

UNIFORM SECURITIES ACT

A LEGISLATIVE PROPOSAL

FOR

HARMONIZATION OF SECURITIES LAWS

CONSULTATION DRAFT

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UNIFORM SECURITIES ACT

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UNIFORM SECURITIES ACT

PART 1: PURPOSE AND INTERPRETATION

Purposes of the Act

1.1 The purposes of this Act are

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

Definitions

1.2(1) In this Act

adviser means a person registered or required to be registered under this Act in any of the prescribed adviser categories;

Canadian financial institution means a bank, loan corporation, trust company, insurance company, treasury branch, credit union, caisse populaire, the Confédération des caisses populaires et d'économie Desjardins du Québec or an association governed by the *Cooperative Credit Associations Act* (Canada) that, under an enactment of a province or of Canada, is authorized to carry on business in Canada or a Canadian jurisdiction;

Canadian jurisdiction means a province or territory of Canada;

clearing agency means a person that

- (a) acts as an intermediary in paying funds or delivering securities, or both, with respect to trades and other transactions in securities,
- (b) provides centralized facilities for the clearing of trades and other transactions in securities, including facilities for comparing data respecting the terms of settlement of securities transactions, or
- (c) provides centralized facilities as a depository of securities,

but does not include the Canadian Payments Association or its successors;

control person means a person or each person in a combination of persons acting in concert holding

- (a) a sufficient number of the voting rights attached to all outstanding voting securities of an issuer to affect materially the control of the issuer, or
- (b) more than 20% of the voting rights attached to all outstanding voting securities of an issuer, unless there is evidence that the holding does not affect materially the control of the issuer;

court means [*insert name of appropriate court*], except where otherwise indicated;

dealer means a person registered or required to be registered under this Act in any of the prescribed dealer categories;

decision means, in relation to a decision of the securities regulatory authority or SRA delegate, a decision, order, ruling, direction or other requirement made under a power or right conferred by securities laws;

derivative means

- (a) a right or obligation to make or take future delivery of
 - (i) a security,
 - (ii) a currency,
 - (iii) a mineral, metal or precious stone,
 - (iv) any other thing or interest if a unit of that thing or interest is naturally or by custom treated as the equivalent of any other unit,
 - (v) cash, if the amount of cash is derived from, or by reference to, a variable, including,
 - (A) a price or quote for anything referred to in subclauses (i) to (iv),
 - (B) an interest rate,
 - (C) a currency exchange rate, or
 - (D) an index or benchmark, or

- (b) any instrument or interest that is designated under section 1.7 [*Designations*], or in accordance with the rules, to be a derivative,

but does not include a right, obligation, instrument or interest that is designated under section 1.7 [*Designations*], or in accordance with the rules, not to be a derivative;

Explanatory note: This definition will not appear in the *Uniform Securities Act* of Ontario. Instead, the following head of rule-making authority will be included under paragraph 11.3(24.), “defining derivatives for the purpose of securities laws”;

director

- (a) means a member of the board of directors of a corporation or an individual who performs similar functions for a corporation, and
- (b) includes, with respect to a person that is not a corporation, an individual who performs functions similar to those of a director of a corporation;

distribution means

- (a) a trade in a security of an issuer that has not been previously issued;
- (b) a trade by or on behalf of an issuer in a previously issued security of that issuer that has been redeemed or purchased by or donated to that issuer;
- (c) a trade in a previously issued security of an issuer from the holdings of a control person;
- (d) any other trade that is designated under section 1.7 [*Designations*], or in accordance with the rules, to be a distribution;
- (e) a transaction or series of transactions involving further acquisitions and trades in the course of or incidental to a distribution described or referred to in clauses (a) to (d);

economic interest means

- (a) a right to receive or the opportunity to participate in a reward, benefit or return from a security, or
- (b) exposure to a loss or risk of loss in respect to a security;

enactment means an Act or regulation or any provision of an Act or regulation;

equity security means any security of an issuer that carries a residual right to participate in the earnings of the issuer and, on the liquidation or winding up of the issuer, in its assets;

exchange-traded derivative means a derivative that is traded on an exchange that is designated under section 1.7 [*Designations*], or in accordance with the rules, for the purpose of this definition;

Explanatory note: This definition will not appear in the *Uniform Securities Act* of Ontario and Manitoba.

expert means a person whose business or profession gives authority to a statement made by the person in their professional capacity, including, without limitation, an accountant, actuary, appraiser, auditor, engineer, financial analyst, geologist or lawyer;

extra-provincial securities laws means

- (a) a *Uniform Securities Act* and *Securities Administration Act* and rules and regulations enacted under them in another Canadian jurisdiction;
- (b) decisions of an extra-provincial SRA or its delegate as they affect the person in respect of whom they are made or to whom they apply;

extra-provincial SRA means a securities regulatory authority in another Canadian jurisdiction;

file means file with the securities regulatory authority, unless otherwise indicated;

foreign jurisdiction means a country or a political subdivision of a country other than Canada;

forward-looking information means disclosure of possible events, conditions or results of operations that is based on assumptions about future economic conditions and courses of action, and includes future-oriented financial information about the prospective results of operations, financial position or cash flows, presented either as a forecast or as a projection;

individual means a natural person, but does not include

- (a) a partnership, trust, fund or an association, syndicate, organization or other organized group, whether incorporated or not;
- (b) a natural person in that person's capacity as a trustee, executor, administrator or personal or other legal representative;

information processor has a prescribed meaning;

inside information means a material fact or material change that has not been generally disclosed;

insider means, in relation to a reporting issuer,

- (a) the reporting issuer itself if it has purchased, redeemed, or otherwise acquired any securities of its own issue, for so long as it continues to hold those securities;
- (b) a director or senior officer of the reporting issuer;
- (c) a subsidiary of the reporting issuer;
- (d) a director or senior officer of a subsidiary of the reporting issuer whose responsibilities routinely give the director or senior officer access to inside information relating to the reporting issuer;
- (e) a person that has
 - (i) direct or indirect beneficial ownership of,
 - (ii) control or direction over, or
 - (iii) a combination of direct or indirect beneficial ownership of, and control or direction over,

securities of the reporting issuer carrying more than 10% of the voting rights attached to all the reporting issuer's outstanding voting securities, excluding, for the purpose of the calculation of the percentage held, any securities held by the person as underwriter in the course of a distribution;

- (f) a director or senior officer of a person referred to in clause (e);

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

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

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

- (a) the dissemination of records in the ordinary course of business of the issuer
 - (i) to promote the sale of products or services of the issuer, or
 - (ii) to raise public awareness of the issuerthat cannot reasonably be considered to promote the purchase or sale of securities of the issuer, or
- (b) activities or communications necessary to comply with
 - (i) securities laws, or the securities legislation of any foreign jurisdiction governing the issuer, or
 - (ii) the requirements of an exchange or marketplace on which the issuer's securities trade;

issuer means a person who

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

issuer bid means an offer to acquire securities of an issuer made by the issuer to a person in [*insert name of local jurisdiction*], or to a security holder whose address is in [*insert name of local jurisdiction*], and also includes a redemption of securities held by any of those persons, but does not include an offer to acquire or a redemption of debt securities that are not convertible into securities other than debt securities;

market participant means

- (a) a registrant;

- (b) a director, officer or partner of a registrant;
- (c) a person exempt from registration under section 11.2 [*Exemption from securities laws*];
- (d) a reporting issuer;
- (e) a director, officer or promoter of a reporting issuer;
- (f) a control person;
- (g) a manager or custodian of assets, shares or units of an investment fund;
- (h) a recognized entity;
- (i) a clearing agency;
- (j) a person exempt from recognition;
- (k) a marketplace;
- (l) an information processor;
- (m) a transfer agent or registrar for securities of a reporting issuer;
- (n) a compensation or contingency fund or any similar fund formed to compensate customers of dealers or advisers registered under securities laws;
- (o) the general partner of a market participant;
- (p) a person providing record keeping services to a registrant;
- (q) a commodity futures exchange recognized or registered under an enactment;
- (r) a person exempt from recognition or registration as a commodity futures exchange under an enactment;
- (s) any other person that is designated under section 1.7 [*Designations*], or in accordance with the rules, to be a market participant;

marketplace has a prescribed meaning;

material change

- (a) if used in relation to an issuer other than an investment fund, means
 - (i) a change in the business, operations, capital, assets, ownership or affairs of the issuer in respect of which there is a substantial likelihood that a reasonable investor would consider it important in determining whether to purchase, hold or sell securities of the issuer, or
 - (ii) a decision to implement a change referred to in subclause (i) made by
 - (A) senior management of the issuer who believe that confirmation of the decision by the directors is probable, or
 - (B) the directors of the issuer, and
- (b) if used in relation to an issuer that is an investment fund, means
 - (i) a change in the business, operations or affairs of the issuer in respect of which there is a substantial likelihood that a reasonable investor would consider it important in determining whether to purchase, hold, sell or redeem securities of the issuer, or
 - (ii) a decision to implement a change referred to in subclause (i) made by
 - (A) senior management of the issuer or by senior management of the investment fund manager who believe that confirmation of the decision by the directors or trustees of the issuer or the directors of the investment fund manager is probable, or
 - (B) the directors or trustees of the issuer or the directors of the investment fund manager;

material fact means, when used in relation to an issuer or its securities, a fact in respect of which there is a substantial likelihood that a reasonable investor would consider it important in making a decision, including a decision to purchase, hold, sell or redeem securities of the issuer and a decision to vote;

material order information means information regarding an order or intended order for the purchase or sale of securities that could reasonably be expected to affect the market price of those securities;

misrepresentation means

- (a) an untrue statement of a material fact,
- (b) an omission to state a material fact that is required to be stated by this Act, or
- (c) an omission to state a material fact that needs to be stated so that a statement is not false or misleading in light of the circumstances in which it is made;

mutual fund means

- (a) any issuer
 - (i) where contributions of security holders are pooled for investment,
 - (ii) where security holders do not have day-to-day control over the management and investment decisions of the issuer, whether or not they have the right to be consulted or to give directions, and
 - (iii) whose securities entitle the security holder to receive on demand, or within a specified period after demand, an amount computed by reference to the value of a proportionate interest in the whole or in part of the net assets of the issuer, or
- (b) an issuer that is designated under section 1.7 [*Designations*], or in accordance with the rules, to be a mutual fund,

but does not include an issuer that is designated under section 1.7 [*Designations*], or in accordance with the rules, not to be a mutual fund;

non-redeemable investment fund means

- (a) any issuer
 - (i) where contributions of security holders are pooled for investment,

- (ii) where security holders do not have day-to-day control over the management and investment decisions of the issuer, whether or not they have the right to be consulted or to give directions, and
 - (iii) whose securities do not entitle the security holder to receive on demand, or within a specified period after demand, an amount computed by reference to the value of a proportionate interest in the whole or in part of the net assets of the issuer, or
- (b) an issuer that is designated under section 1.7 [*Designations*], or in accordance with the rules, to be a non-redeemable investment fund,

but does not include an issuer that is designated under section 1.7 [*Designations*], or in accordance with the rules, not to be a non-redeemable investment fund;

offer to acquire includes

- (a) an offer to purchase securities or a solicitation of an offer to sell securities,
- (b) an acceptance of an offer to sell securities, whether or not the offer has been solicited, or
- (c) any combination of one or more of them,

and the person accepting an offer to sell is deemed to be making an offer to acquire to the person that made the offer to sell;

offering memorandum means

- (a) an offering memorandum in a specified form, or
- (b) any other document describing the business and affairs of an issuer that has been prepared primarily for delivery to and review by a prospective purchaser to assist the prospective purchaser to make an investment decision about securities being sold in a distribution for which a prospectus would be required but for the availability of an exemption under securities laws;

offeror means a person that makes a take-over bid, an issuer bid or an offer to acquire;

officer, with respect to an issuer or registrant,

- (a) means the chair, vice-chair, chief executive officer, chief operating officer, chief financial officer, president, vice-president, secretary, assistant secretary, treasurer, assistant treasurer and general manager, and
- (b) includes
 - (i) any other individual appointed as an officer of the corporation or who performs functions for the corporation similar to those of an officer described in clause (a);
 - (ii) with respect to a person that is not a corporation, an individual who performs functions similar to those of an officer described in clause (a);

participant includes a member;

person includes

- (a) an individual,
- (b) a corporation,
- (c) a partnership, trust, fund and an association, syndicate, organization or other organized group of persons, whether incorporated or not, and
- (d) a natural or other person in that person's capacity as a trustee, executor, administrator or personal or other legal representative;

prescribed means prescribed in the rules;

promoter means a person who,

- (a) acting alone or in concert with one or more persons, directly or indirectly takes the initiative in founding, organizing or substantially reorganizing the business of the issuer, or
- (b) in connection with the founding, organizing or substantially reorganizing the business of an issuer, directly or indirectly receives in consideration of services or property, or both services and property, 10% or more of any class of securities of the issuer or of the

proceeds from the sale of any class of securities of the issuer, but does not include a person that receives securities or proceeds solely

- (i) as an underwriting commission, or
- (ii) in consideration of property transferred to the issuer

if the person does not otherwise take part in founding, organizing or substantially reorganizing the business of the issuer;

prospectus includes an amendment to a prospectus;

recognized entity means a person recognized by the securities regulatory authority under Part 2 [*Marketplaces, Self-Regulation and Market Participants*];

record includes

- (a) information, documents, transmission signals or data, regardless of their physical form or characteristics, including, without limitation, those in electronic, magnetic or mechanical storage;
- (b) any other thing that is capable of being represented or reproduced visually or by sound, or both;
- (c) anything in which information, documents, transmission signals or data is stored, including software and any mechanism or device that produces information or data;
- (d) the results of recording the details of electronic data processing systems and programs to illustrate what the systems are and programs do and how they operate;

