



## **PLEASE NOTE**

This document, prepared by the [Legislative Counsel Office](#), is an office consolidation of this Act, current to December 1, 2004. It is intended for information and reference purposes only.

This document is *not* the official version of the Act. The Act and the amendments as printed under the authority of the [Queen's Printer](#) for the province should be consulted to determine the authoritative statement of the law.

For more information concerning the history of this Act, please see the [Table of Public Acts](#).

If you find any errors or omissions in this consolidation, please notify the Legislative Counsel Office at (902) 368-4291.

**CHAPTER S-3**  
**SECURITIES ACT**

1. In this Act	Definitions
(a) “adviser” means a person or a 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;	adviser
(b) “broker” means a person other than a salesman who engages full-time or part-time, directly or through an agent, in the business of trading in securities and includes a company and officials of a company or partnership that trades in such securities as may be designated by the regulations, and includes a security issuer except where the context clearly indicates the contrary;	broker
(c) “business premises” means any place where records are kept respecting matters governed by this Act;	business premises
(d) “company” means any corporation, incorporated association, incorporated syndicate or other incorporated organization;	company
(e) “Director” means the Director of Corporations;	Director
(e.1) “director” where used in relation to a person, includes a person acting in a capacity similar to that of a director of a company;	director
(f) “distribution”, where used in relation to trading in securities, means	distribution
(i) a trade in securities of an issuer that have not been previously issued,	
(ii) 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,	
(iii) a trade in previously issued securities of an issuer from the holdings of any person, company or combination of persons or companies holding a sufficient number of any securities of that issuer to affect materially the control of that issuer, but any holding of any person, company or combination of persons or companies holding more than twenty per cent of the outstanding voting securities of an issuer shall, in the absence of evidence to the contrary, be deemed to affect materially the control of that issuer, or	
(iv) any trade that is a distribution under the regulations,	

and 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;

distribution to the public

(g) “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;

document

(h) “document” includes any record of information, however recorded or stored, regardless of physical form, characteristics or media on which it is stored;

file

(i) “file” means to file, register, submit, deliver, deposit or otherwise to make available in a manner satisfactory to the Registrar;

fraud, fraudulent, fraudulent acts

(j) “fraud”, “fraudulent” and “fraudulent act” in addition to their ordinary meaning, includes

(i) any intentional misrepresentation by word, conduct or in any manner of any material fact, either present or past, and any intentional omission to disclose such facts,

(ii) any promise or representation respecting the future that is beyond reasonable expectation and not made in good faith,

(iii) any fictitious or pretended trade in any security,

(iv) the gaining or attempt to gain, directly or indirectly, through a trade in any security, a commission, fee or gross profit so large and exorbitant as to be unconscionable and unreasonable,

(v) any course of conduct or business that is calculated or put forward with intent to deceive the public or the purchaser or the vendor of any security as to the nature of any transaction or as to the value of the security,

(vi) the making of any material false statement in any application, document, information, material or evidence, or in any prospectus or return, submitted or given to the Director of Corporations, the representative of the Director or the Registrar under this Act or the regulations, unless the person or company making the statement did not know, and in the exercise of reasonable diligence could not have known, that a false statement was made,

(vii) the violation of any provision of this Act or the regulations relating to trading in securities,

(viii) generally any artifice, agreement, device or scheme, course of conduct or business to obtain money, profit or property, by any of the means hereinbefore set forth, or otherwise contrary to law, and

(ix) anything specifically prescribed in the regulations as coming within the meaning of this definition;

(k) “individual” means a natural person, and does not include a company, partnership, unincorporated association or unincorporated organization; individual

(l) “issuer” means a person or company that has outstanding, issues or proposes to issue, a security; issuer

(m) “material change” where used in relation to the affairs of an issuer means 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 and includes a decision to implement such a change made by the board of directors of the issuer or by senior management of the issuer who believe that confirmation of the decision by the board of directors is probable; material change

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

(o) “Minister” means the Minister of the Crown designated by the Lieutenant Governor in Council to have the responsibility for the administration of this Act; Minister

(o.1) “misrepresentation” means misrepresentation  
 (i) an untrue statement of material fact, or  
 (ii) 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;

(p) “mutual fund” includes an issuer of securities that 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 a part of the net assets, including a separate fund or trust account, of the issuer of the securities; mutual fund

(p.01) “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 8 would apply but for the availability of one or more of the exemptions contained offering memorandum

in the Act, the regulations or in a decision of the Director or the Registrar, 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;

officer	(p.1) “officer” means the chairperson, any vice-chairperson of the board of directors, the president, any vice-president, the secretary, the assistant secretary, the treasurer, the assistant treasurer, and the general manager of a company, and any other person designated an officer of a company by by-law or similar authority, or any individual acting in a similar capacity on behalf of an issuer or registrant;
person	(q) “person” means an individual, partnership, association, syndicate and any unincorporated organization;
policy	(r) “policy” means a written statement of the Director, of <ul style="list-style-type: none"> <li>(i) principles, standards, criteria or factors that relate to a decision or exercise of a discretion by the Director under this Act, the regulations or the rules,</li> <li>(ii) the manner in which a provision of this Act, the regulations or the rules is interpreted or applied by the Director,</li> <li>(iii) the practices generally followed by the Director in the performance of duties and responsibilities under this Act, and</li> <li>(iv) matters that are not of a legislative nature;</li> </ul>
private company	(s) “private company” means a private company as defined by clause 1(e) of the <i>Companies Act</i> R.S.P.E.I. 1988, Cap. C-15;
private issuer	(t) repealed by 2003,c.20,s.1;
Registrar	(u) “Registrar” means the person appointed by the Lieutenant Governor in Council to act as Registrar under this Act;
regulations	(u.1) “regulations” means the regulations made under this Act and, unless the context indicates otherwise, includes the rules;
salesman	(v) “salesman” means every person employed, appointed or authorized by any broker or company to trade in securities, whether directly or through sub-agents;
Securities Office	(w) “Securities Office” means the office of the Director, and includes the Registrar and employees engaged in the administration of this Act;
security	(x) “security” includes <ul style="list-style-type: none"> <li>(i) any document, instrument or writing, commonly known as a security,</li> </ul>

- (ii) any document constituting evidence of title to or interest in the capital, assets, property, profits, earnings or royalties of any person or company,
- (iii) any document constituting evidence of an interest in an association of legatees or heirs,
- (iv) any document constituting evidence of an interest in any option given upon a security, or
- (v) any document designated as a security by the regulations;

(y) “security issuer” includes a company or person other than an individual, trading in securities of its own issue and not trading generally in other securities; security issuer

(y.1) “senior officer” means senior officer

- (i) the chairperson or a vice-chairperson of the board of directors, the president, a vice-president, the secretary, the treasurer or the general manager of a company or any other individual who performs functions for an issuer similar to those normally performed by an individual occupying any such office, and
- (ii) each of the five highest paid employees of an issuer, including any individual referred to in clause (i);

(z) “trade” or “trading” includes, trade or trading

- (i) 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 subclause (iv), a transfer, pledge or encumbrance of securities for the purpose of giving collateral for debt made in good faith,
- (ii) any participation as a trader in any transaction in a security through the facilities of any stock exchange or quotation and trade reporting system,
- (iii) any receipt by a registrant of an order to buy or sell a security,
- (iv) 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 subclause (iii) of the definition of distribution, for the purpose of giving collateral for a debt made in good faith, and
- (v) any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of subclauses (i) to (iv), inclusive. R.S.P.E.I. 1974, Cap. S-4, s.1; 1980,c.2,s.3; 1983,c.1,s.6; 1985,c.40,s.2; 1986,c.5,s.2; 1993,c.29,s.4; 2000,c.22,s.1; 2002,c.43,s.1; 2002,c.24,s.1; 2003,c.20,s.1.

Electronic filing **1.1** The Registrar may require the electronic filing of any application, prospectus, document or other information required under the Act or regulations, in accordance with the regulations. 2000,c.22,s.2.

## PART I

### REGISTRATION OF ADVISERS, BROKERS AND SALESMEN

Trading and advising prohibited unless registered **2.** (1) No person or company shall

- (a) trade in a security or act as an underwriter unless the person or company is registered as a broker, or is registered as a salesman or as a partner or an officer of a registered broker and is acting on behalf of the broker; or
- (b) act as an adviser unless the person or company is registered as an adviser, or is registered as a representative or as a partner or as an officer of a registered adviser and is acting on behalf of the adviser, and the registration has been made in accordance with this Act and the person or company has received written notice of the registration from the Securities Division and, where the registration is subject to terms and conditions, the person or company complies with such terms and conditions.

Director may grant registration, etc. (2) Unless it appears to the Director that the applicant is not suitable for registration, renewal of registration or reinstatement of registration or that the proposed registration, renewal of registration, reinstatement of registration or amendment to registration is objectionable, the Director shall grant registration, renewal of registration, reinstatement of registration or amendment to registration to an applicant.

