies to all written representations made under this section as if they were material required to be filed. 1994, c. 33, s. 8.

Restriction

[\(11\)](#) The Commission shall not adopt a policy that, by reason of its prohibitive or mandatory character, is of a legislative nature. 1994, c. 33, s. 8.

Interpretation

[\(12\)](#) In this section,

“policy” includes a change to and a rescission of a policy. 1994, c. 33, s. 8.

Priorities

[143.9 \(1\)](#) The Commission shall, by June 30, 1995, and each year thereafter, within 90 days after the end of its financial year, deliver to the Minister and publish in its Bulletin a statement of the Chair of the Commission setting out the proposed priorities of the Commission in connection with the administration of this Act, the regulations and the rules, together with a summary of the reasons for the adoption of the priorities. 1994, c. 33, s. 8.

Same

[\(1.1\)](#) The statement referred to in subsection (1) shall also outline in general terms the Commission’s anticipated expenditures for the next financial year by category for any category expected to exceed 10 per cent of the overall expenditures for the year. 1997, c. 10, s. 39.

Same

[\(2\)](#) The Commission shall, at least 60 days before the publication date of the statement, publish a notice in its Bulletin inviting interested persons or companies to make written representations as to the matters that should be identified as priorities. 1994, c. 33, s. 8.

Memorandum of understanding

[143.10 \(1\)](#) The Commission must first deliver to the Minister and then publish in the Commission’s Bulletin every agreement, memorandum of understanding or arrangement between the Commission and,

- (a) another securities, derivatives or financial regulatory authority;
- (b) any self-regulatory body or organization; or
- (c) any jurisdiction. 1994, c. 33, s. 8; 2010, c. 26, Sched. 18, s. 43.

Exception

[\(1.1\)](#) Despite subsection (1), the Commission is not required to publish an agreement, memorandum of understanding or arrangement if the principal purpose of the agreement, memorandum of understanding or arrangement relates to,

- (a) the provision of products or services by a party not named in subsection (1);
- (b) the sharing of costs incurred by a party named in subsection (1); or

(c) the provision of services by, or the temporary transfer of, an employee of a party named in subsection (1). 2007, c. 7, Sched. 38, s. 14 (1).

Minister's option

(2) The Minister may approve or reject the agreement, memorandum of understanding or arrangement within 60 days after it is published in the Bulletin or, if publication under subsection (1) is not required, within 60 days after it is delivered to the Minister. 1994, c. 33, s. 8; 2007, c. 7, Sched. 38, s. 14 (2).

Coming into effect

(3) If the Minister approves the agreement, memorandum of understanding or arrangement, it comes into effect on the date specified in the agreement, memorandum of understanding or arrangement or, if no date is specified, on the day it is approved. 2006, c. 33, Sched. Z.5, s. 20 (1).

Same

(4) If the Minister does not approve or reject the agreement, memorandum of understanding or arrangement within the 60-day period described in subsection (2), it comes into effect on the date specified in it or, if no date is specified, upon the expiry of that 60-day period. 2007, c. 7, Sched. 38, s. 14 (3).

Same

(5) If the Minister rejects the agreement, memorandum of understanding or arrangement before it comes into effect by the operation of subsection (4), it does not come into effect. 1994, c. 33, s. 8.

(6) Repealed: 2007, c. 7, Sched. 38, s. 14 (4).

General orders prohibited

143.11 The Commission shall not make any orders or rulings of general application. 1994, c. 33, s. 8.

Review by Select or Standing Committee

Appointment of first advisory committee

143.12 (1) On or before May 31, 2007, the Minister shall appoint an advisory committee to review the legislation, regulations and rules relating to matters dealt with by the Commission and the legislative needs of the Commission. 2004, c. 31, Sched. 34, s. 26.

Appointment of subsequent advisory committees

(1.1) The Minister shall appoint an advisory committee to perform the functions described in subsection (1) not later than 48 months after the appointment of the previous advisory committee appointed under subsection (1) or this subsection. 2004, c. 31, Sched. 34, s. 26.

Review by committee

(2) The committee shall review the legislation, regulations and rules relating to matters dealt with by the Commission and the legislative needs of the Commission and solicit the views of the public in respect of these matters by means of a notice and comment process. 1994, c. 33, s. 8.