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

regulator means any person authorized under the *Securities Administration Act* to act as regulator by the securities regulatory authority;

related financial instrument means

- (a) an instrument, agreement or security the value, market price or payment obligations of which are derived from, referenced to or based on the value, market price or payment obligations of a security of a reporting issuer, and

- (b) any other instrument, agreement or understanding that affects, directly or indirectly, a person's economic interest in a security of a reporting issuer;

repeal includes revoke or cancel;

reporting issuer means an issuer

- (a) that has filed a prospectus and been issued a receipt for it under this Act,
- (b) that has at any time had securities listed on an exchange that is designated for the purpose of this definition under section 1.7 [*Designations*],
- (c) whose existence continues following the exchange of securities of two or more issuers in connection with an amalgamation, merger, arrangement, reorganization or similar transaction if one of the parties to the transaction is a reporting issuer,
- (d) that is designated under section 1.7 [*Designations*], or in accordance with the rules, to be a reporting issuer, or
- (e) that was a reporting issuer on the date this clause came into effect,

unless the issuer is designated under section 1.7 [*Designations*], or in accordance with the rules, to have ceased to be a reporting issuer;

representative means a person that is, under section 3.2 [*Representatives*], required to be registered, or exempt from registration;

rules means

- (a) rules made by the securities regulatory authority under this Act, including
 - (i) extra-provincial securities laws, or
 - (ii) laws of a foreign jurisdiction,adopted by rule;
- (b) rules made by the securities regulatory authority under the *Securities Administration Act*;

- (c) regulations made by the [Lieutenant Governor] in Council under the *Securities Administration Act*,

and includes specified forms;

Explanatory note: Clauses (a) and (b) of this definition in the *Uniform Securities Act* of some jurisdictions will refer to regulations rather than rules in order to reflect local rule-making practices.

securities laws means

- (a) this Act;
- (b) the *Securities Administration Act*;
- (c) the rules;
- (d) decisions of the securities regulatory authority or SRA delegate as they affect the person in respect of whom they are made or to whom they apply;

securities regulatory authority means [insert name of entity established or continued] under the *Securities Administration Act*;

Explanatory note : Various provisions of the *Uniform Securities Act* of Quebec will be modified as necessary to reflect the roles, powers and functions of the Agencie nationale d'encadrement du secteur financier and the Bureau de décision et de révision en valeurs mobilières. These provisions include certain definitions, such as **regulator**, **securities laws**, **securities regulatory authority** and **SRA delegate**, as well as certain provisions in Parts 2, 9, 10, 11 and 12.

security includes

- (a) an interest, record, instrument, share, unit or writing commonly known as a security,
- (b) a record evidencing title to, or an interest in, the capital, assets, property, profits, earnings or royalties of a person,
- (c) an option, subscription or other interest in or to a security,
- (d) a bond, debenture, note or other evidence of indebtedness, other than

- (i) a contract of insurance issued by an insurance corporation, and
- (ii) an evidence of deposit issued by a Canadian financial institution or an authorized foreign bank listed in Schedule III of the *Bank Act* (Canada),
- (e) an agreement under which the interest of the purchaser is valued, for the purpose of conversion or surrender, by reference to the value of a proportionate interest in a specified portfolio of assets,
- (f) any agreement providing that money received will be repaid or treated as a subscription to shares, units or interests at the option of the recipient or of any person,
- (g) any certificate of share or interest in a trust, estate or association,
- (h) a profit sharing agreement or certificate,
- (i) a collateral trust certificate,
- (j) an income or annuity contract,
- (k) an investment contract,
- (l) an interest in a scholarship or educational plan or trust, and
- (m) a derivative,

whether or not any of the above relate to an issuer;

Explanatory note: In Ontario, exchange-traded derivatives will continue to be regulated under the Ontario *Commodity Futures Act* while over-the counter (“OTC”) derivatives will be regulated as a security in Ontario only if they fall within one of the other heads of the definition of **security**, or if the Ontario Securities Commission introduces a rule to regulate OTC derivatives. The definition of security in the *Uniform Securities Act* of Ontario will not include clause (m).

In Manitoba, exchange-traded derivatives will continue to be regulated under the Manitoba *Commodity Futures Act* while OTC derivatives will be regulated as securities. Clause (m) of this definition will be worded accordingly in the *Uniform Securities Act* of Manitoba.

self-regulatory organization means a person whose objectives are related to or consistent with the purposes of securities laws and that regulates

- (a) the activities of its participants,
- (b) participants of recognized entities, or
- (c) participants of a person that is exempt from the requirement to be recognized under Part 2 [*Marketplaces, Self-Regulation and Market Participants*];

selling security holder means a person that sells or disposes of securities which the person, directly or indirectly, owns or exercises control or direction over, but does not include a person acting as an underwriter;

senior officer means

- (a) an individual performing the functions of the chief executive officer, the chief operating officer or the chief financial officer for an issuer, and
- (b) any other officer of an issuer whose responsibilities routinely give the officer access to inside information relating to an issuer;

specified form means a prescribed form or a form specified under section 1.8 [*Specified forms*];

SRA delegate means a person exercising a power, function or duty under authority delegated by the securities regulatory authority and includes a sub-delegate of that person, but does not include a recognized entity;

subsidiary means an issuer that is controlled directly or indirectly by another issuer and includes a subsidiary of that subsidiary;

take-over bid means an offer to acquire outstanding voting securities or equity securities of a class made to a person in [*insert name of local jurisdiction*], or to a security holder whose address is in [*insert name of local jurisdiction*], if the securities subject to the offer to acquire together with the offeror's securities constitute, in the aggregate, at least the prescribed percentage of the number of securities of that class that are outstanding at the date of the offer to acquire;

trade includes

- (a) the sale or disposition of a security for valuable consideration, whether the terms of payment are on margin, instalment or otherwise, but does not include,
 - (i) except as provided in clause (d), a transfer, pledge or encumbrance of securities for the purpose of giving collateral for a debt made in good faith, or
 - (ii) the purchase of a security;
- (b) participation as a trader in any transaction in a security through the facilities of an exchange or a quotation and trade reporting system;
- (c) receipt by a registrant of an order to buy or sell a security;
- (d) a transfer, pledge or encumbering of securities of an issuer from the holdings of a control person for the purpose of giving collateral for a debt made in good faith;
- (e) entering into a derivative;
- (f) any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of any of the activities referred to in clauses (a) to (e);

Explanatory note: The definition of **trade** in the *Uniform Securities Act* of Ontario will not include clause (e).

underwriter means, except as otherwise prescribed, a person who

- (a) as principal, agrees to purchase a security with a view to a distribution,
- (b) as agent, offers for sale or sells a security in connection with a distribution, or
- (c) participates directly or indirectly in a distribution described in clause (a) or (b);

voting security means a security of an issuer that

- (a) is not a debt security, and

- (b) carries a voting right either under all circumstances or under some circumstances that have occurred and are continuing.

(2) A reference in this Act to **this Act** includes the rules, except where the context or this Act indicates otherwise.

Interpretation guidance

1.3 Securities laws must be given the fair, large and liberal interpretation that best ensures the attainment of their purposes.

Section reference descriptions

1.4 When a section reference is followed by a description of the reference in italicized text in square brackets, the italicized text

- (a) is not part of securities laws, and
- (b) is added for convenience of reference only.

Defined words in different grammatical forms

1.5 When defined words or expressions are used in securities laws in a different part of speech or in a different grammatical form, the words or expressions take a meaning corresponding to their defined meaning.

Amendments, variations and modifications to records

1.6 Unless the context requires otherwise, a reference to a specific record includes a reference to any amendment, variation or modification made to it that is permitted or required under securities laws.

Designations

1.7(1) If the securities regulatory authority considers that it is not prejudicial to the public interest, it may designate, by order,

- (a) an issuer to be or to cease to be a reporting issuer;

- (b) a trade to be a distribution;
- (c) an instrument or interest to be a derivative;
- (d) a right, obligation, instrument or interest not to be a derivative;
- (e) a person to be a market participant;
- (f) an issuer to be or not to be a mutual fund;
- (g) an issuer to be or not to be a non-redeemable investment fund;
- (h) an exchange for the purpose of the definition of *exchange-traded derivative*;
- (i) an exchange for the purpose of the definition of *reporting issuer*.

(2) The securities regulatory authority may make an order under subsection (1) on its own initiative or on application by an interested person.

(3) The securities regulatory authority may, by rule, make any designation referred to in subsection (1)(a) to (i).

Specified forms

1.8 Subject to any other requirement of securities laws, if securities laws provide that a record must be prepared, filed, provided or sent in a specified form, the securities regulatory authority may, by order,

- (a) for a record, specify the form, content and other particulars relating to the record,
- (b) for different classes of a particular kind of record, specify a different form, content and other particulars relating to the record,
- (c) specify the principles to be applied in the preparation of the record, and
- (d) specify the accompanying records to be filed with it.

Explanatory note: Some jurisdictions currently have the power to specify forms by order. This section will allow them to maintain that power. It is expected that the rule-making procedures contained in or prescribed under the *Securities Administration Act* of those jurisdictions that do not currently have this power will continue to require that forms be adopted by rule.

Affiliate

1.9 For the purpose of securities laws, an issuer is an affiliate of another issuer if

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

Associate

1.10(1) For the purpose of securities laws, **associate** means, if used to indicate a relationship with a person,

- (a) a partner, other than a limited partner, of the person,
- (b) a trust or estate in which the person has a substantial beneficial interest or for which the person serves as trustee or in a similar capacity,
- (c) an issuer in which the person beneficially owns, controls, or has direction over, voting securities carrying more than 10% of the voting rights attached to all outstanding voting securities of the issuer,
- (d) a relative of the individual who has the same home as that individual,
- (e) an individual who is married to that person and is not living separate and apart within the meaning of the *Divorce Act* (Canada),
- (f) an individual who has the same home as the person and is living with the person in a domestic or economic relationship, or
- (g) a relative of an individual mentioned in clause (e) or (f) who has the same home as the individual.

(2) In this section, **relative** means a parent, grand-parent, brother, sister, child or grandchild.

Control of an issuer

1.11 For the purpose of securities laws, an issuer is controlled by a person if

- (a) that person, directly or indirectly, beneficially owns or exercises control or direction over voting securities of the issuer, unless that person holds the voting securities only to secure an obligation, and
- (b) the votes carried by those voting securities, if exercised, would entitle their holder to elect a majority of the directors of the issuer.

Beneficial ownership of securities

1.12 For the purpose of securities laws, a person beneficially owns securities that are beneficially owned by

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

Special relationship with reporting issuer

1.13(1) For the purpose of section 12.11 [*Trading, tipping, and procuring prohibited*] and section 8.9 [*Liability for insider trading, tipping, procuring and front running*], a person is in a special relationship with a reporting issuer if the person

- (a) is an insider, affiliate or associate of
 - (i) the reporting issuer,
 - (ii) a person that is making or proposing to make a take-over bid for the securities of the reporting issuer, or
 - (iii) a person that is proposing
 - (A) to become a party to an amalgamation, merger, arrangement reorganization or similar transaction with the reporting issuer, or
 - (B) to acquire a substantial portion of the property of the reporting issuer,

- (b) is engaging in or is proposing to engage in any business or professional activity with or on behalf of the reporting issuer or any person described in clause (a)(ii) or (iii),
- (c) is a director, officer or employee of the reporting issuer or of any person described in clause (a)(ii) or (iii) or clause (b),
- (d) knows of a material fact or of a material change relating to the reporting issuer, having acquired the knowledge while in a relationship described in clauses (a) to (c), or
- (e) knows of a material fact or of a material change relating to the reporting issuer, having acquired the knowledge from another person at a time when
 - (i) that other person was in a special relationship with the reporting issuer, whether under this clause or any of clauses (a) to (d), and
 - (ii) the person that acquired knowledge of the material fact or the material change from that other person knew or reasonably ought to have known of the special relationship referred to in subclause (i).

(2) In subsection (1), a reference to a **reporting issuer** includes a reference to a subsidiary of the reporting issuer.

PART 2: MARKETPLACES, SELF-REGULATION AND MARKET PARTICIPANTS

Division 1 Recognized Entities

Recognition required for exchanges and quotation and trade reporting systems

2.1 No person may carry on business as

- (a) an exchange, or
- (b) a quotation and trade reporting system,

unless that person is recognized by the securities regulatory authority under this Part.

Designation of other entities requiring recognition

2.2(1) The securities regulatory authority may, by order, designate, as requiring recognition under this Part, a person that

- (a) is a self-regulatory organization,
- (b) is a clearing agency, or
- (c) the securities regulatory authority considers to be in the public interest to recognize because the person performs a function that is related to or consistent with the purposes of securities laws.

(2) A person must not be designated under this section unless the person has been given an opportunity to be heard.

(3) A person designated under this section may not carry on the business in respect of which the person is designated unless that person is recognized by the securities regulatory authority.

Application for recognition

2.3 A person that is required to be recognized under this Part must apply to the securities regulatory authority for recognition.

Recognition orders**2.4** On application by

- (a) an exchange,
- (b) a quotation and trade reporting system, or
- (c) a person designated as requiring recognition under this Part,

the securities regulatory authority may, by order, recognize the applicant if the securities regulatory authority is satisfied it would be in the public interest.

Voluntary surrender of recognition

2.5 On application by a recognized entity the securities regulatory authority may accept the voluntary surrender of recognition of the recognized entity if the securities regulatory authority is satisfied that the surrender is not prejudicial to the public interest.

**Division 2
Authority, Duties and Supervision
of Recognized Entities**

Powers of recognized entities

2.6(1) A recognized entity must regulate its participants or the participants of another recognized entity and each of their employees, agents or subscribers in accordance with the rules, policies and other similar instruments of the recognized entity, or of the other recognized entity, as amended from time to time.