Exemption of trades (3) Subject to the regulations, registration is not required in respect of the following trades:

- (a) a trade by an executor, administrator, guardian or committee or by an authorized trustee or assignee, an interim or official receiver or a custodian under the *Bankruptcy Act* (Canada) R.S.C. 1985, Chap. B-3 or by a receiver under the *Supreme Court Act* R.S.P.E.I. 1988, Cap. S-10 or by a liquidator under the *Winding-up Act* (Canada) R.S.C. 1985, Chap. W-11, or *Winding-up Act* R.S.P.E.I. 1988, Cap. W-5 or at a judicial sale;
- (b) an isolated trade by or on behalf of an issuer in a specific security of its own issue, for the issuer's account, or by or on behalf of an owner in a specific security, for the owner's account, where the trade is not made in the course of continued and successive transactions of a like nature, and is not made by a person or company whose usual business is trading in securities;
- (c) a trade where the party purchasing as principal, is

- (i) a bank to which the *Bank Act* (Canada) R.S.C. 1985, Chap. B-1 applies, or the Federal Business Development Bank incorporated under the *Federal Business Development Bank Act* (Canada) R.S.C. 1985, Chap. F-6,
  - (ii) a loan corporation or trust authorized to carry on business under the *Extra-provincial Corporations Registration Act* R.S.P.E.I. 1988, Cap. E-14,
  - (iii) an insurance company licensed under the *Insurance Act* R.S.P.E.I. 1988, Cap. I-4,
  - (iv) a subsidiary of any of the persons or companies referred to in subclause (i), (ii) or (iii) where the bank, loan corporation, trust company or insurance company, as the case may be, owns beneficially all of the voting securities of such subsidiary,
  - (v) Her Majesty in right of Canada or any province or territory of Canada, or
  - (vi) any municipal corporation or public board or commission in Canada;
- (d) a trade where each individual purchaser purchases as principal, if the trade is in a security which has an aggregate acquisition cost to such purchaser of not less than \$97,000;
- (e) a trade by or for the account of a pledgee, mortgagee or other encumbrancer for the purpose of liquidating a *bona fide* debt by selling or offering for sale a security pledged, mortgaged or otherwise encumbered in good faith as collateral for the debt;
- (f) a trade in a security that may occasionally be transacted by employees of a registered broker where the employees do not usually sell securities and have been designated by the Registrar as non-trading employees, either individually or as a class;
- (g) a trade between a person or company and an underwriter acting as purchaser or between or among underwriters;
- (h) a trade in a security by a person or company acting solely through an agent who is a registered broker;
- (i) the execution of an unsolicited order to purchase or sell through a registered broker by a bank to which the *Bank Act* (Canada) applies or a trust company authorized to carry on business under the *Extra-provincial Corporations Registration Act* R.S.P.E.I. 1988, Cap. E-14 as agent for a person or company and the trade by such person or company in placing the unsolicited order with the bank or trust company;
- (j) a trade by an issuer
- (i) in a security of its own issue that is distributed by it to holders of its securities as a stock dividend or other distribution out of earnings or surplus,



(ii) in a security, whether of its own issue or not, that is distributed by it to holders of its securities as incidental to a good faith reorganization or winding-up of the issuer, or distribution of its assets for the purpose of winding up its affairs pursuant to the laws of the jurisdiction in which the issuer was incorporated, organized or continued,

(iii) in securities of its own issue transferred or issued through the exercise of a right to purchase, convert or exchange previously granted by the issuer,

(iv) Repealed by 2000,c.22,s.4,

provided that no commission or other remuneration is paid or given to others in respect of such trades except for ministerial or professional services or for services performed by a registered broker;

(k) a trade in a security of a company that is exchanged 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 which in turn loses its existence by operation of law, or under which the existing companies merge into a new company;

(l) a trade by an issuer in a security of its own issue with an employee, senior officer or director, or an employee, senior officer or director of an affiliate, who is not induced to purchase by expectation of employment or continued employment, or with a trustee on behalf of such an employee, senior officer or director.

(m) a trade made by an issuer with a view to the sale of securities of its own issue if sales are made to not more than twenty-five purchasers and

(i) each individual purchaser purchases as principal, and all of the purchases are completed within a period of six months of the first purchase, except that subsequent sales to the same purchasers may be carried out if made in compliance with written agreements entered into during that six month period,

(ii) each individual purchaser is

(A) an investor who, by virtue of his net worth and investment experience or by virtue of consultation with or advice from a person or company who is not a promoter of the issuer whose securities are being offered and who is a broker, is able to evaluate the prospective investment on the basis of information respecting the investment presented to him by the issuer; or

(B) a senior officer or director of the issuer or his spouse, parent, brother, sister or child,

(iii) the offer and sale of the securities are not accompanied by an advertisement and no selling or promotional expenses have been paid or incurred in connection therewith, except for professional services or for services performed by a registered broker, and

(iv) no promoter of the issuer, other than a registered broker, has acted as a promoter of any other issuer which has traded in securities of its own issue pursuant to the exemption in this clause within the previous twelve months;

(n) a trade in securities secured by mortgage upon real estate or tangible personal property where the entire mortgage, together with all of the securities secured thereby or where all the securities secured thereby are sold at the one time;

(o) a trade in respect of which the regulations provide that registration is not required.

(p) trade by an issuer in a security of another issuer held by it that is distributed by it to holders of its securities as a dividend in kind;

(q) a trade by an issuer

(i) in a right, transferable or otherwise, granted by the issuer to holders of its securities to purchase additional securities of its own issue, and the issue of securities pursuant to the exercise of the right, or

(ii) in securities of another issuer held by it transferred or issued through the exercise of a right to purchase, convert or exchange previously granted by the issuer,

if the issuer has given the Registrar written notice stating the date, amount, nature and conditions of the proposed trade, including the approximate net proceeds to be derived by the issuer on the basis of the additional securities being fully taken up and paid for, and

(iii) the Registrar has not informed the issuer in writing, within ten days of the giving of the notice, that the Registrar objects to the proposed trade, or

(iv) the issuer has delivered to the Registrar information relating to the securities that is satisfactory to and accepted by the Registrar.

(4) Subject to the regulations, registration is not required to trade in the following securities: Exemption *re* securities

(a) bonds, debentures or other evidence of indebtedness,

(i) of or guaranteed by the Government of Canada or any province of Canada or by the Government of the United Kingdom or any foreign country or any political division thereof,

(ii) of any municipal corporation in Canada, including debentures issued for public, separate, secondary or vocational school purposes, or guaranteed by any municipal corporation in Canada, or secured by or payable out of rates or taxes levied under the law

of any province of Canada on property in such province and collectable by or through the municipality in which such property is situated,

(iii) of or guaranteed by a bank to which the *Bank Act* (Canada) applies, a trust company or loan corporation authorized to carry on business as a trust company or loan corporation in the province or an insurance company licensed under the *Insurance Act*, other than bonds, debentures or other evidence of indebtedness which are subordinate in right of payment to deposits placed with the issuer or guarantor of such bonds, debentures or other evidences of indebtedness;

(iv) of or guaranteed by the International Bank for Reconstruction and Development established by the Agreement for an International Bank for Reconstruction and Development approved by the *Bretton Woods Agreement Act* (Canada) R.S.C. 1985, Chap. B-7 if the bonds, debentures, or evidences of indebtedness are payable in the currency of Canada or the United States of America, or

(v) of or guaranteed by the Asian Development Bank or the Inter-American Development Bank, if the bonds, debentures or evidences of indebtedness are payable in the currency of Canada or the United States of America and if, with respect to such securities, such documents, certificates, reports, releases, statements, agreements or other information as may be required by the Registrar are filed;

(b) certificates or receipts issued by a trust company authorized to carry on business under the *Extra-provincial Corporations Registration Act* R.S.P.E.I. 1988, Cap. E-14 for moneys received for guaranteed investment;

(c) negotiable promissory notes or commercial paper maturing not more than one year from the date of issue, provided that each such note or commercial paper traded to an individual has a denomination or principal amount of not less than \$50,000;

(d) securities evidencing indebtedness due under any conditional sales contract or other title retention contract providing for the acquisition of personal property if such securities are not offered for sale to an individual;

(e) a bond, debenture or other evidence of indebtedness issued by an issuer organized exclusively for educational, benevolent, fraternal, charitable, religious or recreational purposes and not for profit, where no part of the net earnings of such issuer enures to the benefit of any security holder and no commission or other remuneration is paid in connection with the sale thereof;

- (f) securities issued by corporations to which the *Co-operative Associations Act* R.S.P.E.I. 1988, Cap. C-23 applies;
- (g) shares of a credit union within the meaning of the *Credit Unions Act* R.S.P.E.I. 1988, Cap. C-29;
- (h) securities of a private company where they are not offered for sale to the public;
- (i) securities issued and sold by a prospector for the purpose of financing a prospecting expedition;
- (j) securities in respect of which the regulations provide that registration is not required.

- (5) Registration as an adviser is not required to be obtained by
- (a) a bank listed in Schedule I or II to the *Bank Act* (Canada) or the Federal Business Development Bank incorporated under the *Federal Business Development Bank Act* (Canada), a loan corporation or a trust company authorized to carry on business under the *Extra-provincial Corporations Registration Act* R.S.P.E.I. 1988, Cap. E-14, or an insurance company licensed under the *Insurance Act* R.S.P.E.I. 1988, Cap. I-4;
  - (b) a lawyer, accountant, engineer or teacher;
  - (c) a registered dealer, or a partner, officer or employee of a registered dealer; and
  - (d) a publisher of or any writer for any newspaper, news magazine or business or financial publication of general and regular paid circulation distributed only to subscribers for value or to purchasers of the publication, who gives advice as an adviser only through that publication and has no interest directly or indirectly in any of the securities upon which the advice is given and receives no commission or consideration for giving the advice,
- where the performance of the service as an adviser is solely incidental to their principal business or occupation; or
- (e) such other persons or companies as are designated by the regulations. R.S.P.E.I. 1974, Cap. S-4, s.2; 1980,c.2,s.3; 1985,c.40,s.2; 2000,c.22,s.3,s.4; 2003,c.20,s.2,3; 2004,c.31,s.17.

Where registration as adviser not required

**3.** (1) Unless the Director of Corporations otherwise directs, the Registrar may, after the receipt by him of any application for registration, cause to be entered in a book kept for such purpose and open to public inspection, hereinafter called "the register", the name and address for service of the applicant, whereupon the applicant shall be considered to be registered as a broker or salesman as the case may be.

Registration of applicant as broker in the register

(2) The Registrar may cause a temporary entry to be made, designated as such, in the register, subject to cancellation at any time upon the order of the Director of Corporations.