Report

(3) The committee shall prepare for the Minister a report of its review and its recommendations. 1994, c. 33, s. 8.

Same

[\(4\)](#) The Minister shall table the report in the Legislature. 1994, c. 33, s. 8.

Committee review

[\(5\)](#) Upon the report being tabled, a select or standing committee of the Legislative Assembly shall be appointed to review the report, hear the opinions of interested persons or companies and make recommendations to the Legislative Assembly regarding amendments to this Act. 1994, c. 33, s. 8.

Confidential information

[143.13](#) The Minister is entitled to keep confidential any information or documents received from the Commission that the Commission was entitled to keep confidential. 1994, c. 33, s. 8.

Electronic communication

[143.14](#) The Commission shall be deemed to have complied with a requirement under Ontario securities law to publish or otherwise make available a notice, rule or other information if the Commission provides the notice, rule or information in electronic form through an electronic medium or posts it on its website. 2002, c. 18, Sched. H, s. 13.

Revocation or variation of decision

[144. \(1\)](#) The Commission may make an order revoking or varying a decision of the Commission, on the application of the Executive Director or a person or company affected by the decision, if in the Commission's opinion the order would not be prejudicial to the public interest. 1994, c. 11, s. 380.

Terms and conditions

[\(2\)](#) The order may be made on such terms and conditions as the Commission may impose. 1994, c. 11, s. 380.

Continuation of registration

[145.](#) Every registration made and receipt for a prospectus issued under *The Securities Act*, being chapter 426 of the Revised Statutes of Ontario, 1970 and in effect immediately before the 15th day of September, 1979, continues in the same manner as if made or issued under this Act. R.S.O. 1990, c. S.5, s. 145.

No privilege

[146. \(1\)](#) Despite subsection 33 (4) of the *Evidence Act*, the Commission may by order compel a bank or officer of a bank, in an investigation, financial examination or hearing under Ontario securities law to which the bank is not a party, to produce any book or record the contents of which can be proved under section 33 of the *Evidence Act* or to appear as a witness to prove the matters, transactions and accounts contained in the book or record. 1994, c. 11, s. 381.

Definitions

[\(2\)](#) In subsection (1),

“bank” and “officer of a bank” have the same meanings as in subsection 33 (4) of the *Evidence Act*. 1994, c. 11, s. 381.

Exemption

[147.](#) Except where exemption applications are otherwise provided for in Ontario securities law, the Commission may, on the application of an interested person or company and if in the Commission's opinion it would not be prejudicial to the public interest, make an order on such

terms and conditions as it may impose exempting the person or company from any requirement of Ontario securities law. 1994, c. 11, s. 381.

148. Repealed: 1997, c. 10, s. 40.

Costs

149. Nothing shall preclude a court from ordering costs payable to the Commission and in the event that costs are awarded to the Commission, a counsel fee may be awarded despite the fact that the Commission was represented by Commission staff. 1994, c. 11, s. 381.

Decision under more than one provision

150. Nothing in this Act shall be construed as limiting the Commission's ability to make a decision under more than one provision of Ontario securities law in respect of the same conduct or matter. 1994, c. 11, s. 381.

Enforcement of Commission decision

151. (1) On filing with the Superior Court of Justice, a decision made by the Commission or by a Director pursuant to subsection 6 (3) shall be deemed to be an order of the Superior Court of Justice and is enforceable as an order of that court. 1994, c. 11, s. 381; 2006, c. 19, Sched. C, s. 1 (1).

Filing decision

(2) A decision of a Director may not be filed with the court under subsection (1) until the time permitted for an application to review the Director's decision pursuant to subsection 8 (2) has expired or, if the decision has been appealed, the Commission has confirmed it. 1994, c. 11, s. 381.

Application for letters of request

152. (1) The Commission may apply to the Superior Court of Justice for an order,

- (a) appointing a person to take the evidence of a witness outside of Ontario for use in a proceeding before the Commission; and
- (b) providing for the issuance of a letter of request directed to the judicial authorities of the jurisdiction in which the witness is to be found, requesting the issuance of such process as is necessary to compel the person to attend before the person appointed under clause (a) to give testimony on oath or otherwise and to produce documents and things relevant to the subject matter of the proceeding. 1994, c. 11, s. 381; 2006, c. 19, Sched. C, s. 1 (1).