(2) The authority of a recognized entity to regulate its participants or the participants of another recognized entity extends to

- (a) its former participants or the former participants of the other recognized entity,
- (b) former employees, agents or subscribers of its participants and former participants, or
- (c) former employees, agents or subscribers of participants or former participants of the other recognized entity

with respect to the person's activities while a participant, or employee, agent or subscriber of a participant or former participant, of the recognized entity or the other recognized entity.

- (3) The rules, policies and other similar instruments of a recognized entity must be consistent with securities laws.
- (4) A recognized entity may impose on participants it regulates additional requirements that are not inconsistent with securities laws.

Delegation

2.7(1) The securities regulatory authority may delegate to a recognized entity any of the powers, functions or duties the securities regulatory authority has under Part 3 [*Registration*] or under rules relating to registration or registrants.

- (2) A recognized entity may, with the prior approval of the securities regulatory authority, sub-delegate any of the powers, functions or duties received by it from the securities regulatory authority under subsection (1).
- (3) A decision of a delegate of a recognized entity is a decision of the recognized entity unless the rules, policies or other instruments of the recognized entity provide otherwise.
- (4) The securities regulatory authority may continue to exercise any power, function or duty delegated by it to a recognized entity.
- (5) A decision of a recognized entity in the exercise of any power, function or duty delegated to it by the securities regulatory authority
 - (a) may be made subject to terms, conditions, restrictions and limitations, or any of them, and
 - (b) may be revoked or varied and new terms, conditions, restrictions and limitations may be imposed on the decision.

Authorizations

- 2.8** The securities regulatory authority may, by order, authorize a recognized entity to
- (a) exercise authority under section 2.10 [*Attendance of witnesses and giving evidence*];
 - (b) make an application under section 2.11(1) [*Appointment to manage affairs*] for the appointment of a receiver, receiver-manager, trustee or liquidator;

- (c) file a decision of the recognized entity with the court under section 2.16(1) [*Filing with the court*];
- (d) file a settlement agreement with the court under section 2.16(2) [*Filing with the court*].

Exempt entities

2.9 The securities regulatory authority may, with respect to a person required to be recognized under section 2.1 [*Recognition required for exchanges and quotation and trade reporting systems*] or section 2.2 [*Designation of other entities requiring recognition*] that is exempt from recognition under the rules or by order of the securities regulatory authority,

- (a) delegate to that person any of the powers, functions and duties described in section 2.7(1) [*Delegation*], or
- (b) authorize that person to exercise any of the powers described in section 2.8 [*Authorizations*].

Attendance of witnesses and giving evidence

2.10 If a recognized entity is empowered under its rules, policies or other similar instruments to conduct hearings, and if it is authorized to do so under section 2.8(a) [*Authorizations*], the following applies for the purpose of a hearing:

- (a) the person conducting the hearing has the same power as is vested in the court for the trial of civil actions
 - (i) to summon and enforce the attendance of witnesses,
 - (ii) to compel witnesses to give evidence under oath or otherwise, and
 - (iii) to compel witnesses to produce records, property and things,
- (b) the failure or refusal of a person summoned to attend a hearing, answer questions, or produce records, property or things that are in the person's custody or possession, or under their direct or indirect control, makes that person, on application to the court by the person conducting the hearing, liable to be committed for contempt by the court,
- (c) a person conducting a hearing may take evidence under oath,

- (d) a person conducting a hearing or a person authorized by a person conducting a hearing may administer oaths for the purpose of taking evidence, and
- (e) the recognized entity may, on behalf of the person conducting a hearing,
 - (i) summon and enforce the attendance of witnesses, and
 - (ii) make applications to the court under clause (b).

Appointment to manage affairs

2.11(1) If a recognized entity is authorized to do so under section 2.8(b) [*Authorizations*], the recognized entity may apply to the court for the appointment of a receiver, receiver-manager, trustee or liquidator for all or part of the undertaking and affairs of a participant of that recognized entity.

(2) On application, the court may make an appointment if the court is satisfied that the appointment is in the best interests of

- (a) the recognized entity,
- (b) the public,
- (c) those persons whose property is in the possession or under the control of the participant,
- (d) security holders or partners of the participant,
- (e) subscribers or clients of the participant, or
- (f) creditors of the participant.

Collection, use and disclosure of personal information

2.12 A recognized entity or a person that is exempt from recognition may, with respect to any personal information referred to, dealt with or governed under sections __ of the [*insert name of local personal information protection legislation (Federal or provincial as applicable)*] collect that information, whether directly from the individual, through a registrant or participant, or by some other method, use and disclose that information for the purpose of

- (a) the suppression of fraud, market manipulation or unfair trading practices, or

- (b) an investigation
 - (i) of a contravention of rules, policies or other similar instruments of the recognized entity, or
 - (ii) of fraud, market manipulation or unfair trading practices.

Supervision of recognized entities

2.13(1) If it considers it in the public interest, the securities regulatory authority may make any decision with respect to the following matters

- (a) a rule, policy or other similar instrument of a recognized entity;
- (b) the procedures, practices, operations and interpretations of a recognized entity;
- (c) the manner in which a recognized entity carries on business;
- (d) the trading of securities on or through the facilities of the recognized entity;
- (e) a security listed or quoted on the recognized entity;
- (f) issuers whose securities are listed or quoted on the recognized entity to ensure that they comply with securities laws;
- (g) a security cleared through the recognized entity.

(2) There is no right of appeal to a court in respect of a decision by the securities regulatory authority under this section.

Review of recognized entity's decisions

2.14(1) The persons described in subsection (2) may request and are entitled to a review of

- (a) a decision, order, ruling or direction of a recognized entity under rules, policies or other similar instruments of the recognized entity;
- (b) a decision of the recognized entity under a power, function or duty delegated to the recognized entity by the securities regulatory authority.

(2) The following persons have a right to request a review under subsection (1)

- (a) a person directly affected by the decision, order, ruling or direction;
- (b) a person who is directly affected by the administration of the decision, order, ruling or direction;
- (c) the regulator.

(3) The securities regulatory authority may, on its own initiative, review anything described or referred to in subsection (1) by giving notice of its intention to do so to

- (a) the recognized entity referred to in subsection (1)(a) or (b) who made the decision, order, ruling or direction, and
- (b) any person directly affected by the decision, order, ruling or direction,

within 30 days after the date the securities regulatory authority was informed of the decision, order, ruling or direction.

(4) A person who has a right to request a review under subsection (2) must give notice of its intention to do so to:

- (a) the recognized entity referred to in subsection (1)(a) or (b) who made the decision, order, ruling or direction,
- (b) any person directly affected by the decision, order, ruling or direction, if the person who requests a review is the regulator,
- (c) the regulator, if the person who requests a review is the person directly affected by, or by the administration of, the decision, order, ruling or direction,

within 30 days after the date the person requesting the review was sent notice of the decision, order, ruling or direction.

(5) The recognized entity is a party to a review of its decision, order, ruling or direction before the securities regulatory authority.

(6) Section 6.6 [*Nature of a review*] and section 6.7 [*Decision after a review*] of the *Securities Administration Act* apply to a review by the securities regulatory authority of a decision, order, ruling or direction of a recognized entity in the same manner as they would apply to a review of an SRA delegate's decision.

When decisions take effect

2.15 A decision, order, ruling or direction of a recognized entity takes effect immediately despite a request for a review or notice by the securities regulatory authority that it intends to conduct a review, unless the person who made the decision, order, ruling or direction or the securities regulatory authority suspends the decision, order, ruling or direction pending the review.

Filing with the court

2.16(1) A recognized entity may file a certified copy of a decision it makes under its rules, policies or other similar instruments with the court if

- (a) the recognized entity is authorized to do so under section 2.8(c) [*Authorizations*],
- (b) the decision was made following a hearing, and
- (c) the time for requesting a review of the decision has expired.

(2) A recognized entity may file a certified copy of a settlement agreement between it and a person with the court if the recognized entity is authorized to do so under section 2.8(d) [*Authorizations*].

(3) A decision or settlement agreement filed with the court under this section has the same effect as if it were a judgment of that court.

Division 3 Market Participants

Duties of market participants

2.17(1) Every market participant must

- (a) keep records necessary to properly record its business and financial affairs and the transactions that it executes on behalf of itself and others, and
- (b) keep such other records as are required by securities laws.

(2) When required by the securities regulatory authority, a market participant must provide to the securities regulatory authority

- (a) any of the records that are required to be kept by the market participant, and
- (b) any communication made or record provided to an extra-provincial SRA, recognized entity, government or governmental or financial regulatory authority in a Canadian jurisdiction or in a foreign jurisdiction, unless prohibited by law from doing so.

Review of market participants

2.18(1) The securities regulatory authority may appoint a person to review the activities, business and conduct of a market participant for the purpose of determining either or both of the following:

- (a) whether a market participant is complying with securities laws, or
- (b) whether a recognized entity is enforcing and administering the recognized entity's rules, policies or other similar instruments, or the rules, policies or other similar instruments of another recognized entity.

(2) The person conducting the review may

- (a) enter the business premises of a market participant during business hours;
- (b) examine the market participant's records and make copies of them;
- (c) examine the market participant's property or things;
- (d) make inquiries of the market participant, or persons employed or engaged by, or persons that have entered into a principal/agent relationship with, the market participant concerning the operations and procedures of the market participant;
- (e) require information to be provided about the market participant's activities, business and conduct;
- (f) require the market participant to produce any record.

- (3) In exercising the power to make copies of records, the person conducting the review may
- (a) carry out the copying at the business premises of the market participant, or
 - (b) on giving an appropriate receipt, remove records for the purpose of copying them at other premises specified in the receipt.
- (4) Records removed for copying must be promptly returned to the person from whom they were received.
- (5) The securities regulatory authority may require a market participant that is the subject of a review to pay prescribed fees or prescribed charges for the cost of the review.

PART 3: REGISTRATION

Registration requirement

3.1 No person may carry on the business of, or hold themselves out as being in the business of, one or more of the following unless the person is registered, or is exempt from registration, in accordance with the rules:

- (a) trading in or acquiring securities;
- (b) advising on trading in, acquiring, or investing in, securities;
- (c) providing services relating to clause (a) or (b) that are prescribed.

Representatives

3.2 Every person that, on behalf of a person that is required under section 3.1 [*Registration requirement*] to be registered or that is exempt from registration,

- (a) trades in or acquires securities,
- (b) advises on trading in, acquiring or investing in securities, or
- (c) provides services relating to clause (a) or (b) that are prescribed,

must be registered, or be exempt from registration, in accordance with the rules.

Registration applications

3.3(1) An applicant for registration or the renewal, transfer, reactivation of, or amendment to, a registration under this Part must

- (a) apply to the securities regulatory authority in accordance with the rules, and
- (b) pay the prescribed fee when the application is made.

(2) The securities regulatory authority must grant the application unless it appears to the securities regulatory authority that

- (a) the applicant is not suitable for registration or renewal, transfer, reactivation of, or amendment to, registration, or

- (b) granting the application would be objectionable.

Information required

3.4 For the purpose of considering an application for registration or renewal, transfer, reactivation of, or amendment to, a registration, or a voluntary surrender or termination of registration, the securities regulatory authority may require that

- (a) any information or record be provided, by the applicant or registrant, and
- (b) the applicant or the registrant, as the case may be, and any director, officer, partner, employee, agent or representative of the applicant or registrant, submit to an examination under oath by a person appointed by the securities regulatory authority.

Opportunity to be heard

3.5 No application for registration or renewal, transfer, reactivation of, or amendment to, a registration, may be denied, and no terms, conditions, restrictions or limitations on a registration may be imposed or varied, unless the applicant or registrant has been given an opportunity to be heard.

Obligations of registrants, representatives and others

3.6 Registrants, representatives, and non-registered directors, officers, partners and employees of registrants, must

- (a) deal fairly, honestly and in good faith with clients, and
- (b) otherwise comply with securities laws.

Voluntary surrender of registration

3.7 On application by a registrant in accordance with the rules, the securities regulatory authority may accept the voluntary surrender of the registrant's registration if the securities regulatory authority is satisfied that

- (a) the registrant's financial obligations to its clients have been discharged, and
- (b) the surrender of the registration is not prejudicial to the public interest.

Continuing obligations after suspension or termination of registration

3.8(1) The registration of a registrant

- (a) whose registration is not renewed before the registration expires, or
- (b) who voluntarily surrenders its registration

is automatically suspended on the date the registration expires or the date the application for voluntary surrender is filed.

(2) A registrant whose registration is terminated or automatically suspended continues to have prescribed obligations for the prescribed period, unless the securities regulatory authority earlier confirms that the obligations are discharged.

Effect of termination of employment or engagement

3.9 If the employment or engagement of a representative ends, the registration of the representative is automatically suspended on the date employment or engagement ends until the registration is transferred, reactivated or terminated in accordance with the rules.

PART 4: PROSPECTUS REQUIREMENTS

Prospectus or alternative prospectus requirements

4.1 A person must not distribute a security, either on its own behalf or on behalf of another person, unless

- (a) a preliminary prospectus and a prospectus relating to the security have been filed and the securities regulatory authority has issued a receipt for the preliminary prospectus and the prospectus, and the prospectus has not lapsed,
- (b) the person or the distribution is exempt from the requirement to file a preliminary prospectus and a prospectus under the rules or under an order made by the securities regulatory authority, or
- (c) the person or the distribution complies with a prescribed process.

Preliminary prospectus contents

4.2 A preliminary prospectus must contain the information that is required for a prospectus, unless otherwise prescribed.

Defective preliminary prospectus

4.3(1) If the securities regulatory authority considers that a preliminary prospectus does not contain the prescribed information, the securities regulatory authority may, without giving prior notice, issue a cease trading order with respect to the securities to which the preliminary prospectus relates.

(2) The cease trading order lasts until a revised preliminary prospectus, satisfactory to the securities regulatory authority,

- (a) is filed with the securities regulatory authority, and
- (b) is sent to every recipient of the defective preliminary prospectus recorded as a recipient in accordance with the rules.