Temporary entry

Expiration, renewal etc. of registration	(3) Registration expires, and may be changed or renewed as the regulations provide.
Terms or conditions, imposition of on registration License	(4) The Director of Corporations may attach to any registration such terms, conditions or restrictions as he thinks advisable and he may by notice in writing, vary, add, or omit any terms, conditions, or restrictions.
	(5) Subject to subsection (6), the Director, on reasonable and probable grounds, may <ul style="list-style-type: none"> <li>(a) refuse to grant or renew a registration; or</li> <li>(b) suspend or cancel a registration.</li> </ul>
Opportunity to be heard	(6) The Director shall give an applicant an opportunity to be heard respecting an application for registration or the renewal of a registration. R.S.P.E.I. 1974, Cap. S-4, s.3; 1980,c.2,s.3; 2000,c.22,s.5.
Application to be in writing; fee & bond	<b>4.</b> (1) Subject to section 1.1, every application under this Act or the regulations shall be made in writing upon the forms provided by the Registrar and shall be accompanied by such bond as may be required.
Address for service; sufficient service, what is deemed to be	(2) Every applicant, whether domiciled in Prince Edward Island or not, shall state in every application an address for service in Prince Edward Island, and all notices under this Act, or the regulations, and all legal process issued by or on behalf of any person or company, are sufficiently served for all purposes if posted by registered mail to the applicant at the latest address for service so stated, and in the case of a non-registered company where the officials are registered, to the latest known address of the person registered as the senior official of such company in Prince Edward Island.
Further information	(3) The Registrar may, and shall, when so directed by the Director of Corporations require any further information or material to be submitted by any applicant or any registered person or company within a specified time limit and may require verification by affidavit or otherwise, of any matter then or previously submitted. R.S.P.E.I. 1951,c.146,s.4; 1971,c.42,s.2; 1980,c.2,s.3; 2000,c.22,s.6; 2002,c.43,s.2.
Bond, amount, form & conditions of	<b>5.</b> (1) Every applicant for registration as a broker shall, before registration, submit a bond by the applicant or the person or company he represents as the Registrar may require.
Bond from a surety company, may be required	(2) The Registrar may, and when so directed by the Director of Corporations shall, require any applicant or any registered person or company within a specified time limit to deliver a bond by a surety company approved by the Director of Corporations or any other bond in such form and upon such condition as the regulations prescribe, and in

such amount as the regulations or the Director of Corporations shall require.

(3) The Registrar may, and when so directed by the Director of Corporations shall require a new bond of the kind mentioned in subsections (1) or (2) to be filed within a specified time limit. R.S.P.E.I. 1974, Cap. S-4, s.5; 1980,c.2,s.3; 1985,c.40,s.3.

6. (1) Any bond mentioned in section 5 is forfeited and the sum named therein becomes due and owing by the person or company bound thereby as a debt to Her Majesty in right of the Province of Prince Edward Island, when there has been filed with the Registrar the Director of Corporations' certificate that the broker in respect of whose conduct the bond is conditioned, or any official of the broker, has, in connection with a trade in a security, been

- (a) in the case of the bond mentioned in subsection 5(1)
  - (i) charged with any criminal offence, or
  - (ii) found upon investigation by the Director of Corporations or his representative to have committed a fraudulent act; or
- (b) in the case of the bond mentioned in subsection 5(2)
  - (i) convicted of a criminal offence,
  - (ii) convicted of an offence against any provision of this Act or the regulations,
  - (iii) enjoined by the Supreme Court or a judge thereof, otherwise than by an interim injunction, or
  - (iv) a party to civil proceedings in the courts as a result of which final judgment has been given against such person, company or official in connection with a trade in a security, where such judgment is based upon a finding of fraud.

(2) Any bond mentioned in section 5 is forfeited and the sum named therein becomes due and owing by the person or company bound thereby, as a debt to Her Majesty in right of the Province of Prince Edward Island, where there has been filed with the Registrar a certificate signed by the Director of Corporations that proceedings by or in respect of the broker or salesman in respect of whose conduct the bond is conditioned, have been taken under the *Bankruptcy Act*, or by way of winding up.

(3) The Director of Corporations may assign any bond forfeited under subsections (1) or (2) or may pay over any moneys recoverable thereunder to any person, or to the Prothonotary of the Supreme Court in trust for those persons and companies as may become judgment creditors of the person or company bonded, or to any trustee, custodian, interim receiver, receiver or liquidator, of such person or company as the case may be; the assignment or payment over to be in accordance with and

upon conditions set forth in the regulations or in any special order of the Lieutenant Governor in Council. R.S.P.E.I. 1974, Cap. S-4, s.6; 1980,c.2,s.3.

Orders by Director  
of Corporations *re*  
registration

7. (1) The Director of Corporations may order that

- (a) any application for registration, renewal, or change of registration shall or shall not be granted where on reasonable grounds the Director considers the order to be necessary;
- (b) the application of any person for registration shall not be granted where it appears that such person proposes to use or is using a trading name other than his own, or that of his partner, where the trading name is apt to lead the public to believe it is that of a business firm of longer established standing in Prince Edward Island, or is calculated to conceal from the public the identity of the applicant, or is for any reason objectionable;
- (c) any temporary entry in the register shall be made, suspended or cancelled where on reasonable grounds the Director considers the order to be necessary;
- (d) any registration shall be reduced to a temporary registration or suspended or cancelled upon
  - (i) any proceedings being taken by or in respect of the broker under the *Bankruptcy Act* or by way of winding up, or
  - (ii) suspension from any stock exchange of any broker or any representative upon any stock exchange of any broker, or
  - (iii) institution of criminal proceedings against the broker or any official of the broker, or
  - (iv) conviction of the broker or an official of the broker of any offence against this Act or the regulations;
- (e) the registration of any broker or salesman shall be suspended for any period or cancelled by reason of default in filing a bond when required under the provisions of subsections 5(2) and (3);
- (f) the registration of any broker or salesman be suspended as provided in section 18.

Entry of order in  
register

(2) The Registrar upon receiving any order of the Director of Corporations suspending or cancelling any registration shall cause immediate entry thereof to be made in the register, whereupon the suspension or cancellation shall become effective forthwith, but notice thereof and of the refusal of any application shall be sent to the broker or salesman concerned.

Further application  
if circumstances  
changed

(3) Notwithstanding any order of the Director of Corporations a further application may be made upon new or other material, or where it is clear that material circumstances have changed. R.S.P.E.I. 1974, Cap. S-4, s.7; 1980,c.2,s.3; 2000,c.22,s.7.

PART II  
REGISTRATION OF SECURITIES

**8.** (1) No person or company shall engage in the distribution of a security on his own account or on behalf of any other person or company, unless a preliminary prospectus and a prospectus for such security have been filed and receipts therefor obtained from the Registrar. Prospectus required

(2) A preliminary prospectus shall substantially comply with the requirements of this Act and the regulations 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. Preliminary prospectus

(3) The Registrar shall issue a receipt for a preliminary prospectus after the filing thereof. 1985,c.40,s.4; 2000,c.22,s.8. Receipt for preliminary prospectus

**8.1** (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 this Act and the regulations. Prospectus

(2) The prospectus shall contain or be accompanied by such financial statement, reports or other documents as are required by this Act or the regulations. 1985,c.40,s.4. Supplemental material

**8.2** Notwithstanding sections 8 and 8.1, the Registrar may issue a receipt for a preliminary prospectus or a prospectus, where Exception

(a) the preliminary prospectus or the prospectus is substantially in compliance with the laws and policies of another jurisdiction;

(b) the preliminary prospectus or prospectus, material ancillary to the filing thereof, and any material required to be filed by the issuer in the other jurisdiction are filed with the Registrar; and

(c) a receipt is issued for the preliminary prospectus or prospectus by the other jurisdiction,

and it appears to the Registrar that to do so would not be prejudicial to the public interest. 1985,c.40,s.4.

**8.3** (1) Where a material adverse change occurs after a receipt is obtained for a preliminary prospectus filed in accordance with subsection 8(2) and before the receipt is obtained for the prospectus, an amendment to the preliminary prospectus shall be filed as soon as practicable. Amendment to preliminary prospectus on material change

(2) The Registrar shall issue a receipt for an amendment to a preliminary prospectus filed pursuant to subsection (1) forthwith after the filing thereof. Receipt for amendment to preliminary prospectus



Delivery of amendment	(3) An amendment to a preliminary prospectus shall, forthwith after a receipt has been obtained, be forwarded to every recipient of the preliminary prospectus according to the record maintained under section 8.12. 1985,c.40,s.4.
Amendment to prospectus on material change	<b>8.4</b> (1) Where there is a material change after a receipt for a prospectus filed in accordance with subsection 8(1) is obtained but prior to the completion of the distribution under such prospectus, an amendment to the prospectus shall be filed as soon as practicable.
Distribution of additional securities	(2) Where securities are to be distributed in addition to the securities previously described in a prospectus, after a receipt for the prospectus is obtained but prior to the lapse date of the prospectus, an amendment to the prospectus shall be filed.
Alteration of term or conditions of offering	(3) Where it is proposed that the terms or conditions of the offering described in a prospectus be altered, after a receipt for the prospectus is obtained but prior to the completion of the distribution under the prospectus, an amendment to the prospectus shall be filed.
Receipt for amendment to prospectus	(4) The Registrar shall issue a receipt for an amendment to a prospectus filed pursuant to this section and section 8.8, with such changes as the context may require, is applicable.
Distribution not to proceed	(5) A distribution or an additional distribution shall not be proceeded with until a receipt for an amendment to a prospectus that is required to be filed under this section is obtained from the Registrar. 1985,c.40,s.4.
Certificate by issuer	<b>8.5</b> A prospectus filed under subsection 8(1) shall contain a certificate in the following 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: The foregoing constitutes full, true and plain disclosure of all material facts relating to the securities offered by this prospectus as required by the <i>Securities Act</i> and the regulations thereunder. 1985,c.40,s.4.
Certificate of underwriter	<b>8.6</b> Where there is an underwriter, a prospectus shall contain a certificate in the following 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: To the best of our knowledge, information and belief, the foregoing constitutes full, true and plain disclosure of all material facts relating to the securities offered by this prospectus as required by the <i>Securities Act</i> and the regulations thereunder. 1985,c.40,s.4.

- 8.7** Every prospectus shall contain a statement of the rights given to a purchaser by sections 8.16 and 16. 1985,c.40,s.4. Statement of rights
- 8.8** (1) Subject to subsection (2), the Registrar shall issue a receipt for a prospectus filed under this Part unless it appears to him that it is not in the public interest to do so. Issuance of receipt
- (2) The Registrar shall not issue a receipt for a prospectus if it appears to him that Refusal of receipt
- (a) the prospectus or any document required to be filed therewith
    - (i) fails to comply in any substantial respect with any of the requirements of this Part or the regulations,
    - (ii) contains any statement, promise, estimate or forecast 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 the acquisition of property or the provision of services;
  - (c) the proceeds from the sale of the securities to which the prospectus relates that are to be paid into the treasury of the issuer, together with other resources or expertise of the issuer, are insufficient to accomplish the purpose of the issue stated in the prospectus;
  - (d) having regard to the financial condition of the issuer or an officer, director, promoter, or a person or company or combination of persons or companies holding sufficient of the securities of the issuer to affect materially the control of the issuer, the issuer cannot reasonably be expected to be financially responsible in the conduct of its business;
  - (e) the past conduct of the issuer or an officer, director, promoter, or a person or company or combination of persons or companies holding sufficient of the securities of the issuer to affect materially the control of the issuer affords reasonable grounds for belief that the business of the issuer will not be conducted with integrity and in the best interests of its security holders;
  - (f) such escrow or pooling agreement as the Registrar considers necessary or advisable with respect to securities has not been entered into;
  - (g) such agreement as the Registrar considers necessary or advisable to accomplish the objects indicated in the prospectus for the holding in trust of the proceeds payable to the issuer from the sale of the securities pending the distribution of the securities has not been entered into;
  - (h) in the case of a prospectus filed by a finance company, as defined in the regulations,

(i) the plan of distribution of the securities offered is not acceptable,

(ii) the securities offered are not secured in such manner, on such terms and by such means as are required by the regulations, or

(iii) such finance company does not meet such financial and other requirements and conditions as are specified in the regulations; or

(i) a person or company who has prepared or certified any part of the prospectus or is named as having prepared or certified a report or valuation used in or in connection with a prospectus is not acceptable to him.