Practice and procedure

(2) The practice and procedure in connection with an appointment under this section, the taking of evidence and the certifying and return of the appointment shall, as far as possible, be the same as those that govern similar matters in civil proceedings in the Superior Court of Justice. 1994, c. 11, s. 381; 2006, c. 19, Sched. C, s. 1 (1).

Admissibility of evidence

(3) The making of an order under subsection (1) does not determine whether evidence obtained pursuant to the order is admissible in the proceeding before the Commission. 1994, c. 11, s. 381.

Reciprocal assistance

(4) If it is made to appear to the Superior Court of Justice that a court or tribunal of

competent jurisdiction outside of Ontario has, on behalf of a securities commission or other body empowered by statute to administer or regulate trading in securities or derivatives, duly authorized, by commission, order or other process, the obtaining of the testimony of a witness outside the jurisdiction of the securities commission or other body and within Ontario for use at a proceeding before the securities commission or other body, the Superior Court of Justice may order the examination of the witness before the person appointed in the manner and form directed by the commission, order or other process, and may, by the same or by subsequent order, command the attendance of the witness for the purpose of being examined, or the production of a writing or other document or thing mentioned in the order, and may give all such directions as to the time and place of the examination and all other matters connected with the examination as seem proper. 1994, c. 11, s. 381; 2006, c. 19, Sched. C, s. 1 (1); 2010, c. 26, Sched. 18, s. 44.

Exchange of information

153. Despite the *Freedom of Information and Protection of Privacy Act*, the Commission may provide information to and receive information from the following entities, both in Canada and elsewhere, and the information received by the Commission is exempt from disclosure under that Act if the Commission determines that the information should be maintained in confidence:

1. Other securities, derivatives or financial regulatory authorities.
2. Exchanges.
 - 2.1 Trade repositories.
 - 2.2 Clearing agencies.
 - 2.3 Alternative trading systems.
3. Self-regulatory bodies or organizations.
4. Law enforcement agencies.
5. Governmental or regulatory authorities not mentioned in paragraphs 1 to 4.
6. Any person or entity, other than an employee of the Commission, who provides services to the Commission. 2002, c. 18, Sched. H, s. 14; 2010, c. 26, Sched. 18, s. 45.

Disclosure

154. The disclosure of information to the Commission or a trade repository that is made in good faith by a person or company in compliance or attempted compliance with Ontario securities law,

- (a) does not constitute a breach of any contractual provision to which the person or company or any other person or company is subject; and
- (b) does not constitute any other basis of liability against the person or company or any other person or company. 2010, c. 26, Sched. 18, s. 46.

[SCHEDULE/ANNEXE](#)

PART A/PARTIE A

Blanket Ruling/Décision générale	Date Issued/Date
In The Matter of Certain Reporting Issuers, 1980 O.S.C.B. 166	10/04/80
In The Matter of The Automatic Investment of Dividends or Distributions in Shares or Units of Mutual Funds	11/05/83