Prospectus

4.4 A prospectus must

- (a) provide full, true and plain disclosure of all material facts relating to the securities issued or proposed to be distributed,
- (b) be in the specified form, with the prescribed contents, and
- (c) otherwise comply with securities laws.

Filing prospectus without distribution

4.5 Even though no distribution of a security is contemplated, a person may file a preliminary prospectus and a prospectus, in the specified form, with the prescribed contents,

- (a) for the purpose of enabling the issuer to become a reporting issuer, or
- (b) for a prescribed purpose.

Receipt for prospectus

4.6(1) Except as otherwise prescribed, the securities regulatory authority must issue a receipt for a prospectus filed under this Part, unless it appears to the securities regulatory authority that it is not in the public interest.

(2) A receipt for a prospectus must not be refused without giving the person who filed the prospectus an opportunity to be heard.

Withdrawal from a purchase under a prospectus

4.7(1) A person may cancel an order to purchase securities offered under a prospectus if the dealer from whom the purchaser purchased the securities receives notice in writing from the purchaser by midnight on the second business day after the latest prospectus is received by the purchaser that the purchaser does not intend to be bound by the agreement of purchase.

(2) Subsection (1) does not apply if:

- (a) the purchaser is a registrant, or

- (b) the purchaser sells, or otherwise transfers beneficial ownership of the securities referred to in subsection (1), other than to secure indebtedness, before the expiration of the time referred to in subsection (1).

(3) For the purpose of this section but subject to subsection (4), receipt of the latest prospectus that the purchaser is entitled to receive under the rules, by a dealer who

- (a) is acting as agent of the purchaser, or
- (b) after receipt begins to act as agent of the purchaser,

with respect to the purchase of the securities referred to in subsection (1), is deemed receipt by the purchaser on the date the dealer received the prospectus.

(4) For the purpose of this section, a dealer does not act as agent of the purchaser unless the dealer is acting solely as agent of the purchaser with respect to the purchase and sale in question and has not received any compensation from or on behalf of the seller of the securities with respect to the purchase and sale.

(5) The receipt of notice referred to in subsection (1) by a dealer who acted as an agent of the seller is deemed to be receipt of the notice by the seller of the securities.

(6) If the issuer or a selling security holder acts as its own dealer in respect of a trade, this section applies to the issuer or selling security holder as if the issuer or selling security holder were a dealer.

(7) If there is a dispute, the dealer from whom the purchaser agreed to purchase the securities has the onus of proving that the time described in subsection (1) for cancelling the purchase has passed.

PART 5: CONTINUOUS DISCLOSURE

Disclosure obligation

5.1(1) A reporting issuer must, in accordance with the rules,

- (a) make periodic disclosure about its business and affairs,
- (b) make timely disclosure of a material change, and
- (c) make other prescribed disclosure.

(2) An issuer that is not a reporting issuer must disclose prescribed information in accordance with the rules.

Review of disclosure

5.2(1) The securities regulatory authority may conduct a review of the disclosure that has been made or that was required under securities laws to have been made by an issuer.

(2) An issuer that is subject to a review under this section must, at the time the securities regulatory authority requires, deliver to the securities regulatory authority any records relevant to disclosure that has been made or that was required under securities laws to have been made by the issuer or by any other person required by securities laws to file records or make disclosure.

(3) Despite [*insert name of freedom of information and protection of privacy legislation,*] information and records obtained under this section are exempt from disclosure under that Act if the securities regulatory authority determines that the information and records should be kept confidential.

PART 6: TRADE AND RELATED DISCLOSURE

Division 1 Disclosure of Interests

Definitions

6.1(1) In this Division, a reporting issuer does not include a mutual fund.

(2) Section 1.12(b) [*Beneficial ownership of securities*] does not apply to this Division.

Deemed insider – issuers

6.2 If an issuer becomes an insider of a reporting issuer, every director or senior officer of the issuer is deemed to have been an insider of the reporting issuer for the prescribed period or for the period that the individual was a director or senior officer of the issuer, whichever is the shorter period.

Deemed insider – reporting issuers

6.3 If a reporting issuer (the first reporting issuer) becomes an insider of another reporting issuer, (the second reporting issuer), every director or senior officer of the second reporting issuer is deemed to have been an insider of the first reporting issuer for the prescribed period or for the period that the individual was a director or senior officer of the second reporting issuer, whichever is the shorter period.

Initial insider report

6.4 A person who becomes an insider of a reporting issuer must file, in accordance with the rules, an insider report disclosing as at the date the person became an insider

- (a) any direct or indirect beneficial ownership of, or control or direction over,
 - (i) securities of the reporting issuer, or
 - (ii) any put or call option or other right or obligation to purchase or sell securities of the reporting issuer, and
- (b) any interest in, or right or obligation associated with, a related financial instrument.

Subsequent insider reports

6.5 An insider of a reporting issuer must file, in accordance with the rules, an insider report if there is a change in

- (a) the insider's direct or indirect beneficial ownership of, or control or direction over,
 - (i) securities of the reporting issuer, or
 - (ii) any put or call option or other right or obligation to purchase or sell securities of the reporting issuer, or
- (b) the insider's interest in, or rights or obligations associated with, a related financial instrument.

Insider report for deemed insiders

6.6 If a person is deemed to have been an insider of a reporting issuer under section 6.2 [*Deemed insider – issuers*] or section 6.3 [*Deemed insider-reporting issuers*] the person must file the insider reports referred to in section 6.4 [*Initial insider report*] and section 6.5 [*Subsequent insider reports*] for the period for which the person is deemed to have been an insider.

Division 2 Early Warning System

Disclosure of acquisitions

6.7(1) For the purpose of this section,

- (a) a security is deemed to be convertible into a security of another class if, with or without conditions,
 - (i) it is or may be convertible into or exchangeable for a security of the other class, or
 - (ii) it carries the right or obligation to acquire a security of the other class,whether the other class is of the same or another issuer;
- (b) a security that is convertible into a security of another class (the second security) is also deemed to be convertible into securities of each class into

which the second security may be converted, whether that conversion can take place directly or indirectly through securities of one or more additional classes of securities that are themselves convertible.

(2) A person that, directly or indirectly, acquires beneficial ownership of, or the power to exercise control or direction over,

- (a) voting securities,
- (b) equity securities, or
- (c) securities convertible into voting securities or equity securities,

of any class of a reporting issuer that, together with the person's securities of that class, would constitute at least the prescribed percentage of the outstanding securities of that class, must make disclosure respecting the acquisition as may be prescribed.

(3) If a prescribed change in the information provided under subsection (2) occurs, the person required to provide the information under subsection (2) must make disclosure respecting the change as may be prescribed.

PART 7: TAKE-OVER BIDS AND ISSUER BIDS

Division 1 Process

Making of bid

7.1 A person must not make a take-over bid or issuer bid, whether alone or acting jointly or in concert with one or more persons, unless

- (a) at the time of the bid, the bid is filed and disseminated to the holders of securities of the class that is subject to the bid, and securities convertible into that class, in accordance with the rules, and
- (b) the offeror complies with the rules, including rules respecting,
 - (i) the form, content, filing and dissemination of records,
 - (ii) time periods,
 - (iii) amendments to a bid and to records, and
 - (iv) taking up and paying for securities.

Application to direct and indirect offers

7.2 For the purpose of this Part, the rules relating to take-over bids and issuer bids and the definitions of *issuer bid* and *take-over bid*, a reference to

- (a) an offer to acquire,
- (b) the acquisition or ownership of securities, or
- (c) control or direction over securities

includes a direct or indirect offer to acquire or the direct or indirect acquisition or ownership of securities, or the direct or indirect control or direction over securities, as the case may be.

Bid financing

7.3 If a take-over bid or issuer bid provides that the consideration for the securities deposited under the bid is to be paid wholly or partly in cash, the offeror must make

adequate arrangements, as may be prescribed, to ensure that the required funds are available to fully pay for all securities that the offeror has offered to acquire.

Equal treatment

7.4(1) Subject to the rules, a take-over bid or issuer bid must be subject to the same terms and conditions for all holders of the same class of securities.

(2) Subject to the rules, if a person makes or intends to make a take-over bid or issuer bid, that person or any person acting jointly or in concert with that person must not enter into any collateral agreement, arrangement, commitment or understanding that has the effect of providing to a holder or beneficial owner of securities of the offeree issuer a consideration of greater value than that offered to the other holders of securities of the same class.

(3) If a variation in the terms of a take-over bid or issuer bid before the expiry of the bid increases the value of the consideration offered for the securities subject to the bid, the offeror must pay that increased consideration to each person whose securities are taken up under the bid, whether or not the securities were taken up by the offeror before the variation.

(4) Subject to the rules, if

- (a) a take-over bid or issuer bid is made for less than all of the class of securities subject to the bid, and
- (b) a greater number of securities is deposited under the bid than the offeror is bound or willing to acquire under the bid,

the securities must be taken up and paid for by the offeror as nearly as may be proportionately, disregarding fractions, according to the number of securities deposited by each depositing security holder.

Directors' recommendation

7.5(1) When a take-over bid has been made, the directors of the offeree issuer must

- (a) determine whether to recommend acceptance or rejection of the bid or determine not to make a recommendation, and
- (b) make their recommendation, or a statement that they are not making a recommendation, in accordance with the rules.

(2) An individual director or officer of the offeree issuer may recommend acceptance or rejection of a take-over bid if the recommendation is made in accordance with the rules.

Division 2 Remedying Contraventions

Definition

7.6 In this Division, *interested person* means

- (a) an offeree issuer,
- (b) a security holder, director or officer of an offeree issuer,
- (c) an offeror, and
- (d) any other person who, in the opinion of the court or the securities regulatory authority, as the case requires, is a proper person to make an application.

Order by securities regulatory authority for contraventions

7.7 On application by an interested person or the regulator and, if the securities regulatory authority considers that a person has not complied or is not complying with this Part or the rules relating to take-over bids and issuer bids, the securities regulatory authority may make an order

- (a) restraining the distribution of any record used or issued in connection with a take-over bid or issuer bid;
- (b) requiring an amendment to or variation of any record used or issued in connection with a take-over bid or issuer bid and requiring the distribution of amended, varied or corrected information;
- (c) directing any person to comply with this Part or the rules relating to take-over bids and issuer bids;
- (d) restraining any person from contravening this Part or the rules relating to take-over bids and issuer bids;
- (e) directing the directors and senior officers of any person to cause the person to comply with or to cease contravening this Part or the rules relating to take-over bids and issuer bids.

Applications to the court

7.8(1) On application by an interested person or the securities regulatory authority and, if the court is satisfied that a person has not complied with this Part or the rules relating to take-over bids and issuer bids, the court may make such interim or final order as the court thinks fit, including, without limitation, an order

- (a) compensating any interested person who is a party to the application for damages suffered as a result of a contravention of this Part or the rules relating to take-over bids and issuer bids;
- (b) rescinding a transaction with any interested person, including the issue of a security or an acquisition and sale of a security;
- (c) requiring any person to dispose of any securities acquired pursuant to or in connection with a take-over bid or an issuer bid;
- (d) prohibiting any person from exercising any or all of the voting rights attaching to any securities;
- (e) requiring the trial of an issue.

(2) If the securities regulatory authority is not the applicant under subsection (1), the securities regulatory authority

- (a) must be given notice of the application, and
- (b) is entitled to appear at the hearing and may make representations to the court.

PART 8: CIVIL LIABILITY – GENERAL

Liability for misrepresentation in prospectus

8.1(1) If a prospectus contains a misrepresentation, a person who purchases a security offered by the prospectus during the period of distribution has, without regard to whether the purchaser relied on the misrepresentation, a right of action for damages against

- (a) the issuer or a selling security holder on whose behalf the distribution is made,
- (b) every underwriter of the securities who is required under the rules to sign the certificate in the prospectus,
- (c) every director of the issuer at the time the prospectus was filed,
- (d) every person whose consent has been filed, as prescribed, but only with respect to reports, opinions or statements that have been made by them,
- (e) every person who signed the prospectus, other than the persons included in clauses (a) to (d), and
- (f) any other prescribed person.

(2) If a prospectus contains a misrepresentation, the purchaser has a right of action for rescission against a person or underwriter referred to in subsection (1)(a) or (b) or another underwriter of the securities, in which case the purchaser has no right of action for damages against that person under subsection (1).

(3) A person is not liable under subsection (1) or (2) if the person proves that the purchaser purchased the securities with knowledge of the misrepresentation.

(4) A person, other than the issuer or a selling security holder, is not liable under subsection (1) or (2) if the person proves that

- (a) the prospectus was filed without the person's knowledge or consent and that, on becoming aware of its filing, the person promptly gave reasonable general notice that it was so filed,
- (b) before the purchase of the securities by the purchaser, on becoming aware of any misrepresentation in the prospectus, the person withdrew their consent to it and gave reasonable general notice of the withdrawal and the reason for it,
- (c) with respect to any part of the prospectus purporting

- (i) to be made on the authority of an expert, or
 - (ii) to be a copy of, or an extract from, a report, statement or opinion of an expert,
- the person had no reasonable grounds to believe and did not believe that
- (iii) there had been a misrepresentation, or
 - (iv) the relevant part of the prospectus
 - (A) did not fairly represent the report, statement or opinion of the expert, or
 - (B) was not a fair copy of, or an extract from, the report, statement or opinion of the expert,
- (d) with respect to any part of the prospectus purporting
- (i) to be made on the person's own authority as an expert, or
 - (ii) to be a copy of, or an extract from, the person's own report, statement or opinion as an expert,
- but that contained a misrepresentation attributable to failure to fairly represent the person's report, statement or opinion as an expert,
- (iii) the person had, after reasonable investigation, reasonable grounds to believe and did believe that the relevant part of the prospectus fairly represented the person's report, statement or opinion as an expert, or
 - (iv) on becoming aware that the relevant part of the prospectus did not fairly represent the person's report, statement or opinion as an expert, the person promptly gave written notice to the securities regulatory authority and gave reasonable general notice that
 - (A) the person's report, statement or opinion was not fairly represented, and
 - (B) the person would not be responsible for that part of the prospectus,

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

it was a correct and fair representation of the statement or copy of, or an extract from, the document, and the person had reasonable grounds to believe and did believe that the statement was true, or
- (f) with respect to a misrepresentation in the prospectus,
 - (i) the misrepresentation was also contained in a document filed by or on behalf of a person, other than the issuer, with the securities regulatory authority, an extra-provincial SRA or an exchange and was not corrected in another document filed by or on behalf of that person with the securities regulatory authority, the extra-provincial SRA or the exchange before the filing of the prospectus,
 - (ii) the prospectus contained a reference identifying the document that was the source of the misrepresentation, and
 - (iii) when the prospectus was filed, the person did not know and had no reasonable grounds to believe that the prospectus contained a misrepresentation.