Hearing

(3) The Registrar shall not refuse to issue a receipt under subsections (1) or (2) without giving the person or company who filed the prospectus an opportunity to be heard. 1985,c.40,s.4.

Refiling of prospectus

**8.9** (1) No distribution of a security to which subsection 8(1) applies shall continue after a date being twelve months from the date of the prospectus relating to such security, which shall be the lapse date, unless a new prospectus that complies with this Part is filed and a receipt therefor is obtained from the Registrar.

*Idem*

(2) A distribution may be continued for a further twelve months 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 Registrar within the twenty days following the lapse date of the previous prospectus.

*Idem*

(3) The continued distribution of securities after the lapse date does not contravene subsection (1) unless and until any of the conditions of subsection (2) are not complied with.

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.

Extension of time

(5) The Registrar may, upon an application of a reporting issuer, extend, subject to such terms and conditions as he may impose, the times provided by subsection (2) where in his opinion it would not be prejudicial to the public interest to do so. 1985,c.40,s.4.

**8.10** (1) In this section, “waiting period” means the interval between the issuance by the Registrar of a receipt for a preliminary prospectus relating to the offering of a security and the issuance of a receipt for the prospectus.

“waiting period” defined

(2) Notwithstanding subsection 8(1), it is permissible during the waiting period

Distribution of material during 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. 1985,c.40,s.4.

**8.11** Any broker distributing a security to which section 8.10 applies shall 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. 1985,c.40,s.4.

Distribution of preliminary prospectus

**8.12** Any broker distributing a security to which this section applies shall maintain a record of the names and addresses of all persons and companies to whom the preliminary prospectus has been forwarded. 1985,c.40,s.4.

Distribution list

**8.13** Where it appears to the Registrar that a preliminary prospectus is defective in that it does not substantially comply with the requirements of this Act and the regulations as to form and content, he may without giving notice, order that the trading permitted by subsection 8.10(2) in the security to which the preliminary prospectus relates shall cease until a revised preliminary prospectus satisfactory to the Registrar is filed and forwarded to each recipient of the defective preliminary prospectus according to the record maintained under section 8.12. 1985,c.40,s.4.

Defective preliminary prospectus

**8.14** From the date of the issuance by the Registrar of a receipt for a prospectus relating to a security, a person or company trading in the security in a distribution, either on his own account or on behalf of any other person or company, may distribute the prospectus, any document

Material given on distribution

filed with or referred to in the prospectus and any notice, circular, advertisement or letter of the nature described in clause 8.10(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. 1985,c.40,s.4.

Order to cease trading

**8.15** (1) Where it appears to the Registrar, 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 8.8(2) exist, the Registrar may order that the distribution of the securities under the prospectus shall cease.

Hearing

(2) No order shall be made under subsection (1) without a hearing unless in the opinion of the Registrar 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 Registrar may extend the order until the hearing is concluded.

Notice

(3) An notice of every order made under this section shall be served upon the issuer of 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 Registrar for the prospectus is revoked. 1985,c.40,s.4.

Obligation to deliver prospectus

**8.16** (1) A broker not acting as agent of the purchaser who receives an order or subscription for a security offered in a distribution to which subsection 8(1) or section 8.9 is applicable shall, unless he 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.

Withdrawal from purchase

(2) An agreement of purchase and sale referred to in subsection (1) is not binding upon the purchaser, if the broker 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.

Application of subsection (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).

(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.

Time of receipt

(5) The receipt of the latest prospectus or any amendment to the prospectus by a broker 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.

Receipt of prospectus by agent

(6) The receipt of the notice referred to in subsection (2) by a broker 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.

Receipt of notice by agent

(7) For the purpose of this section, a broker shall not be considered to be acting as agent of the purchaser unless the broker 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.

Broker as agent

(8) The onus of proving that the time for giving notice under subsection (2) has expired is upon the broker from whom the purchaser has agreed to purchase the security. 1985,c.40,s.4.

Onus of proof

**9.** Repealed by 2002,c.43,s.3.

Fee

**10.** The information filed in compliance with section 8 shall be made available to the public under such regulations as the Registrar may prescribe. R.S.P.E.I. 1974, Cap. S-4, s.10; 2002,c.43,s.4.

Information available to public, where

**11.** Repealed by 1985,c.40,s.5.

Information incomplete, inaccurate, etc. Prospectus, filing

**12.** Repealed by 1985,c.40,s.6.

**13.** (1) Subsection 8(1) does not apply to a distribution where

Prospectus not required

(a) the purchaser is

(i) a bank to which the *Bank Act* (Canada) applies or the Federal Business Development Bank incorporated under the *Federal Business Development Bank Act* (Canada),

- (ii) a loan corporation or trust company authorized to carry on business under the *Extra-provincial Corporations Registration Act* R.S.P.E.I. 1988, Cap. E-14,
  - (iii) an insurance company licensed under the *Insurance Act*,
  - (iv) a subsidiary of any of the persons or companies referred to in subclause (i), (ii) or (iii) where the bank, loan corporation, trust company or insurance company, as the case may be, owns beneficially all of the voting securities of such subsidiary,
  - (v) Her Majesty in right of Canada or any province or territory of Canada, or
  - (vi) any municipal corporation or public board or commission in Canada,
- who purchases as principal;
- (b) the trade is an isolated trade by or on behalf of an issuer in a security of its own issue, for the issuer's account, where the trade is not made in the course of continued and successive transactions of a like nature, and is not made by a person or company whose usual business is trading in securities;
  - (c) the purchaser purchases as principal, if the trade is in a security which has an aggregate acquisition cost to such purchaser of not less than \$97,000;
  - (d) the trade is to a lender, pledgee, mortgagee or other encumbrancer from the holdings of any person, company or combination of persons or companies described in subclause 1(f)(iii) for the purpose of giving collateral for a *bona fide* debt;
  - (e) the trade is made by an issuer
    - (i) in a security of its own issue that is distributed by it to holders of its securities as a stock dividend or other distribution out of earnings or surplus,
    - (ii) in a security whether of its own issue or not that is distributed by it to holders of its securities as incidental to a *bona fide* reorganization or winding up of the issuer or distribution of its assets for the purpose of winding up its affairs pursuant to the laws of the jurisdiction in which the issuer was incorporated, organized or continued, or
    - (iii) in securities of its own issue transferred or issued through the exercise of a right to purchase, convert or exchange previously granted by the issuer,provided that no commission or other remuneration is paid or given to others in respect of such distribution except for ministerial or professional services or for services performed by a registered broker;

- (f) the trade is made in a security of a company that is exchanged 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 which in turn loses its existence by operation of law, or under which the existing companies merge into a new company;
- (g) the trade is made by an issuer in a security of its own issue as consideration for a portion of all of the assets of any person or company, if the fair value of the assets so purchased is not less than \$100,000;
- (h) the trade is made by an issuer in a security of its own issue with an employee, senior officer or director or an employee, senior officer or director of an affiliate who is not induced to purchase by expectation of employment or continued employment, or to a trustee on behalf of such an employee, senior officer or director;
- (i) the trade is made by an issuer with a view to the sale of securities of its own issue if sales are made to not more than twenty-five purchasers and,
- (i) each purchaser purchases as principal, and all of the purchases are completed within a period of six months of the first purchase except that subsequent sales to the same purchasers may be carried out if made in compliance with written agreements entered into during that six month period,
  - (ii) each purchaser is
    - (A) an investor who, by virtue of his net worth and investment experience or by virtue of consultation with or advice from a person or company who is not a promoter of the issuer whose securities are being offered and who is a registered adviser or a registered broker, is able to evaluate the prospective investment on the basis of information respecting the investment presented to him by the issuer, or
    - (B) a senior officer or director of the issuer or his spouse, parent, brother, sister or child,
  - (iii) the offer and sale of the securities are not accompanied by an advertisement and no selling or promotional expenses have been paid or incurred in connection therewith, except for professional services or for services performed by a registered dealer, and
  - (iv) no promoter of the issuer, other than a registered broker, has acted as a promoter of any other issuer which has traded in securities of its own issue pursuant to the exemption in this clause within the previous twelve months.



(j) a trade by an issuer in a security or another issuer held by it that is distributed by it to holders of its securities as a dividend in kind;

(k) a trade by an issuer

(i) in a right, transferable or otherwise, granted by the issuer to holders of its securities to purchase additional securities of its own issue and the issue of securities pursuant to the exercise of the right, or

(ii) in securities of another issuer held by it transferred or issued through the exercise of a right to purchase, convert or exchange previously granted by the issuer,

if the issuer has given the Registrar written notice stating the date, amount, nature and conditions of the proposed trade, including the approximate net proceeds to be derived by the issuer on the basis of such additional securities being fully taken up and paid for, and

(iii) the Registrar has not informed the issuer in writing, within ten days of the giving of the notice, that the Registrar objects to the proposed trade, or

(iv) the issuer has delivered to the Registrar information relating to the securities that is satisfactory to and accepted by the Registrar.

Discretion to  
remove exemptions

(2) The Registrar may, where in his opinion such action is in the public interest, order, subject to such terms and conditions as he may impose, that any or all of the exemptions contained in subsections 2(3), (4) and subsection (1) do not apply to the person or company named in the order.

Report

(3) Subject to the regulations, where a trade has been made pursuant to clause (1)(c) or (i), the vendor shall within ten days file a report prepared and executed in accordance with a form approved by the Director. 1985,c.40,s.7; 2000,c.22,s.9; 2003,c.20,s.4; 2004,c.31,s.17.