(1983), 6 O.S.C.B. 1078	
In The Matter of Certain Proposed Amendments (1983), 6 O.S.C.B. 3508	19/10/83
In The Matter of Discount Brokerage and The Role of Financial Institutions (1984), 7 O.S.C.B. 458	10/01/84
In The Matter of Order Execution Access Dealers (1984), 7 O.S.C.B. 1520	10/02/84
In The Matter of Certain Reporting Issuers (1984), 7 O.S.C.B. 1913	27/04/84
In The Matter of Certain Reporting Issuers (1984), 7 O.S.C.B. 3247	24/07/84
In The Matter of Zero Coupon Strip Bonds (1984), 7 O.S.C.B. 4085	25/09/84
In The Matter of Eurosecurity Financings (1984), 7 O.S.C.B. 4897	22/11/84
In The Matter of Trades in Securities of a Private Company Under The Execution Act (1985), 8 O.S.C.B. 127	04/01/85
In The Matter of Certain Reporting Issuers (1985), 8 O.S.C.B. 2915	12/07/85
In The Matter of The Mandatory Investment of Dividends or Distributions In Shares or Units of Mutual Funds (1985), 8 O.S.C.B. 4308	16/10/85
In The Matter of a Policy of The Toronto Stock Exchange on Small Shareholder Selling and Purchase Arrangements (1987), 10 O.S.C.B. 1455	02/03/87
In The Matter of a Policy of The Montreal Exchange on Small Shareholder Selling and Purchase Arrangements (1987), 10 O.S.C.B. 4938	18/08/87
In The Matter of Certain Proposed Amendments (1987), 10 O.S.C.B. 5936	22/09/87
In The Matter of The Business Corporations Act, 1982, S.O. 1982, chapter 4, as amended and In The Matter of The Canadian Depository for Securities (1988), 11 O.S.C.B. 542	25/11/87
In The Matter of Trading in Recognized Options Cleared Through Recognized Clearing Organizations (1988), 11 O.S.C.B. 4895	01/12/88
In The Matter of The Securities Act R.S.O. 1980, chapter 466, as amended (1989), 12 O.S.C.B. 2735	07/07/89
In The Matter of The Toronto Stock Exchange (1990), 13 O.S.C.B. 3007	12/07/90
In The Matter of Self-Directed Registered Education Savings Plans (1990), 13 O.S.C.B. 4793	22/10/90
In The Matter of The Toronto Stock Exchange (1991), 14 O.S.C.B. 881	27/02/91
In The Matter of The Recognized Options Rationalization Order (1991), 14 O.S.C.B. 2157	30/04/91
In The Matter of an Assignment to the Director Pursuant to Section 6 of The Securities Act (1991), 14 O.S.C.B. 3439	25/06/91
In The Matter of First Prospectuses Filed by National Policy Statement No. 36 Mutual Funds and In The Matter of Universal Money Market Fund (1991), 14 O.S.C.B. 3475	03/07/91
In The Matter of Mutual Fund Securities (1991), 14 O.S.C.B. 3763	24/07/91
In The Matter of The Recognized Options Rationalization Order (1991), 14 O.S.C.B. 4234	14/08/91
In The Matter of Self-Directed Registered Education Savings Plans (1992), 15 O.S.C.B. 613	05/12/91
In The Matter of Certain Advisers (1992), 15 O.S.C.B. 1955	05/05/92
In The Matter of Certain Members of The Toronto Stock Exchange (1992), 15 O.S.C.B. 3354	14/07/92
In The Matter of The Limitations on a Registrant Underwriting Securities of a Related Issuer or Connected Issuer of The Registrant (1992), 15 O.S.C.B. 3645	30/07/92
In The Matter of Going Private Transactions (1993), 16 O.S.C.B. 3428	30/06/93
In The Matter of Insider Bids, Issuer Bids and Take-Over Bids in Anticipation of Going Private Transactions (1993), 16 O.S.C.B. 3429	30/06/93
In The Matter of Real Return Bond Strip Bonds (1994), 17 O.S.C.B. 2875	23/11/93
In The Matter of Dividend Reinvestment and Stock Dividend Plans (1993), 16 O.S.C.B. 5928	26/11/93
In The Matter of Ontario Regulation 638/93 and The Disclosure of Executive Compensation and of Indebtedness of Directors, Executive Officers and Senior Officers (1993), 16 O.S.C.B. 5913	01/12/93
Blanket Permission Under Section 81 of The Regulation Under The Securities Act (Ontario) (1993), 16 O.S.C.B. 5914	01/12/93
Blanket Permission — International Offerings made by way of Private Placement in Ontario — Subsection 38 (3) of The Securities Act (Ontario) (1993), 16 O.S.C.B. 5938	01/12/93
In The Matter of Regulation 1015, R.R.O. 1990, as amended and In The Matter of Certain International Offerings by Private Placement in Ontario (1993), 16 O.S.C.B. 5931	01/12/93
In The Matter of Networking Arrangements Governed by the Principles of Regulation (1993), 16 O.S.C.B. 6168	15/12/93
In The Matter of a Proposal of The Toronto Stock Exchange to Foster Capital Formation for Junior Resource and Industrial Enterprises (1994), 17 O.S.C.B. 347	10/01/94
In The Matter of Dividend Reinvestment Plans (1994), 17 O.S.C.B. 1178	02/03/94
In The Matter of Ontario Regulation 638/93 and The Disclosure of Executive Compensation and of Indebtedness of Directors, Executive Officers and Senior Officers (1994), 17 O.S.C.B. 1176	08/03/94
Blanket Permission Under Section 81 of The Regulation Under The Securities Act (Ontario) (1994), 17 O.S.C.B. 1187	08/03/94
In The Matter of Trades by Issuers In Connection With Securities Exchange Issuer Bids and In The Matter of Trades by Holders of Securities of a Company to Another Company In Connection With an Amalgamation, an Arrangement or a Specified Statutory Procedure (1994), 17 O.S.C.B. 1975	20/04/94