(5) A person is not liable under subsection (1) or (2) with respect to a misrepresentation in forward-looking information if,

- (a) the prospectus containing the forward-looking information contained, proximate to the forward-looking information,
 - (i) reasonable cautionary language identifying the forward-looking information as such and identifying material factors that could cause actual results to differ materially from a conclusion, forecast or projection in the forward-looking information, and
 - (ii) a statement of the material factors or assumptions that were applied in drawing a conclusion or making a forecast or projection set out in the forward-looking information, and
- (b) the person had a reasonable basis for drawing the conclusions or making the forecasts or projections set out in the forward-looking information.

(6) A person, other than the issuer and selling security holder, is not liable under subsection (1) with respect to any part of the prospectus purporting

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

unless the person

- (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.

(7) A person, other than the issuer or a selling security holder, is not liable under subsection (1) or (2) with respect to any part of the prospectus not purporting

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

unless the person

- (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.

(8) Subsection (5) does not relieve a person of liability respecting forward-looking information in a financial statement required to be filed under securities laws or forward-looking information in a prospectus filed in connection with an initial public offering.

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

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

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

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

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

(14) 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 at law.

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

Liability for misrepresentation in an offering memorandum

8.2(1) If an offering memorandum contains a misrepresentation, a purchaser who purchases a security offered by the offering memorandum during the period of distribution has, without regard to whether the purchaser relied on the misrepresentation, a right of action for damages against

- (a) the issuer,
- (b) the selling security holder on whose behalf the distribution is made,
- (c) every director of the issuer at the date of the offering memorandum, and
- (d) every person who signed the offering memorandum.

(2) If an offering memorandum contains a misrepresentation, a purchaser has a right of action for rescission against the issuer or the selling security holder, in which case the purchaser has no right of action for damages against the issuer or the selling security holder under subsection (1).

(3) A person is not liable under subsection (1) or (2) if the person proves that the purchaser purchased the securities with knowledge of the misrepresentation.

(4) A person, other than the issuer and selling security holder, is not liable under subsection (1) or (2) if the person proves that

- (a) 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, statement or opinion of an expert,

the person had no reasonable grounds to believe and did not believe that
- (iii) there had been a misrepresentation, or
- (iv) the relevant part of the offering memorandum
 - (A) did not fairly represent the report, statement or opinion of the expert, or
 - (B) was not a fair copy of, or an extract from, the report, statement or opinion of the expert, or
- (b) with respect to a misrepresentation in the offering memorandum,
 - (i) the misrepresentation was also contained in a document filed by or on behalf of a person, other than the issuer, with the securities regulatory authority, an extra-provincial SRA or an exchange and was not corrected in another document filed by or on behalf of that person with the securities regulatory authority, the extra-provincial SRA or the exchange before the delivery of the offering memorandum,
 - (ii) the offering memorandum contained a reference identifying the document that was the source of the misrepresentation, and
 - (iii) when the offering memorandum was delivered, the person did not know and had no reasonable grounds to believe that the offering memorandum contained a misrepresentation.

(5) A person is not liable with respect to a misrepresentation in forward-looking information if,

- (a) the offering memorandum containing the forward-looking information contained, proximate to the forward-looking information,
 - (i) reasonable cautionary language identifying the forward-looking information as such and identifying material factors that could cause actual results to differ materially from a conclusion, forecast or projection in the forward-looking information, and

- (ii) a statement of the material factors or assumptions that were applied in drawing a conclusion or making a forecast or projection set out in the forward-looking information, and
 - (b) the person had a reasonable basis for drawing the conclusions or making the forecasts or projections set out in the forward-looking information.
- (6)** A person, other than the issuer and selling security holder, is not 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, statement or opinion of an expertunless the person
 - (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.
- (7)** Subsection (5) does not relieve a person of liability respecting forward looking information in a financial statement required to be filed under securities laws.
- (8)** In an action for damages under subsection (1), the defendant is not liable for all or any part of the damages that the defendant proves does not represent the depreciation in value of the security resulting from the misrepresentation.
- (9)** The liability of all persons referred to in subsection (1) is joint and several with respect to the same cause of action.
- (10)** Despite subsection (9), an issuer and every director of the issuer at the date of the offering memorandum who is not a selling security holder is not liable if the issuer does not receive any proceeds from the distribution of the securities and the misrepresentation was not based on information provided by the issuer, unless the misrepresentation
 - (a) was based on information that was previously publicly disclosed by the issuer,
 - (b) was a misrepresentation at the time of its previous public disclosure, and
 - (c) was not subsequently publicly corrected or superceded by the issuer before completion of the distribution of the securities being distributed.

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

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

(13) 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 at law.

(14) 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.

Withdrawal from a purchase under an offering memorandum

8.3 A purchaser of a security to whom an offering memorandum is required to be sent may cancel the contract to purchase the security by sending written notice to the issuer by midnight on the second business day after the purchaser signs the agreement to purchase the securities.

Liability for misrepresentation in a take-over bid circular, issuer bid circular or notice

8.4(1) If a take-over bid circular, issuer bid circular, notice of change or notice of variation sent under securities laws contains a misrepresentation, a person to whom the circular or notice was sent has, without regard to whether the person relied on the misrepresentation, a right of action for

- (a) rescission against the offeror, or
- (b) damages against
 - (i) every director of the offeror at the time the circular or notice was signed,
 - (ii) each person who signed the certificate in the circular or notice,
 - (iii) every person whose consent has been filed, as prescribed, but only with respect to reports, opinions or statements that have been made by them, and
 - (iv) the offeror.

(2) If a directors' circular or a director's or officer's circular or a notice of change in respect of a directors' circular or a director's or officer's circular sent under securities laws contains a misrepresentation, a person to whom the circular or notice was sent has, without regard to whether the person relied on the misrepresentation, and

- (a) in respect of a misrepresentation in a directors' circular or a notice of change to it, a right of action for damages against
 - (i) every officer who signed the circular or notice,
 - (ii) every director if the board of directors approved the circular, and
 - (iii) every person whose consent has been filed, as prescribed, but only with respect to reports, opinions or statements that have been made by them;
- (b) in respect of a misrepresentation in an individual director's or officer's circular or a notice of change to it, a right of action for damages against
 - (i) every director or officer who signed the circular or notice, and
 - (ii) every person whose consent has been filed, as prescribed, but only with respect to reports, opinions or statements that have been made by them.

(3) A person is not liable under subsection (1) or (2) if the person proves that the person exercising the right of action had knowledge of the misrepresentation.

(4) A person, other than the offeror, is not liable under subsection (1) or (2) if the person proves that

- (a) the circular or notice was sent without the person's knowledge or consent and that, on becoming aware of that fact, the person promptly gave reasonable general notice that it was so sent,
- (b) after the sending of the circular or notice and on becoming aware of any misrepresentation in the circular or notice, the person withdrew the person's consent to it and gave reasonable general notice of the withdrawal and the reason for it,
- (c) with respect to any part of the circular or notice purporting
 - (i) to be made on the authority of an expert, or

- (ii) to be a copy of, or an extract from, a report, statement or opinion of an expert,

the person had no reasonable grounds to believe and did not believe that
- (iii) there had been a misrepresentation, or
- (iv) the relevant part of the circular or notice
 - (A) did not fairly represent the report, statement or opinion of the expert, or
 - (B) was not a fair copy of, or extract from, the report, statement or opinion of the expert,
- (d) with respect to any part of the circular or notice purporting
 - (i) to be made on the person's own authority as an expert, or
 - (ii) to be a copy of, or an extract from, the person's own report, statement or opinion as an expert,

but that contained a misrepresentation attributable to a failure to fairly represent the person's report, statement or opinion as an expert,
 - (iii) the person had, after reasonable investigation, reasonable grounds to believe and did believe that the relevant part of the circular or notice fairly represented their report, statement or opinion as an expert, or
 - (iv) on becoming aware that the relevant part of the circular or notice did not fairly represent the person's report, statement or opinion as an expert, the person promptly advised the securities regulatory authority and gave reasonable general notice that
 - (A) the person's report, statement or opinion was not fairly represented, and
 - (B) the person would not be responsible for that part of the circular or notice,
- (e) with respect to a false statement,
 - (i) purporting to be a statement made by an official person, or

- (ii) 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 the person had reasonable grounds to believe and did believe that the statement was true, or

- (f) with respect to a misrepresentation in a circular or notice,
 - (i) the misrepresentation was also contained in a document filed by or on behalf of a person, other than the issuer, with the securities regulatory authority, an extra-provincial SRA or an exchange and was not corrected in another document filed by or on behalf of that person with the securities regulatory authority, the extra-provincial SRA or the exchange before the filing of the circular or notice,
 - (ii) the circular or notice contained a reference identifying the document that was the source of the misrepresentation, and
 - (iii) when the circular or notice was filed, the person did not know and had no reasonable grounds to believe that the circular or notice contained a misrepresentation.

(5) A person is not liable with respect to a misrepresentation in forward-looking information if

- (a) the circular or notice containing the forward-looking information contained, proximate to the forward-looking information,
 - (i) reasonable cautionary language identifying the forward-looking information as such and identifying material factors that could cause actual results to differ materially from a conclusion, forecast or projection in the forward-looking information, and
 - (ii) a statement of the material factors or assumptions that were applied in drawing a conclusion or making a forecast or projection set out in the forward-looking information, and
- (b) the person had a reasonable basis for drawing the conclusions or making the forecasts or projections set out in the forward-looking information.

(6) A person, other than the offeror, is not liable under subsection (1) or (2) with respect to any part of the circular or notice purporting

- (a) to be made on the person's own authority as an expert, or

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

unless the person

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

(7) A person, other than the offeror, is not liable under subsection (1) or (2) with respect to any part of the circular or notice not purporting

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

unless the person

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

(8) Subsection (5) does not relieve a person of liability respecting forward-looking information in a financial statement required to be filed under securities laws or forward-looking information in a document released in connection with the issuance of securities pursuant to a securities exchange take-over bid.

(9) The liability of all persons referred to in subsections (1)(b) or (2) is joint and several with respect to the same cause of action.

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

(11) In an action for damages under subsection (1) or (2) based on a misrepresentation affecting a security offered by the offeror issuer in exchange for securities of the offeree issuer, the defendant is not liable for all or any part of the damages that the defendant proves does not represent the depreciation in value of the security resulting from the misrepresentation.

(12) For the purpose of this section, if, with respect to a bid that the rules permit to be made through the facilities of an exchange, the offeror is required to file a disclosure document with the exchange or to deliver a disclosure document to security holders of the offeree issuer, the disclosure document is deemed to be a take-over bid circular, issuer bid circular, notice of change or notice of variation, as the case may be, sent as required by securities laws.

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

Standard of reasonableness

8.5 In determining what constitutes reasonable investigation or reasonable grounds for belief for the purpose of section 8.1 [*Liability for misrepresentation in prospectus*], section 8.2 [*Liability for misrepresentation in an offering memorandum*] and section 8.4 [*Liability for misrepresentation in a take-over bid circular, issuer bid circular or notice*], the standard of reasonableness is that required of a prudent person in the circumstances of the particular case.

Right of action for failure to deliver a prospectus, take-over bid circular or issuer bid circular

8.6 A person who is

- (a) a purchaser of a security to whom a prospectus was required under securities laws to be sent or delivered but which was not sent or delivered, or
- (b) a person to whom a take-over bid circular, issuer bid circular, notice of change or notice of variation was required under securities laws to be sent or delivered but which was not sent or delivered,

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

Right of action for failure to deliver an offering memorandum

8.7 A person who is a purchaser of a security distributed under an offering memorandum has a right of action for damages or rescission against the issuer if the offering memorandum was not sent or delivered as prescribed.

Right of action for failure to file a prospectus

8.8 A person who is a purchaser of a security in respect of which a prospectus was required under securities laws to be filed, and the prospectus was not filed, has a right of action for damages or rescission against the issuer or selling security holder.

Liability for insider trading, tipping, procuring and front running

8.9(1) For the purpose of this section, a reference to a **reporting issuer** in section 1.13 [*Special relationship with reporting issuer*] includes an issuer that is a reporting issuer under extra-provincial securities laws.

(2) Every person in a special relationship with a reporting issuer who contravenes section 12.11(2) [*Trading, tipping and procuring prohibited*] is liable to compensate the other party to the action described in section 12.11(2) for damages as a result of the action unless,

- (a) the person in the special relationship with the reporting issuer proves that the person reasonably believed that the inside information had been generally disclosed, or
- (b) the inside information was known or ought reasonably to have been known to the other party to the action.