Exemption from  
registration, etc.

**14.** The Registrar may, on the application of any interested person or company, rule that any trade, intended trade, security, person or company is not subject to section 2 or 8 where he is satisfied that to do so would not be prejudicial to the public interest, and he may impose such terms and conditions as he considers necessary. 1981, c.34, s.1; 1990, c.59, s.1.

Prospectus not  
required

**14.1** Sections 8 and 8.9 do not apply to a distribution of securities

(a) referred to in subsection 2(4); or

(b) that are listed and posted for trading on any stock exchange recognized for the purpose of this section where the securities are distributed through the facilities of the stock exchange pursuant to the rules of the stock exchange, provided that a statement of material facts, which shall comply as to form and content with the regulations, is filed with and is accepted for filing by the stock exchange. 1990, c.59, s.2.

## II.1 TRADING IN SECURITIES GENERALLY

**15.** No person or company shall make any representation, written or oral, that the Registrar has in any way passed upon the financial standing, fitness or conduct of any registrant or upon the merits of any security or issuer. 2000,c.22,s.10; 2002,c.43,s.5. Advertising approval by Registrar

## PART III CIVIL LIABILITY

**16.** (1) Where a prospectus together with any amendment to the prospectus contains a misrepresentation, a purchaser who purchases a security offered thereby during the period of distribution or distribution to the public shall be deemed to have relied on such misrepresentation if it was a misrepresentation at the time of purchase and has a right of action for damages against Liability for misrepresentation in prospectus

- (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 8.6;
- (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 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, he may elect to exercise a right of rescission against such person, company or underwriter, in which case he shall have no right of action for damages against such person, company or underwriter.

(2) No person or company is liable under subsection (1) if he proves that the purchaser purchased the securities with knowledge of the misrepresentation. Defence

(3) No person or company, other than the issuer or selling security holder, is liable under subsection (1) if he proves Idem

- (a) that the prospectus or the amendment to the prospectus was filed without his knowledge or consent, and that, on becoming aware of its filing, he 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 securities by the purchaser, on becoming aware of any misrepresentation in the prospectus or an amendment to the prospectus he withdrew his 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 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 own authority as an expert or purporting to be a copy of or an extract from his own report, opinion or statement as an expert but that contains a misrepresentation attributable to failure to represent fairly his report, opinion or statement as an expert,

(i) he 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 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 report, opinion or statement as an expert, he forthwith advised the Registrar and gave reasonable general notice that such use had been made and that he 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 had reasonable grounds to believe and did believe that the statement was true.

*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 own authority as an expert or purporting to be a copy of or an extract from his own report, opinion or statement as an expert unless he

(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.

(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

(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.

(6) No underwriter is liable for more than the total public offering price represented by the portion of the distribution under written by him.

*Idem*  
Limitation *re*  
underwriters

(7) In an action for damages pursuant to subsection (1), the defendant is not liable for all or any portion of such damages that he proves do not represent the depreciation in value of the security as a result of the misrepresentation relied upon.

Limitation in action  
for damages

(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.

Joint and several  
liability

(9) In no case shall the amount recoverable under this section exceed the price at which the securities were offered to the public.

Limitation *re*  
amount recoverable

(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. 1985,c.40,s.8.

No derogation of  
rights

**16.1** 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 8.16(1) has a right of action for rescission or damages against the broker or offeror who failed to comply with the applicable requirement. 1985,c.40,s.8.

Liability of broker  
or offeror

**16.1.1** (1) Where an offering memorandum contains a misrepresentation, a purchaser who purchases a security offered by the offering memorandum during the period of distribution shall be deemed to have relied on the misrepresentation if it was a misrepresentation at the time of purchase and

Liability for  
misrepresentation in  
offering  
memorandum

- (a) has a right of action for damages against
  - (i) the seller,
  - (ii) every director of the seller at the date of the offering memorandum, and
  - (iii) every person who signed the offering memorandum; or
- (b) may elect to exercise a right of rescission against the seller, in which case the purchaser has no right of action for damages against any person or company under clause (a).

Defence

(2) No person or company is liable under subsection (1) if the person or company proves that the purchaser purchased the securities with knowledge of the misrepresentation.

*Idem*

(3) No person or company is liable under subsection (1) if the person or company proves that

- (a) the offering memorandum was sent or delivered to the purchaser without the person's or company's knowledge or consent and that, on becoming aware of its delivery, the person or company gave reasonable general notice that it was delivered without the person's or company's knowledge or consent;
- (b) after delivery of the offering memorandum and before the purchase of the securities by the purchaser, on becoming aware of any misrepresentation in the offering memorandum, the person or company withdrew the person's or company's consent to the offering memorandum, and gave reasonable general notice of the withdrawal and the reason for it; or
- (c) with respect to any part of the offering memorandum purporting
  - (i) to be made on the authority of an expert, or
  - (ii) to be a copy of, or an extract from, a report, an opinion or a statement of an expert,
 the person or company had no reasonable grounds to believe and did not believe that
  - (iii) there had been a misrepresentation, or
  - (iv) the relevant part of the offering memorandum
    - (A) did not fairly represent the report, opinion or statement of the expert, or
    - (B) was not a fair copy of, or an extract from, the report, opinion or statement of the expert.

*Idem*

(4) No person or company is liable under subsection (1) with respect to any part of an offering memorandum not purporting

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

unless the person or company

- (c) failed to conduct a reasonable investigation to provide reasonable grounds for a belief that there had been no misrepresentation; or  
 (d) believed that there had been a misrepresentation.

(5) Subsections (3) and (4) do not apply to the seller if the seller is also the issuer. Application to issuer

(6) 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. Limitation in action for damages

(7) The liability of all persons or companies referred to in clause (1)(a) is joint and several with respect to the same cause of action. Joint and several liability

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

(9) The amount recoverable by a plaintiff under this section may not exceed the price at which the securities were offered under the offering memorandum. Limitation *re* amount recoverable

(10) The right of action for rescission or damages conferred by this section is in addition to and not in derogation from any other right the purchaser may have. No derogation of rights

(11) If a misrepresentation is contained in a record incorporated by reference in, or deemed incorporated into, an offering memorandum, the misrepresentation is deemed to be contained in the offering memorandum. Incorporation by reference

(12) For greater certainty, in this section “seller” includes the issuer where the securities are distributed by the issuer. seller

(13) This section only applies 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 8 of this Act that requires the delivery of an offering memorandum or that is specified in the regulations for the purposes of this section. 2003,c.20,s.5. Application

**16.2** Unless otherwise provided in this Act, no action shall be commenced to enforce a right created by this Part more than Limitation

- (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) one year 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. 1985,c.40,s.8.

#### PART IV INVESTIGATION AND ACTION BY THE DIRECTOR OF CORPORATIONS

Examination to  
determine  
fraudulent act or  
offence, powers

**17.** (1) The Director of Corporations, or any person to whom as his representative he may in writing delegate such authority, may examine any person, company, property, or thing at any time in order to ascertain whether any fraudulent act, or any offence against this Act or the regulations has been, is being, or is about to be committed, and for that purpose has the same power to summon and enforce the attendance of witnesses and compel them to give evidence on oath and to produce documents, records and things as is vested in the Supreme Court or a judge thereof for the trial of civil cases except that

- (a) the rules of court, or of law relating to the service of subpoenas upon and to the payment of conduct money or witness fees to witnesses do not apply;
- (b) no person is entitled to claim any privilege in respect of any document, record or thing asked for, given or produced on the ground that he might be incriminated or exposed to a penalty or to civil litigation thereby and no evidence given is privileged except under the *Evidence Act* R.S.P.E.I. 1988, Cap. E-11 and the *Canada Evidence Act* R.S.C. 1985, Chap. C-5; and
- (c) no provisions of the *Evidence Act* shall exempt any bank or any officer or employee thereof from the operation of this section.

Accountants &  
other experts,  
appointment

(2) When the Director of Corporations or his representative is about to examine or is examining any person or company under this section, the Director of Corporations may appoint an accountant or other expert to examine documents, records, properties and matters and report thereon to him.

Refusal not  
permitted

- (3) No person or company shall
- (a) fail without reasonable excuse to provide information required by the Registrar, within the time limited;
  - (b) fail without reasonable excuse to appear in response to a summons for examination issued by the Director pursuant to subsection (1); or

(c) refuse to give evidence, answer any question or to produce anything that would be required in an action under this Act.

(3.1) Failure by a person or a company to comply with subsection (3) is *prima facie* evidence upon which

Grounds for finding, injunction or conviction

- (a) the Director may base an affirmative finding respecting a fraudulent act;
- (b) the Supreme Court may grant an interim or permanent injunction; and
- (c) a judge may base a conviction for an offence against this Act or the regulations.

(4) No person or company, other than the Director or the Registrar, or a representative of either of them, shall disclose any information or evidence obtained or the name of any witness examined or sought to be examined pursuant to subsection (1). R.S.P.E.I. 1974, Cap. S-4, s.16; 1980,c.2,s.3; 2000,c.22,s.11.

No disclosure

**18.** If the Director of Corporations or his representative upon investigation finds that any fraudulent act, or any offence against this Act, or the regulations, has been, is being, or is about to be committed, the Director of Corporations

Fraudulent act or offence against Act found, powers of Director of Corporations

- (a) may where a registered adviser, broker, company or salesman is in the opinion of the Director concerned therein, order that the adviser, broker, company or salesman and any other registered adviser, broker, company or salesman connected with the same organization, be suspended from registration for any period not exceeding thirty days;
- (b) may where he considers a suspension for thirty days inadequate, or where any unregistered person or company is, in his opinion, concerned in such fraudulent act, or in such offence, proceed under section 19 or otherwise under this Act or the regulations; and
- (c) may, for the purpose of public protection, give notice of the act or offence, to the public by advertisement or otherwise, or to any person or company by letter or otherwise. R.S.P.E.I. 1974, Cap. S-4, s.17; 1980,c.2,s.3; 2000,c.22,s.12.

**19.** (1) The Supreme Court or a judge thereof may, upon the application of the Director of Corporations, where it is made to appear that any fraudulent act, or any offence against this Act or the regulations has been, is being, or is about to be committed, by order enjoin

Supreme Court, powers upon application of Director of Corporations

- (a) any registered broker, company or salesman or any person or company implicated with any of them in the same matter from trading in any security whatsoever, absolutely or for such period of time as shall seem just, and any such injunction by that very fact



suspends the registration of any registered person or company named in the order during the same period; or  
 (b) any person or company from trading in any security whatever, or in any specific security, or from committing any specific act or series of acts, absolutely or for such period of time as shall seem just.