In The Matter of Trades by Issuers Upon Exercise of Certain Conversion or Exchange Rights and In The Matter of The First Trade In Securities Acquired Upon Exercise of Such Conversion or Exchange Rights (1994), 17 O.S.C.B. 2876	07/06/94
In The Matter of Certain Amendments to Regulation 1015 of The Revised Regulations of Ontario 1990 made under The Securities Act (Financial intermediary registration exemption)	08/11/94
In The Matter of Certain Amendments to Regulation 1015 of The Revised Regulations of Ontario 1990 made under The Securities Act (Corporate sponsored plans)	08/11/94
In The Matter of Trades by an Issuer in Securities of its own issue to Senior Officers, Directors, Personal Holding Companies and Registered Retirement Savings Plans and a Controlling Shareholder in Securities of an Issuer to Employees, Senior Officers, Directors, Personal Holding Companies and Registered Retirement Savings Plans	14/11/94
In The Matter of the First Trade in Securities Acquired Pursuant to Certain Exemptions, 26/4/94, 170SCB-1978 "Resale Ruling", amended 14/11/94	14/11/94
In The Matter of Trading in Securities of Labour Sponsored Investment Fund Corporations (Blanket Order/ordonnance générale)	10/11/94

PART B/PARTIE B

Blanket Ruling and Related Policy Statements/Décision générale et politiques connexes	Date Issued/Date
In The Matter of a Simplified Prospectus Qualification System for Mutual Funds (1984), 7 O.S.C.B. 5333 [including National Policy Statement No. 36 (1984), 7 O.S.C.B. 5355 and National Policy Statement No. 39/y compris l'instruction générale canadienne n° 36 (1984), 7 O.S.C.B. 5355 et l'instruction générale canadienne n° 39]	18/12/84
In The Matter of Certain Reporting Issuers (1988), 11 O.S.C.B. 1029 [including National Policy Statement No. 41 (1987), 10 O.S.C.B. 6307/y compris l'instruction générale canadienne n° 41 (1987), 10 O.S.C.B. 6307]	01/03/88
In The Matter of Rules for Shelf Prospectus Offerings and for Pricing Offerings after the Prospectus Is Received (1991), 14 O.S.C.B. 1824 [including National Policy Statement No. 44 (1991), 14 O.S.C.B. 1844/y compris l'instruction générale canadienne n° 44 (1991), 14 O.S.C.B. 1844]	02/05/91
In The Matter of Regulation 910, R.R.O. 1980, as amended and In The Matter of The Multijurisdictional Disclosure System (1991), 14 O.S.C.B. 2863 [including National Policy Statement No. 45 (1991), 14 O.S.C.B. 2889/y compris l'instruction générale canadienne n° 45 (1991), 14 O.S.C.B. 2889]	24/06/91
In The Matter of The Prompt Offering Qualification System (1993), 16 O.S.C.B. 731, 16 O.S.C.B. 732; 16 O.S.C.B. 949 [including National Policy Statement No. 47 (1993), 16 O.S.C.B. 765/y compris l'instruction générale canadienne n° 47 (1993), 16 O.S.C.B. 765]	17/02/93 & 25/02/93
In The Matter of National Policy Statement No. 47 and The Solicitation of Expressions of Interest (1993), 16 O.S.C.B. 2832 [including National Policy Statement No. 47 (1993), 16 O.S.C.B. 765/y compris l'instruction générale canadienne n° 47 (1993), 16 O.S.C.B. 765]	09/06/93
In The Matter of Certain Trades in Securities of Junior Resource Issuers (1988), 11 O.S.C.B. 1522 [including Ontario Policy No. 5.2 (1988), 11 O.S.C.B. 563/y compris la politique de l'Ontario n° 5.2 (1988), 11 O.S.C.B. 563]	30/03/88

1994, c. 33, s. 9.

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