(3) Every

- (a) reporting issuer,
- (b) person in a special relationship with a reporting issuer, and
- (c) person that proposes,
 - (i) to make a take-over bid for the securities of a reporting issuer,
 - (ii) to become a party to an amalgamation, merger, arrangement, reorganization or similar transaction with a reporting issuer, or
 - (iii) to acquire a substantial portion of the property of a reporting issuer,

who informs another person of inside information relating to the reporting issuer is liable to compensate for damages any person who, after that, sells securities of the reporting issuer to, or purchases securities of the reporting issuer from, the person that received the inside information unless,

- (d) the person who informed the other person proves that the informing person reasonably believed the inside information had been generally disclosed,
- (e) the inside information was known or ought reasonably to have been known to the seller or purchaser, as the case may be,
- (f) in the case of an action against a reporting issuer or a person in a special relationship with the reporting issuer, the inside information was given in the necessary course of business, or
- (g) in the case of an action against a person described in clause (c)(i), (ii) or (iii), the inside information was given in the necessary course of business to effect the take-over bid, amalgamation, merger, arrangement, reorganization, or similar transaction, or acquisition.

(4) Every

- (a) reporting issuer, and
- (b) person in a special relationship with a reporting issuer

who contravenes section 12.11(5) [*Trading, tipping and procuring prohibited*] is liable to compensate the other party to the action described in section 12.11(5) for damages as a result of the action unless

- (c) the person who recommended or encouraged the other person proves that, at the time of the action described in section 12.11(5) [*Trading, tipping and procuring prohibited*], the person who recommended or encouraged reasonably believed the inside information had been generally disclosed, or
- (d) the inside information was, at the time of the action, known or ought reasonably to have been known to the other party to the action described in section 12.11(5) [*Trading, tipping and procuring prohibited*].

(5) A person (the first person) who

- (a) knows of material order information, and
- (b) contravenes section 12.9(1) or (2) [*Front running*],

is liable to account to the person to whom the material order information relates for any benefit or advantage received or receivable by the first person by reason of the contravention.

- (6) Every person who is an insider, affiliate or associate of a reporting issuer that,
- (a) acts as described in section 12.11(2) [*Trading, tipping and procuring prohibited*] with knowledge of inside information relating to the reporting issuer,
 - (b) informs another person, other than in the necessary course of business, of inside information relating to the reporting issuer, or
 - (c) recommends or encourages another person to act as described in section 12.11(5) [*Trading, tipping and procuring prohibited*] with knowledge of inside information relating to the reporting issuer,

is accountable to the reporting issuer for any benefit or advantage received or receivable by the person as a result of the action, information provided, recommendation or encouragement, as the case may be, unless the person proves that they reasonably believed that the inside information had been generally disclosed.

(7) If more than one person in a special relationship with a reporting issuer is liable under subsection (2), (3) or (4) as to the same transaction or series of transactions, their liability is joint and several with respect to the same cause of action.

- (8) In assessing damages under subsection (2), (3) or (4), the court must consider,
- (a) if the plaintiff is a purchaser, the price paid by the plaintiff for the security less the average market price of the security in the 10 trading days following general disclosure of the inside information, or
 - (b) if the plaintiff is a seller, the average market price of the security in the 10 trading days following general disclosure of the inside information less the price received by the plaintiff for the security,

but the court may instead consider such other measures of damages as may be relevant in the circumstances.

Court action on behalf of issuer

8.10(1) On application by

- (a) the securities regulatory authority, or
- (b) any person who
 - (i) was, at the time of a transaction referred to in section 8.9(2), (3) or (4) [*Liability for insider trading, tipping, procuring and front running*], or

- (ii) is, at the time of the application,
- a security holder of a reporting issuer, the court may, if satisfied that
- (c) the applicant has reasonable grounds for believing that the reporting issuer has a cause of action under section 8.9(6) [*Liability for insider trading, tipping, procuring and front running*], and
- (d) the reporting issuer has
- (i) refused or failed to commence an action under section 8.9(6) [*Liability for insider trading, tipping, procuring and front running*] within 60 days after receipt of a written request from the applicant to do so, or
- (ii) failed to prosecute diligently an action commenced by it under section 8.9(6) [*Liability for insider trading, tipping, procuring and front running*],

make an order, on any terms as to security for costs or otherwise that it considers proper, requiring the securities regulatory authority or authorizing the person or the securities regulatory authority to commence, commence and prosecute, or continue an action in the name of, and on behalf of, the reporting issuer to enforce the liability created by section 8.9(6) [*Liability for insider trading, tipping, procuring and front running*].

(2) If an action under section 8.9(6) [*Liability for insider trading, tipping, procuring and front running*] is commenced, commenced and prosecuted, or continued by the directors of the reporting issuer, the court may order the reporting issuer to pay all costs properly incurred by the directors in commencing, commencing and prosecuting, or continuing the action, as the case may be, if it is satisfied that the action is in the best interests of the reporting issuer and its security holders.

(3) If an action under section 8.9(6) [*Liability for insider trading, tipping, procuring and front running*] is commenced, commenced and prosecuted, or continued by a person who is a security holder of the reporting issuer, the court may order the reporting issuer to pay all costs properly incurred by the security holder in commencing, commencing and prosecuting, or continuing the action, as the case may be, if it is satisfied that

- (a) the reporting issuer refused or failed to commence the action or having commenced it, failed to prosecute it diligently, and
- (b) the action is in the best interests of the reporting issuer and its security holders.

(4) If an action under section 8.9(6) [*Liability for insider trading, tipping, procuring and front running*] is commenced, commenced and prosecuted, or continued by the securities regulatory authority, the court must order the reporting issuer to pay all costs properly incurred by the securities regulatory authority in commencing, commencing and prosecuting, or continuing the action, as the case may be.

(5) In determining whether an action or its continuance is in the best interests of a reporting issuer and its security holders, the court must consider the relationship between the potential benefit to be derived from the action by the reporting issuer and its security holders, and the cost involved in the prosecution of the action.

(6) Notice of every application under subsection (1) must be sent to the securities regulatory authority and the reporting issuer, and each of them may appear and be heard.

(7) An order under subsection (1) requiring or authorizing the securities regulatory authority to commence, commence and prosecute, or continue an action must provide that the reporting issuer,

- (a) cooperate fully with the securities regulatory authority in the commencement, commencement and prosecution, and prosecution or continuation of the action, and
- (b) make available to the securities regulatory authority all records and other material or information relevant to the action and known to, or reasonably ascertainable by, the reporting issuer.

Limitation periods

8.11(1) Except as provided in subsection (2), no action may be commenced to enforce a right created by this Part more than,

- (a) in the case of an action for rescission, 180 days after the date of the transaction that gave rise to the cause of action, or
- (b) in the case of any action other than an action for rescission, the earlier of
 - (i) three years from the date on which the document containing the misrepresentation was sent or filed, or
 - (ii) if a news release announcing the commencement of a class action in a Canadian jurisdiction in respect of the misrepresentation is issued, six months after the issuance of the news release.

(2) No action may be commenced to enforce a right created by section 8.6 [*Right of action for failure to deliver a prospectus, take-over bid circular or issuer bid circular*], section 8.7 [*Right of action for failure to deliver an offering memorandum*], section 8.8 [*Right of action for failure to file a prospectus*], section 8.9 [*Liability for insider trading, tipping, procuring and front running*] and section 8.10 [*Court action on behalf of issuer*] after the earlier of,

- (a) 180 days after the plaintiff first had knowledge of the facts giving rise to the cause of action, or
- (b) three years after the date of the transaction that gave rise to the cause of action.

(3) This section applies despite the [*insert name of Limitations Act*].

PART 9: CIVIL LIABILITY FOR SECONDARY MARKET DISCLOSURE

Division 1 Interpretation and Application

Definitions

9.1 In this Part,

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

core document means,

- (a) when used in relation to,
 - (i) a director of a responsible issuer who is not also an officer of the responsible issuer,
 - (ii) an influential person, other than an officer of the responsible issuer or an investment fund manager when the responsible issuer is an investment fund, or
 - (iii) a director or officer of an influential person, other than an officer of an investment fund manager, who is not also an officer of the responsible issuer,

a prospectus, a take-over bid circular, an issuer bid circular, a directors' circular, a notice of change or notice of variation in respect of a take-over bid circular, issuer bid circular or directors' circular, a rights offering circular, management's discussion and analysis, an annual information form, an information circular, annual financial statements, and interim financial statements of the responsible issuer, or

- (b) when used in relation to,
 - (i) a responsible issuer or an officer of the responsible issuer,
 - (ii) an investment fund manager when the responsible issuer is an investment fund, or

- (iii) an officer of an investment fund manager when the responsible issuer is an investment fund,

a prospectus, a take-over bid circular, an issuer bid circular, a directors' circular, a notice of change or notice of variation in respect of a take-over bid circular, issuer bid circular or directors' circular, a rights offering circular, management's discussion and analysis, an annual information form, an information circular, annual financial statements, interim financial statements, and a material change report prescribed by securities laws of the responsible issuer, and

- (c) any other prescribed documents for the purpose of this definition;

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

- (a) that is required to be filed with the securities regulatory authority, or
- (b) that is not required to be filed with the securities regulatory authority and,
 - (i) that is filed with the securities regulatory authority,
 - (ii) that is filed or required to be filed with a government or an agency of a government under securities laws or corporate law or with any exchange or quotation and trade reporting system under its rules, policies and similar instruments, or
 - (iii) that is any other communication in respect of which there is a substantial likelihood that a reasonable investor would consider the content of the communication important in making a decision to purchase, hold, sell or redeem securities of the responsible issuer;

failure to make timely disclosure means a failure to disclose a material change in the manner and at the time required under securities laws;

influential person means, in respect of a responsible issuer,

- (a) a control person,
- (b) a promoter,

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

issuer's security means a security of a responsible issuer and includes a security,

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

liability limit means,

- (a) in the case of a responsible issuer, the greater of,
 - (i) 5% of its market capitalization, as defined in the rules, and
 - (ii) \$1 million,
- (b) in the case of a director or officer of a responsible issuer, the greater of,
 - (i) \$25,000, and
 - (ii) 50% of the aggregate of the director's or officer's compensation from the responsible issuer and its affiliates,
- (c) in the case of an influential person who is not an individual, the greater of,
 - (i) 5% of its market capitalization, as defined in the rules, and
 - (ii) \$1 million,
- (d) in the case of an influential person who is an individual, the greater of,
 - (i) \$25,000, and
 - (ii) 50% of the aggregate of the influential person's compensation from the responsible issuer and its affiliates,

- (e) in the case of a director or officer of an influential person, the greater of,
 - (i) \$25,000, and
 - (ii) 50% of the aggregate of the director's or officer's compensation from the influential person and its affiliates,
- (f) in the case of an expert, the greater of,
 - (i) \$1 million, and
 - (ii) the revenue that the expert and the affiliates of the expert have earned from the responsible issuer and its affiliates during the 12 months preceding the misrepresentation, and
- (g) in the case of each person who made a public oral statement, other than an individual referred to in clauses (b), (d), (e) or (f), the greater of
 - (i) \$25,000, and
 - (ii) 50% of the aggregate of the person's compensation from the responsible issuer and its affiliates;

management's discussion and analysis means the section of an annual information form, annual report or other document that contains management's discussion and analysis of the financial condition and results of operations of a responsible issuer as required under securities laws;

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

release means, with respect to information or a document, to file with the securities regulatory authority, an extra-provincial SRA or an exchange, or to otherwise make available to the public;

responsible issuer means

- (a) a reporting issuer or a reporting issuer under extra-provincial securities laws, or

- (b) any other issuer with a real and substantial connection to [*insert local jurisdiction*] whose securities are publicly traded;

trading day means a day during which the principal market, as defined in the rules, for the security is open for trading.

Application

9.2 This Part does not apply to,

- (a) the purchase of a security offered by a prospectus during the period of distribution,
- (b) the acquisition of a security under a distribution that is exempt from the requirement for filing a preliminary prospectus and a prospectus under the rules or under an order made by the securities regulatory authority, except as may be prescribed,
- (c) the acquisition or disposition of a security in connection with or under a take-over bid or issuer bid, except as may be prescribed, or
- (d) other prescribed transactions.

Division 2 Liability for Secondary Market Disclosure

Liability for secondary market disclosure

9.3(1) If a responsible issuer or a person with actual, implied or apparent authority to act on behalf of a responsible issuer releases a document that contains a misrepresentation, a person who acquires or disposes of the issuer's security during the period between the time when the document was released and the time when the misrepresentation contained in the document was publicly corrected has, without regard to whether the person relied on the misrepresentation, a right of action for damages against,

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

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

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

- (a) the responsible issuer,
- (b) the person who made the public oral statement,
- (c) each director and officer of the responsible issuer who authorized, permitted or acquiesced in the making of the public oral statement,
- (d) each influential person, and each director and officer of the influential person, who knowingly influenced,
 - (i) the person who made the public oral statement to make the public oral statement, or
 - (ii) a director or officer of the responsible issuer to authorize, permit or acquiesce in the making of the public oral statement, and

- (e) each expert if
 - (i) the misrepresentation is also contained in a report, statement or opinion made by the expert,
 - (ii) the person making the public oral statement includes, summarizes or quotes from the report, statement or opinion of the expert, and
 - (iii) the public oral statement was made by a person other than the expert and the expert consented in writing to the use of the report, statement or opinion in the public oral statement.

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

- (a) the responsible issuer,
 - (i) if a director or officer of the responsible issuer, or
 - (ii) if the responsible issuer is an investment fund, the investment fund manager,

authorized, permitted or acquiesced in the release of the document or the making of the public oral statement,
- (b) the person who made the public oral statement,
- (c) each director and officer of the responsible issuer who authorized, permitted or acquiesced in the release of the document or the making of the public oral statement,
- (d) the influential person,
- (e) each director and officer of the influential person who authorized, permitted or acquiesced in the release of the document or the making of the public oral statement, and

- (f) each expert if
 - (i) the misrepresentation is also contained in a report, statement or opinion made by the expert,
 - (ii) the document or public oral statement includes, summarizes or quotes from the report, statement or opinion of the expert, and
 - (iii) the document was released or the public oral statement was made by a person other than the expert and the expert consented in writing to the use of the report, statement or opinion in the document or public oral statement.