Procedure for application

(2) The application of the Director of Corporations under subsection (1) may be made, without any action being instituted, either  
 (a) by an application for an interim injunction which shall, if granted, remain in force for ten days from the date thereof unless the time is extended or the originating motion mentioned in clause (b) is sooner heard and determined; or  
 (b) by notice of motion which, if an interim injunction has been granted, shall be served within five days and returnable within ten days from the date of the interim injunction.

Evidence obtained by Director of Corporations admissible

(3) Any information, evidence, exhibit or thing obtained by the Director of Corporations or his representative or the Registrar under this Act or the regulations, or copies thereof, or statement that a person or company is or is not registered or other data concerning registration certified by the Director of Corporations or the Registrar, without proof of the office or signature of the person certifying, shall, so far as relevant, be receivable in evidence for all purposes in any action, proceeding or prosecution, and in proceedings under this section only, the evidence of a witness may be used against him, notwithstanding anything in the *Evidence Act*. R.S.P.E.I. 1974, Cap. S-4, s.18; 1980,c.2,s.3.

Examination and dealing with funds or securities held in province for person being examined

**20.** (1) The Director of Corporations may  
 (a) when he is about to examine or during or after the examination of any person or company under section 17;  
 (b) when he is about to apply for or has applied for or has obtained an injunction, interim or otherwise, against any person or company under section 19; or  
 (c) where criminal proceedings that in his opinion are connected with or arise out of any security or any trade therein, or out of any business conducted by the accused, are about to be or have been instituted against any person in writing or by telegram,  
 direct any person or company having in Prince Edward Island on deposit or under control or for safe keeping any funds or securities of the person or company so to be or actually examined, enjoined or charged, to hold such funds or securities or direct the person or company so to be or actually examined, enjoined or charged to refrain from withdrawing any such funds or securities from any other person or company having any of

them on deposit, under control or for safe keeping or to hold all funds or securities of clients or others in his possession or control, in trust for any interim receiver, custodian, trustee, receiver or liquidator, appointed under the *Bankruptcy Act*, the *Supreme Court Act*, the *Winding-up Act* or until the Director of Corporations in writing revokes such direction or consents to release any particular fund or security from such direction.

(1.1) A direction made by the Director pursuant to subsection (1) shall apply to funds or securities in a stock exchange, clearing house, or securities in process of transfer by a transfer agent

(a) only where specifically stated in the direction; and

(b) in the case of a bank, loan or trust company, only to the offices, branches or agencies named in the direction.

Application of  
direction

(2) Any person or company in receipt of a direction given under subsection (1), if in doubt as to the application of the direction to any funds or security, or in case of a claim being made thereto by any person or company, not named in the direction, may apply to the Supreme Court or a judge thereof, who may direct the disposition of the fund or security and may make such order as to costs as may seem just.

Application by  
holder of security  
for direction from  
Supreme Court

(3) The Director of Corporations, whenever Her Majesty becomes a creditor of any person or company, in respect of a debt to the Crown, arising from sections 5 and 6, may take proceedings under the *Bankruptcy Act*, the *Supreme Court Act* or the *Winding-up Act* for the appointment of an interim receiver, custodian, trustee, receiver or liquidator. R.S.P.E.I. 1974, Cap. S-4, s.19; 1980,c.2,s.3; 2000,c.22,s.13.

Proceedings for  
appointment of  
interim receiver,  
liquidator etc.

#### PART IV.1

##### REVIEW OF DIRECTOR'S DECISIONS, APPEALS

**20.1** (1) A person or company directly affected by a decision of the Director under this Act, may request a review of the decision, by notice in writing to the Director within thirty days of the date of the decision.

Review of  
Director's decision

(2) The Director shall hold a review hearing where a request is made in accordance with subsection (1), and the Director may

Review hearing

(a) confirm the previous decision; or

(b) vary the decision as the Director considers appropriate in the circumstances.

(3) A decision under review pursuant to this section takes effect immediately, unless the Director orders the decision to be stayed pending the review. 2000,c.22,s.14.

Decision effective  
immediately

Appeal	<b>20.2.</b> (1) A person or a company, directly affected by a decision pursuant to subsection 20.1(2), may appeal the decision to the Supreme Court within thirty days of the decision.
Decision effective immediately	(2) Unless the court otherwise orders, a decision under appeal under this section takes effect immediately. 2000,c.22,s.14.

#### PART V AUDIT, ACCOUNTS, INFORMATION

Inspection of books & accounts of brokers	<b>21.</b> The books and accounts of every broker, registered under this Act, may be inspected at least twice in every calendar year by the Director of Corporations or his representative; the dates of the inspections are at the discretion of the Director of Corporations and no notice shall be given to any broker whose books and accounts are to be inspected, of the date on which the inspection takes place. R.S.P.E.I. 1974, Cap. S-4, s.20; 1980,c.2,s.3.
Not to withhold, conceal information, etc.	<b>22.</b> No person or company shall withhold, destroy or conceal any books of account, securities, cash, documents, bank accounts, vouchers, correspondence or records of any description, or refuse to give any information or thing reasonably required by the Director, or any person acting under the direction of the Director, in the administration of this Act. R.S.P.E.I. 1974, Cap. S-4, s.21; 1980,c.2,s.3; 2000,c.22,s.15.
Alteration or supplement of book & record keeping	<b>23.</b> The Director of Corporations may, in writing, require any person or company whose affairs have been inspected, or are being inspected, to alter, supplement or replace any system of book or record keeping in any manner. R.S.P.E.I. 1974, Cap. S-4, s.22; 1980,c.2,s.3.
Compliance with direction	<b>24.</b> (1) No person or company shall fail to comply with a direction of the Director. R.S.P.E.I. 1974, Cap. S-4, s.23; 1980,c.2,s.3.
Suspension for failure to comply	(2) The Director may suspend a person or company from registration under this Act for failure to comply with a direction of the Director. 2000,c.22,s.16.

#### PART VI GENERAL PROVISIONS

Judge not acting in a personal capacity	<b>25.</b> (1) A judge of the Supreme Court, in exercising any of the powers conferred upon the judge, by this Act, shall be deemed to act as a judge of the court and not in a personal capacity.
Director of Corporations, acts as agent of Crown	(2) The Director of Corporations shall, in all proceedings under this Act or the regulations, be deemed to be acting as the representative of

Her Majesty, in the right of Prince Edward Island, and not in a personal capacity.

(3) The *Supreme Court Act* and the rules of court made thereunder, so far as they are applicable to proceedings of a like nature, including those relating to appeals and to the enforcement of judgments and orders apply to every proceeding before the Supreme Court or a judge thereof under this Act, except the service of notices and other legal process, shall be in accordance with subsection 4(2) and that costs may be awarded to but not against the Director of Corporations. R.S.P.E.I. 1974, Cap. S-4, s.24; 1980,c.2,s.3. *Supreme Court Act, application of*

**25.1** (1) The Director may appoint one or more persons to make such investigation with respect to a matter as the Director considers expedient, *Investigators*

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

(b) to assist in the due administration of the securities laws or the regulation of the capital markets in another jurisdiction.

(2) An investigator may enter the business premises of any person or company during business hours and inspect any records or other information used in the business or in any way related to the business of the person or company within the meaning of this Act. *Inspect business premises*

(3) An investigator shall present identification or other document of appointment, signed by the Director, to the person or company being investigated. *Identification*

(4) Subsection (2) does not apply to documents or other information in the possession of a lawyer and subject to solicitor client privilege. *Privileged documents*

2000,c.22,s.17.

**25.2** (1) Where a person or company being investigated pursuant to section 17 does not cooperate with the investigation or prevents the investigator from conducting the investigation, the Director may apply *ex parte* to the court for a search warrant authorizing an investigator to enter and search any building or place and seize any items specified in the search warrant. *Search warrant*

(2) The court may order a search warrant under this section where it is satisfied that there are reasonable and probable grounds for believing that documents or information respecting an investigation under this Act may be present in the premises or place to be searched. *Grounds*

(3) The investigator named in a search warrant granted pursuant to this section, using such force as may reasonably be necessary, may enter any *Entry using warrant*

premises or place named in the search warrant and seize documents or other information in accordance with the search warrant. 2000,c.22,s.17.

Investigator's report **25.3** A report of an investigator under this Act is the property of the Director. 2000,c.22,s.17.

Limitation of action **26.** No action whatever, and no proceedings by way of judicial review or other extraordinary remedies shall lie or be instituted against any person whether in his public or private capacity or against any company in respect of any act or omission in connection with the administration or carrying out of this Act, or the regulations where such person is the Director of Corporations or his representative, or the Registrar, or where such person or company was proceeding under the written or verbal direction or consent of any one of them, or under an order of the Supreme Court or a judge thereof made under this Act. R.S.P.E.I. 1974, Cap. S-4, s.25; 1980,c.2,s.3.

Regulations **27.** The Lieutenant Governor in Council may make regulations

- (a) prescribing categories for persons and companies and the manner of allocating persons and companies to categories, including permitting the Registrar to make such allocations, and prescribing the form and content of and governing the use of prospectuses, preliminary prospectuses, *pro forma* prospectuses, summary statements and statements of material facts to be filed by, and financial conditions applicable to, persons and companies in accordance with their categories;
- (b) prescribing the form and content of financial statements and interim financial statements required to be filed under this Act;
- (c) prescribing requirements for applications for registration, renewal of registration, suspension and expiry of registrations, and for the establishment of national registration systems;
- (d) classifying registrants into categories and prescribing the terms and conditions of registration of registrants in each category;
- (e) governing the furnishing of information to the public or to the Registrar by a registrant in connection with securities or trades therein;
- (f) governing the furnishing of information by a registrant or class of registrants to a person or company recognized by the Registrar and governing the payment of fees with respect thereto;
- (g) governing the keeping of accounts and records, the preparation and filing of financial statements of the affairs of the security issuers and the audit requirements with respect thereto;
- (h) repealed by 2002,c.43,s.6;
- (i) prescribing the documents, certificates, reports, releases, statements, agreements and other information and the form, content

- and other particulars relating thereto that are required to be filed, furnished or delivered under this Act and the regulations;
- (j) prescribing the forms for use under this Act and the regulations;
  - (k) prescribing trades or securities, in addition to the trades and securities referred to in subsections 2(3) and (4), in respect of which registration shall not be required;
  - (l) prescribing trades or securities, referred to in subsections 2(3) and (4), in respect of which there shall cease to be exemption from registration;
  - (m) prescribing trades or securities, in addition to the trades and securities referred to in subsection 13(1), in respect of which subsection 8(1) does not apply;
  - (n) prescribing trades or securities in respect of which subsection 8(1) shall be applicable notwithstanding subsection 13(1);
  - (o) prescribing the information required or permitted to be distributed under subsection 8.10(2);
  - (p) specifying jurisdictions and empowering the Registrar to exempt certain trades or securities from the requirements of this Act and the regulations where they are in compliance with the laws of the specified jurisdiction.
  - (q) respecting advisers, brokers, dealers and broker-dealers and categories of them, including working capital and free capital requirements, books and records contents, management and retention, identification of clients and other enquiries, standards, charges, statements, separation and segregation of accounts, conflict of interest and any other matter related to persons or companies providing advice on securities;
  - (r) permitting or requiring applications, documents or any kind of information submitted pursuant to this Act or the regulations, to be submitted electronically, including regulations
    - (i) respecting the circumstances, manner and place in which applications, documents or information may be filed electronically,
    - (ii) respecting the form, format and content of applications, documents or information filed electronically,
    - (iii) prescribing the circumstances in which applications, documents or information submitted electronically are deemed to be filed with the Registrar, and acknowledgement, proof of receipt or acceptance of them,
    - (iv) respecting the establishment and use of electronic systems for the electronic filing or storage of applications, documents or information,
    - (v) respecting electronic signatures,

(vii) respecting copies of, certificates or certification of electronically submitted applications, documents or information,  
 (viii) respecting fees payable for the electronic submission of applications, documents or information;

(s) defining any word used in this Act or the regulations;

(t) exempting from all or any of the provisions of this Act or the regulations, on such terms and conditions as may be prescribed, any persons, applicants, applications, documents or information or any classes of persons, applicants, applications, documents or information; and

(u) respecting suitability of investments. 1985,c.40,s.9; 2000,c.22,s.18; 2002,c.43,s.6.

Penalty of offence **28.** (1) Every person or company who contravenes any provision of this Act or the regulations or who does any fraudulent act is guilty of an offence and is liable upon summary conviction to a fine of not more than \$1,000,000 or to imprisonment for a term of not more than two years or to both.

*Idem* (2) 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 \$1,000,000 or to imprisonment for a term of not more than two years, or to both.

Limitation of proceedings (3) Notwithstanding any other Act, proceedings under this section may be commenced at any time within six years from the date of the occurrence of the last event on which the proceeding is based and not after that time.

Limitation of action (4) No proceedings under this section shall be instituted except with the consent or under the direction of the Director of Corporations. R.S.P.E.I. 1974, Cap. S-4, s.27; 1980,c.2,s.3; 1994,c.58,s.6; 2000,c.22,s.19; 2002,c.24,s.2.

Costs of investigation, collection of by Director of Corporations **29.** Where, in consequence of an investigation under Part IV, any person or a company has been  
 (a) convicted of a criminal offence;  
 (b) convicted of an offence against any provision of this Act, or the regulations;  
 (c) enjoined by the Supreme Court or a judge thereof otherwise than by an interim injunction; or

(d) examined, and documents, records, properties or matters have been examined by an accountant or other expert appointed by the Director of Corporations,

the Director of Corporations may certify in writing as to the costs of the investigation and is entitled to take the proceedings as are available to a judgment creditor for the collection from the person or company of the sum set forth in the certificate, which sum shall be a debt to Her Majesty in right of Prince Edward Island. R.S.P.E.I. 1974, Cap. S-4, s.28; 1980,c.2,s.3.

**30.** (1) Where a magistrate or justice of another province issues a warrant for the arrest of any person, on a charge of violating any provisions of the Act, or any similar statute of that province, any provincial court judge in this province, within whose jurisdiction that person is or is suspected to be, may upon satisfactory proof of the handwriting of the police magistrate, or justice, who issues the warrant, make an endorsement thereon, in the form prescribed by the regulations, and a warrant so endorsed shall be sufficient authority to the person bringing the warrant, and to all other persons to whom it was originally directed, and to all constables within the territorial jurisdiction of the provincial court judge so endorsing the warrant to execute it within that jurisdiction and to take the person arrested thereunder either out of or anywhere in Prince Edward Island and to re-arrest the person anywhere in Prince Edward Island.

Enforcement of  
warrant issued out  
of province

(2) Any constable or peace officer of Prince Edward Island, or of any other province of Canada, who is passing through Prince Edward Island, having in his custody a person arrested in another province, under a warrant endorsed in pursuance of subsection (1) may hold, take and re-arrest the accused, anywhere in Prince Edward Island, under such warrant without proof of the warrant or the endorsement thereof. R.S.P.E.I. 1974, Cap. S-4, s.29.

Warrant issued out  
of province, valid in  
province, where

**31.** The Registrar may, where in his opinion to do so would not be prejudicial to the public interest, make an order on such terms and conditions as he may impose revoking or varying any decisions made by him under this Act or the regulations. 1985,c.40,s.10.

Discretion to revoke  
or vary his decision

**32.** (1) Notwithstanding subsection 30(4) of the *Evidence Act* R.S.P.E.I. 1988 Cap. E-11, the Director may compel a savings institution or an officer of a savings institution, in an investigation, financial examination or a hearing under this Act, to produce any book, or record, the contents of which can be proved under section 30 of the *Evidence Act* or to appear as a witness to prove the matters, transactions and accounts contained in the book or record.

Director may  
compel bank, bank  
officer



Application	(2) Subsection (1) applies whether or not the savings institution is a party to the investigation, financial examination or hearing. 2000,c.22,s.20.
Act does not constrain Director's powers	<b>33.</b> Nothing in this Act shall be construed as limiting the ability of the Director to make a decision under more than one provision of this Act or the regulations with respect to the same conduct or matter. 2000,c.22,s.20.
Director's decision filed in court	<b>34.</b> (1) Subject to subsection (2), a decision of the Director may be filed with the court and when filed it is enforceable as an order of the court.
Not filed until after review	(2) A decision of the Director shall not be filed with the court until the time permitted for an application for review or appeal has expired or if the decision has been appealed, the decision has been confirmed or varied.
Evidence taken in other jurisdiction	(3) Where a court is satisfied that a court of competent jurisdiction or a tribunal outside the province has, pursuant to the securities law of another jurisdiction, the power to order that a witness give evidence in that jurisdiction with respect to securities matters, the court may order that evidence be taken in such manner as may be applicable in that other jurisdiction, and command the attendance of the witness and the taking of evidence in that other jurisdiction in such manner as is proper in the other jurisdiction. 2000,c.22,s.20.

## PART VII RULES

Minister may make rules	<p><b>35.</b> (1) The Minister, upon the recommendation of the Director, may make rules regulating or prescribing requirements on matters including the following:</p> <ul style="list-style-type: none"> <li>(a) prescribing requirements respecting <ul style="list-style-type: none"> <li>(i) applications for registration and the renewal, amendment, expiration or surrender of registration,</li> <li>(ii) suspension, cancellation and reinstatement of registration, and</li> <li>(iii) the establishment of national registration systems;</li> </ul> </li> <li>(b) prescribing categories of registrants and conditions of registration, including <ul style="list-style-type: none"> <li>(i) standards of practice and business conduct of registrants in dealing with their clients and customers and prospective clients and customers,</li> <li>(ii) requirements or guidelines for the prevention or regulation of conflicts of interest,</li> <li>(iii) requirements in respect of self regulatory organizations;</li> </ul> </li> </ul>
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- (c) extending requirements prescribed pursuant to clause (b) to unregistered directors, partners, salespersons and officers of registrants;
- (d) prescribing residence requirements of the registrants in Canada or in the province;
- (e) prescribing notification by registrants to the Registrar respecting proposed changes in beneficial ownership of, control or direction over securities of the registrant and authorizing the Registrar to make an order requiring that a proposed change is not effective unless and until the Registrar determines whether or not to exercise the Registrar's powers in response to the proposed change;
- (f) prescribing requirements respecting calling at or telephoning private residences for the purposes of trading in securities;
- (g) prescribing disclosure requirements and the provision of information to the public or to the Registrar;
- (h) providing exemptions from registration requirements under this Act, the regulations or the rules and for the removal of exemptions from those requirements;
- (i) prescribing requirements in respect of the books, records and other documents or information required to be kept by market participants, including the form in which and the period for which the books, records and other documents and information are to be kept;
- (j) regulating recognized stock exchanges, recognized self regulatory organizations, recognized quotation and trade reporting systems and recognized clearing agencies, including review or approval of the Registrar of any by-law, rule, regulation, policy, procedure, interpretation or practice;
- (k) regulating the trading of or advising in securities, to prevent trading or advising that is fraudulent, manipulative, deceptive or unfairly detrimental to investors;
- (l) regulating the trading or advising in penny stocks, including requirements respecting additional disclosure and suitability for investment;
- (m) prescribing categories of issuers for purposes of the prospectus requirements under this Act;
- (n) varying the application of this Act to establish procedures for or requirements for the preparation and filing of any kind of prospectus and the issuance of receipts to facilitate the distribution of securities, including
  - (i) requirements respecting distribution of securities by means of a prospectus incorporating other documents by reference,
  - (ii) requirements respecting distribution of securities by means of a simplified or summary prospectus,

- (iii) requirements respecting distribution of securities on a continuous or delayed basis,
- (iv) requirements respecting pricing of distributions of securities after the issuance of a receipt for the prospectus filed in relation to the securities,
- (v) procedures for the issuing of receipts for prospectuses after expedited or selective review,
- (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 of certificates,
- (viii) provisions for eligibility requirements to obtain a receipt for, or to distribute under, a particular form of prospectus and the loss of that eligibility, and
- (ix) provisions for varying withdrawal rights;
- (o) prescribing requirements for the escrow of securities in connection with distributions;
- (p) designating activities in which registrants or issuers are permitted to engage or prohibited from engaging in connection with distributions, including the use of documents or advertising;
- (q) prescribing which distributions and trading in relation to distributions are distributions and trading outside the province;
- (r) providing for exemptions from the prospectus requirements under this Act and for the removal of exemptions from those requirements;
- (s) prescribing the circumstances in which the Registrar is required to refuse a receipt for a prospectus;
- (t) prescribing requirements respecting financial accounting, reporting and auditing for the purposes of this Act, the regulations and the rules, including
  - (i) defining accounting principles and auditing standards acceptable to the Director,
  - (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 an issuer or a registrant, and
  - (v) requirements respecting a change in the financial year of an issuer;
- (u) prescribing requirements for the validity and solicitation of proxies;