(4) If a responsible issuer fails to make timely disclosure, a person who acquires or disposes of the issuer's security between the time when the material change was required to be disclosed in the manner required under securities laws and the subsequent disclosure of the material change has, without regard to whether the person relied on the responsible issuer having complied with its disclosure requirements, a right of action for damages against,

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

(5) In an action under this section, a person who is a director or officer of an influential person is not liable in that capacity if the person is liable as a director or officer of the responsible issuer.

(6) In an action under this section,

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

(7) In an action under subsection (2) or subsection (3), if the person who made the public oral statement had apparent authority, but not implied or actual authority, to speak on behalf of the issuer, no other person is liable with respect to any of the responsible issuer's securities that were acquired or disposed of before that other person became, or should reasonably have become, aware of the misrepresentation.

Burden of proof and defences – non-core documents and public oral statements

9.4(1) In an action under section 9.3 [*Liability for secondary market disclosure*] in relation to a misrepresentation in a document that is not a core document, or a misrepresentation in a public oral statement, a person is not liable, subject to subsection (2), unless the plaintiff proves that the person,

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

(2) A plaintiff is not required to prove any of the matters set out in subsection (1) in an action under section 9.3 [*Liability for secondary market disclosure*] in relation to an expert.

(3) In an action under section 9.3 [*Liability for secondary market disclosure*] in relation to a failure to make timely disclosure, a person is not liable, subject to subsection (4), unless the plaintiff proves that the person,

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

(4) A plaintiff is not required to prove any of the matters set out in subsection (3) in an action under section 9.3 [*Liability for secondary market disclosure*] in relation to,

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

(5) A person is not liable in an action under section 9.3 [*Liability for secondary market disclosure*] in relation to a misrepresentation or a failure to make timely disclosure if that person proves that the plaintiff acquired or disposed of the issuer's security,

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

(6) A person is not liable in an action under section 9.3 [*Liability for secondary market disclosure*] in relation to,

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

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

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

(8) A person is not liable in an action under section 9.3 [*Liability for secondary market disclosure*] in respect of a failure to make timely disclosure if,

- (a) the person proves that the material change was disclosed by the responsible issuer in a report filed on a confidential basis with the securities regulatory authority under this Act,

- (b) the responsible issuer had a reasonable basis for making the disclosure on a confidential basis,
- (c) where the information contained in the report filed on a confidential basis remains material, disclosure of the material change was made public promptly when the basis for confidentiality ceased to exist,
- (d) the person or responsible issuer did not release a document or make a public oral statement that, due to the undisclosed material change, contained a misrepresentation, and
- (e) when the material change became publicly known in a manner other than the manner required under this Act, the responsible issuer promptly disclosed the material change in the manner required under this Act.

(9) A person is not liable in an action under section 9.3 [*Liability for secondary market disclosure*] for a misrepresentation in forward-looking information if the person proves all of the following things:

- (a) the document or public oral statement containing the forward-looking information contained, proximate to that information,
 - (i) reasonable cautionary language identifying the forward-looking information as such, and identifying material factors that could cause actual results to differ materially from a conclusion, forecast or projection in the forward-looking information, and
 - (ii) a statement of the material factors or assumptions that were applied in drawing a conclusion or making a forecast or projection set out in the forward-looking information, and
- (b) the person had a reasonable basis for drawing the conclusions or making the forecasts or projections set out in the forward-looking information.

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

- (a) made a cautionary statement that the oral statement contains forward-looking information,

- (b) stated that
 - (i) the actual results could differ materially from a conclusion, forecast or projection in the forward-looking information, and
 - (ii) certain material factors or assumptions were applied in drawing a conclusion or making a forecast or projection as reflected in the forward-looking information, and
- (c) stated that additional information about,
 - (i) the material factors that could cause actual results to differ materially from the conclusion, forecast or projection in the forward-looking information, and
 - (ii) the material factors or assumptions that were applied in drawing a conclusion or making a forecast or projection as reflected in the forward-looking information,

is contained in a readily-available document or in a portion of such a document and has identified that document or that portion of the document.

(11) For the purpose of subsection (10), a document filed with the securities regulatory authority or otherwise generally disclosed is deemed to be readily available.

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

(13) A person, other than an expert, is not liable in an action under section 9.3 [*Liability for secondary market disclosure*] with respect to any part of a document or public oral statement that includes, summarizes or quotes from a report, statement or opinion made by the expert if the responsible issuer obtained the written consent of the expert to the use of the report, statement or opinion and the consent had not been withdrawn in writing before the document was released or the public oral statement was made, and if the person proves that,

- (a) the person did not know and had no reasonable grounds to believe that there had been a misrepresentation in the part of the document or public oral statement made on the authority of the expert, and
- (b) the part of the document or oral public statement fairly represented the report, statement or opinion made by the expert.

(14) An expert is not liable in an action under section 9.3 [*Liability for secondary market disclosure*] with respect to any part of a document or public oral statement that includes,

summarizes or quotes from a report, statement or opinion made by the expert, if the expert proves that the written consent previously provided was withdrawn in writing before the document was released or the public oral statement was made.

(15) A person is not liable in an action under section 9.3 [*Liability for secondary market disclosure*] in respect of a misrepresentation in a document, other than a document required to be filed with the securities regulatory authority, if the person proves that, at the time of release of the document, the person did not know and had no reasonable grounds to believe that the document would be released.

(16) A person is not liable in an action under section 9.3 [*Liability for secondary market disclosure*] for a misrepresentation in a document or a public oral statement, if the person proves that,

- (a) the misrepresentation was also contained in a document filed by or on behalf of another person, other than the responsible issuer, with the securities regulatory authority or any securities regulatory authority in another Canadian jurisdiction, or an exchange, and was not corrected in another document filed by or on behalf of that other person with the securities regulatory authority or that other securities regulatory authority in another Canadian jurisdiction or exchange, before the release of the document or the public oral statement made by or on behalf of the responsible issuer,
- (b) the document or public oral statement contained a reference identifying the document that was the source of the misrepresentation, and
- (c) when the document was released or the public oral statement was made, the person did not know and had no reasonable grounds to believe that the document or public oral statement contained a misrepresentation.

(17) A person, other than the responsible issuer, is not liable in an action under section 9.3 [*Liability for secondary market disclosure*] if the misrepresentation or failure to make timely disclosure was made without the knowledge or consent of the person and, if, after the person became aware of the misrepresentation before it was corrected, or the failure to make timely disclosure before it was disclosed in the manner required under this Act,

- (a) the person promptly notified the directors of the responsible issuer of the misrepresentation or the failure to make timely disclosure, and
- (b) if no correction of the misrepresentation or no subsequent disclosure of the material change in the manner required under this Act was made by the responsible issuer within two business days after the notification under clause (a), the person, unless prohibited by law or by professional confidentiality rules, promptly and in writing notified the securities regulatory authority of the misrepresentation or failure to make timely disclosure.

Division 3 Damages

Assessment of damages

9.5(1) Damages must be assessed in favour of a person that acquired an issuer's securities after the release of a document or the making of a public oral statement containing a misrepresentation or after a failure to make timely disclosure as follows:

- (a) in respect of any of the securities of the responsible issuer that the person subsequently disposed of on or before the tenth trading day after the public correction of the misrepresentation or the disclosure of the material change in the manner required under this Act, assessed damages must equal the difference between
 - (i) the average price paid for those securities, including any commissions paid in respect of them, and
 - (ii) the price received on the disposition of those securities (without deducting any commissions paid in respect of the disposition), calculated taking into account the result of hedging or other risk limitation transactions;
- (b) in respect of any of the securities of the responsible issuer that the person subsequently disposed of after the tenth trading day after the public correction of the misrepresentation or the disclosure of the material change in the manner required under this Act, assessed damages must equal the lesser of,
 - (i) an amount equal to the difference between
 - (A) the average price paid for those securities, including any commissions paid in respect of them, and
 - (B) the price received on the disposition of those securities (without deducting any commissions paid in respect of the disposition), calculated taking into account the result of hedging or other risk limitation transactions, and
 - (ii) an amount equal to the number of securities that the person disposed of, multiplied by the difference between the average price per security paid for those securities, including any commissions paid in respect of them determined on a per security basis, and

- (A) if the issuer's securities trade on a published market, the trading price of the issuer's securities on the principal market, as those terms are defined in the rules, for the 10 trading days following the public correction of the misrepresentation or the disclosure of the material change in the manner required under this Act, or
 - (B) if there is no published market, the amount that the court considers just;
- (c) in respect of any of the securities of the responsible issuer that the person has not disposed of, assessed damages must equal the number of securities acquired, multiplied by the difference between the average price per security paid for those securities, including any commissions paid in respect of them determined on a per security basis, and
 - (i) if the issuer's securities trade on a published market, the trading price of the issuer's securities on the principal market (as those terms are defined in the rules) for the 10 trading days following the public correction of the misrepresentation or the disclosure of the material change in the manner required under this Act, or
 - (ii) if there is no published market, the amount that the court considers just.

(2) Damages must be assessed in favour of a person that disposed of securities after a document was released or a public oral statement made containing a misrepresentation or after a failure to make timely disclosure as follows:

- (a) in respect of any of the securities of the responsible issuer that the person subsequently acquired on or before the tenth trading day after the public correction of the misrepresentation or the disclosure of the material change in the manner required under this Act, assessed damages must equal the difference between
 - (i) the average price received on the disposition of those securities (deducting any commissions paid in respect of the disposition), and
 - (ii) the price paid for those securities (without including any commissions paid in respect of them), calculated taking into account the result of hedging or other risk limitation transactions;
- (b) in respect of any of the securities of the responsible issuer that the person subsequently acquired after the tenth trading day after the public correction

of the misrepresentation or the disclosure of the material change in the manner required under this Act, assessed damages must equal the lesser of,

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

(3) Despite subsections (1) and (2), assessed damages must not include any amount that the defendant proves is attributable to a change in the market price of securities that is unrelated to the misrepresentation or the failure to make timely disclosure.

Proportionate liability

9.6(1) In an action under section 9.3 [*Liability for secondary market disclosure*], the court must determine, in respect of each defendant found liable in the action, the defendant's responsibility for the damages assessed in favour of all plaintiffs in the action, and each of those defendants are liable, subject to the limits set out in section 9.7(1) [*Limits on damages*], to the plaintiffs for only that portion of the aggregate amount of damages assessed in favour of the plaintiffs that corresponds to that defendant's responsibility for the damages.

(2) Despite subsection (1), if in an action under section 9.3 [*Liability for secondary market disclosure*] in respect of a misrepresentation or a failure to make timely disclosure, a court determines that a particular defendant, other than the responsible issuer, authorized, permitted or acquiesced in the making of the misrepresentation or the failure to make timely disclosure while knowing it to be a misrepresentation or a failure to make timely disclosure, the whole amount of the damages assessed in the action may be recovered from that defendant.

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

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

Limits on damages

9.7(1) Despite section 9.5 [*Assessment of damages*], the damages payable by a person in an action under section 9.3 [*Liability for secondary market disclosure*] is the lesser of,

- (a) the aggregate damages assessed against the person in the action, and
- (b) the liability limit for the person less
 - (i) the aggregate of all damages assessed after appeals, if any, against the person in all other actions brought under section 9.3 [*Liability for secondary market disclosure*], and under comparable provisions of extra-provincial securities laws in respect of that misrepresentation or failure to make timely disclosure, and

(ii) any amount paid in settlement of any of those actions.

(2) Subsection (1) does not apply to a person, other than the responsible issuer, if the plaintiff proves that the person

- (a) authorized, permitted or acquiesced in the making of the misrepresentation or the failure to make timely disclosure while knowing that it was a misrepresentation or a failure to make timely disclosure, or
- (b) influenced the making of the misrepresentation or the failure to make timely disclosure while knowing that it was a misrepresentation or a failure to make timely disclosure.

Division 4 Procedural Matters

Leave to proceed

9.8(1) No action may be commenced under section 9.3 [*Liability for secondary market disclosure*] without leave of the court granted upon motion with notice to each defendant.

(2) The court may grant leave only if it is satisfied that,

- (a) the action is brought in good faith, and
- (b) there is a reasonable possibility that the action will be resolved at trial in favour of the plaintiff.

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

(4) The maker of each affidavit may be examined on it in accordance with the rules of court.

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

News release and other notices

9.9 A person that has been granted leave to commence an action under section 9.3 [*Liability for secondary market disclosure*] must

- (a) promptly issue a news release disclosing that leave has been granted to commence the action,
- (b) send a written notice to the securities regulatory authority within seven days, together with a copy of the news release, and
- (c) send a copy of the statement of claim or other originating document to the securities regulatory authority when filed.

Restriction on discontinuation, abandonment and settlement of action

9.10 An action under section 9.3 [*Liability for secondary market disclosure*] may not be discontinued, abandoned or settled without the approval of the court given on such terms as the court thinks fit, including, without limitation, terms as to costs, and in determining whether to approve the settlement of the action, the court must consider, among other things, whether there are any other actions outstanding under section 9.3 [*Liability for secondary market disclosure*] or under comparable securities laws in the other Canadian jurisdictions in respect of the same misrepresentation or failure to make timely disclosure.

Costs

9.11 Despite [*insert name of Act as need be*], the prevailing party in an action under section 9.3 [*Liability for secondary market disclosure*] is entitled to costs determined by a court in accordance with applicable rules of civil procedure.

Interventions by the securities regulatory authority

9.12 The securities regulatory authority may intervene in an action under section 9.3 [*Liability for secondary market disclosure*] and in an application for leave under section 9.8 [*Leave to proceed*].