- (v) prescribing standards or criteria for determining when a material fact or a material change has been generally disclosed;
- (w) regulating mutual funds or non-redeemable investment funds and the distribution and trading of securities in the funds, including
  - (i) varying registration and prospectus requirements to prescribe additional disclosure requirements respecting the funds and requiring or permitting the use of forms or types of additional offering or other documents in connection with the funds,
  - (ii) prescribing permitted investment policy and investment practices for funds and prohibiting or restricting investments or investment practices for funds,
  - (iii) prescribing requirements governing the custodianship of assets of the funds,
  - (iv) prescribing minimum initial capital requirements for any of the funds making a distribution and prohibiting or restricting the reimbursement of costs in connection with the organization of a fund,
  - (v) prescribing matters affecting any of the funds that require the approval of security holders of the fund or the Director including, in the case of security holders, the level of approval,
  - (vi) prescribing requirements respecting the calculation of the net asset value of mutual funds,
  - (vii) prescribing requirements respecting the content and use of sales literature, sales communications and advertising relating to the funds and the securities of the funds,
  - (viii) designating mutual funds as private mutual funds and 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 a mutual fund, and commissions or sales incentives to be paid to registrants in connection with the securities of a mutual 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 the procedures applicable to mutual funds, registrants and any other person or company respecting sales and redemption of mutual fund securities and payments for sales and redemption, and
  - (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 mutual funds or non-redeemable investment funds;

- (x) 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;
- (y) prescribing requirements relating to qualification of a registrant to act as an adviser to a mutual fund or non-redeemable investment fund;
- (z) regulating commodity pools including
  - (i) varying registration and distribution requirements to prescribe additional disclosure requirements respecting commodity pools and requiring or permitting the use of forms or types of additional offering or other documents in connection with commodity pools,
  - (ii) prescribing requirements respecting promoters, advisers, persons and companies that administer or participate in the administration of commodity pools,
  - (iii) prescribing standards respecting 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 respecting the voting rights of security holders, and
  - (vi) prescribing requirements respecting the redemption of securities of a commodity pool;
- (aa) regulating or varying this Act respecting derivatives, including
  - (i) providing exemptions from any requirements of this Act,
  - (ii) prescribing disclosure requirements and requiring or prohibiting the use of forms or types of offering document or other documents, and
  - (iii) prescribing requirements that apply to mutual funds, non-redeemable investment funds, commodity pools or other issuers;
- (bb) varying the application of this Act to foreign issuers to facilitate distributions, compliance with requirements applicable to or relating to reporting issuers and the making of take-over bids, issuer bids, insider bids, going-private transactions and related party transactions, where the foreign issuers are subject to laws and regulations of other jurisdictions, that the Director considers are adequate in light of the purposes and principles of this Act;
- (cc) respecting the designation or recognition of any person, company or jurisdiction for the purposes of this Act, including recognition of stock exchanges, self-regulatory organizations and clearing agencies;

- (dd) respecting the conduct of the Director and the Securities Office with respect to duties, responsibilities and discretionary powers pursuant to this Act, including
  - (i) the conduct of investigations and examinations carried out under this Act and the regulations, and
  - (ii) the conduct of hearings;
- (ee) establishing conditions for any exemption that the Director is empowered to give pursuant to this Act and the regulations, and dispensing with applications for exemption when the conditions are met;
- (ff) repealed by 2002,c.43,s.7;
- (gg) establishing requirements for and procedures respecting the use of electronic or computer based systems for the registration, filing, delivery or deposit of any documents or information required by this Act, including ancillary documents or information and including varying the application of this Act to permit or require that use; and
- (hh) prescribing the circumstances in which persons or companies are deemed to have signed or certified documents on an electronic or computer based system for any purpose of this Act;
- (ii) defining terms used in the rules;
- (jj) regulating scholarship plans and the distribution and trading of the securities of scholarship plans;
- (kk) specifying the conditions under which any particular type of trade that would not otherwise be a distribution shall be a distribution;
- (ll) varying this Act to permit or require methods of filing or delivery, to or by the Registrar, issuers, registrants, security holders or others, of documents, information, notices, books, records, things, reports, orders, authorizations or other communications required under or governed by the Act or regulations;
- (mm) providing exemptions from or varying the requirements set out in Part II.1;
- (nn) prescribing amounts for the purposes of clauses 2(3)(d) and 13(1)(c) and (g);
- (oo) 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;
- (pp) providing for exemptions from or varying the requirements of sections 8.9, 8.10 or 8.16;
- (qq) providing for exemptions from or varying the requirements under this Act in respect of resale restrictions on the first trade in securities;

- (rr) prescribing, providing for exemptions from or varying any or all of the time periods in this Act;
- (ss) specifying exemptions and circumstances that shall be subject to section 16.1.1.

## Regulations

(2) The Lieutenant Governor in Council may make regulations in respect of any matter in respect of which the Minister may make rules and may make such other regulations as the Lieutenant Governor in Council considers necessary for carrying out the purposes of this Act.

## Incorporation by reference of standards

(3) A regulation or rule made under this section or under section 27 may incorporate by reference, in whole or in part, any standard, procedure or guideline and may require compliance with any standard, procedure or guideline so incorporated.

## Classes

(4) Regulations or rules in respect of trades, intended trades, securities, persons or companies or any other matters or things, may be made in respect of any class or category of trades, intended trades, securities, persons or companies or other matters or things.

## Scope

(5) 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.

## Exemptions

(6) A regulation or rule may authorize the Director or the Registrar to grant an exemption to it.

*Idem*

- (7) An exemption or a removal of an exemption may be
  - (a) granted in whole or in part; and
  - (b) granted or made subject to conditions or restrictions. 2002,c.43,s.7; 2003,c.20,s.6.

## Publication of rules

**36.** (1) Notice of every rule made by the Minister, pursuant to section 35, shall be published in the Gazette, and the Director shall
 

- (a) publish the rule electronically; and
- (b) ensure that the rule is available to the public in the Securities Office.

## Effective date

(2) A rule made pursuant to section 35 comes into effect fifteen days after its approval by the Minister or on the effective date stated in the rule, whichever is later. 2000,c.22,s.21.

## Policies of the Director

**37.** (1) The Director may make policies.

## Publication of policies

(2) Notice of every policy made by the Director shall be published in the Gazette, two weeks prior to its adoption, and the Director shall
 

- (a) publish the policy electronically; and

(b) ensure that the policy is available to the public in the Securities Office. 2000,c.22,s.21.

**38.** (1) No agreement, memorandum of understanding or arrangement between the Director and

- (a) another securities or financial regulatory authority;
- (b) any self-regulated body or organization; and
- (c) any jurisdiction,

shall come into effect without the approval of the Minister.

Minister's approval required

(2) An agreement, memorandum of understanding or arrangement referred to subsection (1) shall come into effect on the day that the Minister approves it, unless the Minister otherwise specifies an effective date. 2000,c.22,s.21.

Effective date

**39.** Where there is a conflict or an inconsistency between a regulation made under this Act and a rule made under section 35, the regulation prevails, but in all other respects a rule has the same force and effect as a regulation. 2000,c.22,s.21; 2002,c.43,s.8.

Regulation prevails where conflict with rule

**40.** (1) The Director may, on application by an interested person or company or, with the approval of the Minister, on the Director's own initiative, exempt any

- (a) trade, intended trade, security, person or company, or
- (b) class or type of trades, intended trades, securities, persons or companies,

from any or all provisions of this Act or the regulations if, in the opinion of the Director, the exemption is not prejudicial to the public interest.

Exemption

(2) The Director may impose any terms and conditions on an exemption granted under subsection (1) that the Director considers appropriate. 2002,c.43,s.9.

Terms and conditions

## PART VIII FEES

**41.** (1) There shall be paid to the Provincial Treasurer, at the time an application or filing is made under this Act, such fees as are set out in the Schedule to this Act.

Applications and filings

(2) A person or company registered as a broker or adviser under this Act shall pay to the Provincial Treasurer by or on December 31 of each year a fee, to maintain registration for the subsequent year, that is equal in amount to the fee payable under this Act for an application for registration for itself and its registered salespersons and counselling officers.

Fee for maintaining registration



Application

(3) Subsection (2) only applies in respect of a year after the year 2002.  
2002,c.43,s.10; 2003,c.20,s.7.

## FEES SCHEDULE

1. The fee payable for an application for
  - (a) registration of a broker, regardless of the number of categories of registration to which the application relates, is \$600;
  - (b) registration as a salesperson of a registered broker is \$200;
  - (c) registration of an adviser, regardless of the number of categories of registration to which the application relates, is \$600;
  - (d) registration as a counselling officer of a registered adviser is \$200;
  - (e) registering the change of a partner or officer of a registered broker or adviser is \$100;
  - (f) registering the transfer of a salesperson or counselling officer is \$100.
2.
  - (1) Subject to subsection (3), the fee payable for filing every preliminary prospectus or pro forma prospectus is \$600 for each issuer.
  - (2) In addition to any fee payable under subsection (1), the fee payable for filing any form of preliminary prospectus or pro forma prospectus that offers more than one class or unit of securities of any one issuer, is \$100 for each additional class or unit of securities offered.
  - (3) The fee payable for every preliminary base shelf prospectus filed under National Instrument 44-102 Alternative Forms of Prospectus or every preliminary MJDS prospectus filed for a rule 415 offering under National Instrument 71-101 Securities Transactions Outside the Jurisdiction, shall be accompanied by a fee of \$800 for each issuer.
3. The fee payable for filing every amendment to a preliminary, pro forma, or other prospectus is \$100 for each issuer.
4. The fee payable for filing every annual information form filed by an issuer, other than a mutual fund, is \$500.

5. The fee payable for an application under section 14 or section 40 of this Act is \$200.
6. The fee payable for every application under any section of this Act or the regulations not otherwise provided for in this Schedule is \$100.  
2002,c.43,s.11.