No derogation from other rights

9.13 The right of action for damages and the defences to an action under section 9.3 [*Liability for secondary market disclosure*] are in addition to and without derogation from any

other rights or defences the plaintiff or defendant may have in an action brought otherwise than under this Part.

Limitation periods

9.14 No action may be commenced under section 9.3 [*Liability for secondary market disclosure*],

- (a) in the case of misrepresentation in a document, later than the earlier of,
 - (i) three years after the date on which the document containing the misrepresentation was first released, and
 - (ii) six months after the issuance of a news release disclosing that leave has been granted to commence an action under section 9.3 [*Liability for secondary market disclosure*] or under comparable securities laws in another Canadian jurisdiction in respect of the same misrepresentation,
- (b) in the case of a misrepresentation in a public oral statement, later than the earlier of,
 - (i) three years after the date on which the public oral statement containing the misrepresentation was made, and
 - (ii) six months after the issuance of a news release disclosing that leave has been granted to commence an action under section 9.3 [*Liability for secondary market disclosure*] or under comparable securities laws in another Canadian jurisdiction in respect of the same misrepresentation, and
- (c) in the case of a failure to make timely disclosure, later than the earlier of,
 - (i) three years after the date on which the requisite disclosure was required to be made, and
 - (ii) six months after the issuance of a news release disclosing that leave has been granted to commence an action under section 9.3 [*Liability for secondary market disclosure*] or under comparable securities laws in another Canadian jurisdiction in respect of the same failure to make timely disclosure.

PART 10: INTER-JURISDICTIONAL ARRANGEMENTS AND IMMUNITY

Division 1 Inter-Jurisdictional Arrangements

Delegation and acceptance of authority

10.1(1) Subject to subsection (2), the securities regulatory authority

- (a) may delegate any of its powers, functions and duties under securities laws to an extra-provincial SRA, and
- (b) may accept a delegation of any power, function or duty from an extra-provincial SRA.

(2) The securities regulatory authority must not delegate or accept

- (a) the power to delegate in subsection (1);
- (b) a power to make, repeal or amend rules;
- (c) any other delegation that is prohibited from being made or accepted under the *Securities Administration Act*.

Sub-delegation

10.2 The securities regulatory authority may sub-delegate any power, function or duty it accepts from an extra-provincial SRA in the manner and to the extent that it can delegate its own powers, functions or duties under securities laws.

Adoption and acceptance of extra-provincial securities laws

10.3 The securities regulatory authority may,

- (a) by rule, adopt or incorporate, as amended from time to time, whether before or after adoption or incorporation, with or without modification, all or any provisions of extra-provincial securities laws or laws of a foreign jurisdiction;
- (b) by order, accept compliance with all or any provisions of extra-provincial securities laws instead of requiring compliance with provisions of securities laws or deem that compliance with all or any provisions of extra-provincial

securities laws constitutes compliance with all or any provisions of securities laws.

Adoption of extra-provincial decisions

10.4(1) The securities regulatory authority may, by order, adopt a decision of an extra-provincial SRA or its delegate.

(2) A decision adopted under subsection (1) is enforceable in [*insert name of local jurisdiction*] in the same manner and to the same extent as a decision of the securities regulatory authority.

Inter-jurisdictional agreements

10.5 The securities regulatory authority may enter into an agreement with one or more extra-provincial SRAs respecting any matter related to this Part, including, without limitation:

- (a) the delegation of any function, duty or power, or amendments to, or the revocation of, a delegation;
- (b) the administration of extra-provincial securities laws adopted or incorporated by rule;
- (c) the administration of a decision of the securities regulatory authority or SRA delegate;
- (d) generally, the administration of securities laws arising from or as a result of the matters described in clauses (a) to (c).

Division 2 Immunity from Legal Action

Immunity for compliance with securities laws

10.6 No person has any rights or remedies and no proceedings exist or may be brought for any act or omission by a person done or omitted as a result of complying with securities laws.

Immunity for securities regulatory authority and SRA delegates

10.7(1) This section applies to

- (a) the securities regulatory authority;
- (b) the regulator;
- (c) a member, officer, employee, appointee or agent of the securities regulatory authority;
- (d) an SRA delegate;
- (e) a recognized entity acting under powers, functions or duties delegated by the securities regulatory authority.

(2) No action or other proceeding may be instituted against a person described in subsection (1)

- (a) for any act done in good faith in the
 - (i) performance or intended performance of any duty under securities laws, or
 - (ii) exercise or intended exercise of any power or function under securities laws, or
- (b) for any neglect or default in the performance or exercise in good faith of the powers, functions or duties described in clause (a).

Immunity under extra-provincial securities laws

10.8(1) This section applies to

- (a) the securities regulatory authority;
- (b) the regulator;
- (c) a member, officer, employee, appointee or agent of the securities regulatory authority;
- (d) an SRA delegate;

- (e) a recognized entity acting under powers, functions or duties sub-delegated by the securities regulatory authority.

(2) No action or other proceeding may be instituted against a person described in subsection (1)

- (a) for any act done in good faith in the
 - (i) performance or intended performance of any duty under extra-provincial securities laws, or
 - (ii) exercise or intended exercise of any power or function under extra-provincial securities laws, or
- (b) for any neglect or default in the performance or exercise in good faith of the powers, functions or duties described in clause (a).

Other immunity for extra-provincial SRAs

10.9 No action or other proceeding may be instituted against an extra-provincial SRA or any member, officer, employee, appointee or agent of that extra-provincial SRA

- (a) for any act done in good faith in [*insert name of local jurisdiction*] in the
 - (i) performance or intended performance of any duty under extra-provincial securities laws, or
 - (ii) exercise or intended exercise of any power or function under extra-provincial securities laws, or
- (b) for any neglect or default in the performance or exercise in good faith of the powers, functions or duties described in clause (a)

PART 11: DECISIONS AND RULE-MAKING AUTHORITY

Division 1 Terms and Conditions and Exemptions

Terms and conditions and revocation of decisions

11.1(1) Subject to any requirements of securities laws, a decision of the securities regulatory authority or SRA delegate

- (a) may be made subject to terms, conditions, restrictions and limitations, or any of them;
- (b) may be of general or specific application and may be made applicable to classes, categories or sub-categories of persons, securities, trades, distributions or transactions.

(2) Subject to any requirements of securities laws, a securities regulatory authority or SRA delegate, as the case may be, if it is satisfied that it would not be prejudicial to the public interest, may

- (a) revoke or vary its decision, or
- (b) impose new terms, conditions, restrictions and limitations on the decision.

(3) The securities regulatory authority or SRA delegate may take action under subsection (2) on their own initiative or on application by a person affected by the decision.

Exemption from securities laws

11.2(1) If it is satisfied that it would not be prejudicial to the public interest, the securities regulatory authority may, by order, exempt a person, security, trade, distribution or transaction from all or any provisions of securities laws.

(2) The securities regulatory authority may make an order under subsection (1) on its own initiative or on application by an interested person.

Division 2 Rule-Making Authority

Rule-making authority

11.3 The securities regulatory authority may make rules

Self-regulation

1. respecting self-regulatory organizations, marketplaces, clearing agencies, recognized entities and entities exempt from recognition, including, without limitation:
 - (i) the recognition or exemption from recognition of exchanges, self-regulatory organizations, clearing agencies and quotation trade reporting systems and entities designated for the purpose of section 2.4(c) [*Recognition orders*];
 - (ii) the review or approval by the securities regulatory authority of rules, policies and other similar instruments, procedures, practices, operations or interpretations of recognized entities and entities exempt from recognition;
 - (iii) applications by a recognized entity for the voluntary surrender of recognition;

Market participants

2. respecting market participants, including the form in which and the period for which records must be kept;

Registration

3. respecting registration or refusal of registration of persons under Part 3 [*Registration*] or the rules, including, without limitation:
 - (i) establishing classes, categories and sub-categories of registrants and the allocation of persons to those classes, categories and sub-categories;
 - (ii) the requirements and conditions to be met by applicants for registration, renewal, amendment, reactivation or reinstatement of registration;

- (iii) the terms, conditions, restrictions and limitations that may be imposed on a registration;
- (iv) the terms, conditions, restrictions and limitations for the voluntary surrender of registration;
- (v) the termination or expiration of registration and the obligations on, or that may be imposed on, a former registrant following a voluntary surrender or termination or expiration of registration;
- (vi) the suspension of registration and the obligations of suspended registrants;
- (vii) the duration and periods of duration of registration;
- (viii) the conditions, obligations, standards of practice and the business conduct to be met and maintained by registrants, representatives, and non-registered directors, officers, partners and employees of registrants;
- (ix) the prevention or disclosure of conflicts of interest in relation to registrants, representatives, and non-registered directors, officers, partners and employees of registrants;
- (x) requiring registrants, representatives, and non-registered directors, officers, partners and employees of registrants to have and maintain participation or membership in a recognized entity or self-regulatory organization;
- (xi) the ownership and control of registrants, and requiring notification to the securities regulatory authority of a proposed change in beneficial ownership of or control or direction of a registrant;
- (xii) requiring the establishment and maintenance of and respecting the trust arrangements between registrants and their clients the segregation of securities and the establishment, maintenance and operation of and contributions to compensation or contingency funds, and payments from them;
- (xiii) respecting the trading in or purchasing of securities by registrants;
- (xiv) respecting telephone or personal solicitation for the purpose of trading in or purchasing of securities;

- (xv) authorizing a person to prescribe alternative conditions for applicants from those prescribed in the rules and the manner of giving notice of those alternative conditions;
- (xvi) the disclosure or providing of information by registrants to the public, marketplaces or the securities regulatory authority and when and how that must be done;
- (xvii) respecting the residence in [*insert name of local jurisdiction*] or Canada of registrants;
- (xviii) respecting requirements for non-registered directors, officers, partners and employees of registrants;
- (xix) prescribing standards in relation to the suitability for certain investors of certain securities;
- (xx) prescribing the conditions and circumstances under which a person that is a corporation may undertake the duties, responsibilities and activities that a person who is a registrant and a shareholder of the corporation is authorized to undertake by virtue of being a registrant, including the establishment of a scheme for the registration of the corporation and the category of that registration;
- (xxi) imposing liability on a registrant who is a dealer or adviser for the acts or omissions prescribed under subclause (xxv) of a corporation that is a registrant under a scheme established pursuant to subclause (xx) where the dealer or adviser has a prescribed contractual relationship with the corporation;
- (xxii) imposing liability on a person who is a registrant and a shareholder of a corporation for acts or omissions of the corporation if the corporation that performs the acts or fails to perform the acts is a registrant under a scheme established pursuant to subclause (xx);
- (xxiii) prescribing the terms and conditions under which a person who is in a contractual relationship with a dealer is deemed to be an employee of the dealer for the purpose of securities laws and deemed to be qualified for registration as a representative of the dealer;
- (xxiv) imposing liability on a registrant who is a dealer for the acts and omissions prescribed under subclause (xxv) of a person deemed to be an employee of the dealer under a rule made pursuant to subclause (xxiii);

- (xxv) prescribing the acts or omissions of a corporation for which a registrant who is a dealer or adviser is liable;
- (xxvi) prescribing the acts or omissions of a person deemed to be an employee of a dealer for which a registrant who is a dealer is liable;

Distribution

- 4. respecting the distribution of securities, including, without limitation:
 - (i) the form, content, filing, disclosure and delivery requirements for preliminary prospectuses, prospectuses, and other forms of disclosure documents;
 - (ii) the distribution of securities by means of a simplified or summary prospectus or other form of disclosure document and the form and contents of a simplified or summary prospectus or other form of disclosure document in connection with the distribution;
 - (iii) the distribution of securities on a continuous or delayed basis;
 - (iv) any additional or alternative requirements to permit a distribution of securities by means of a disclosure document other than a prospectus;
 - (v) the incorporation of other documents by reference in a prospectus or other form of disclosure document and the effect, including from a liability and evidentiary perspective, of modifying or superceding statements;
 - (vi) the distribution of securities by means of a prospectus or other form of disclosure document incorporating other documents by reference;
 - (vii) the form of certificates relating to prospectuses or other form of disclosure documents, and the persons required to sign a certificate;
 - (viii) the pricing of securities after the issuance of a receipt;
 - (ix) the issuance of receipts for preliminary prospectuses, prospectuses and other forms of disclosure documents, including the issuance of receipts after an expedited or selective review, and respecting when receipts are not required or will not be issued, and the circumstances under which a receipt may be refused;

- (x) prescribing periods in which receipts are effective and the circumstances in which receipts may be revoked or deemed to be void;
- (xi) varying or removing a withdrawal right;
- (xii) eligibility requirements to obtain a receipt for, or distribute under, a particular prospectus or other form of disclosure document and the loss of that eligibility;
- (xiii) the lapse date for a prospectus or other form of disclosure document, the terms and conditions for continuing to distribute securities after the lapse date, and the circumstances under which the purchaser may cancel a trade that occurs after the lapse date;
- (xiv) prescribing circumstances when an issuer must provide information to a person to enable a distribution of previously issued securities of the issuer;
- (xv) designating a document that describes the business and affairs of an issuer not to be an offering memorandum;
- (xvi) designating a document that describes the business and affairs of an issuer to be an offering memorandum;
- (xvii) prescribing, with respect to a trade that would not otherwise be a distribution, the conditions under which that trade is deemed to be a distribution;
- (xviii) respecting requirements for the escrow of securities in connection with a distribution;
- (xix) prescribing prospectus or other form of disclosure document delivery;
- (xx) respecting activities in which registrants or issuers are permitted to engage in connection with distributions, including the use of records or advertising;
- (xxi) requirements in respect of amendments to prospectuses, preliminary prospectuses or other form of disclosure document prescribing circumstances under which an amendment to a preliminary prospectus, prospectus or other form of disclosure document must be filed;

- (xxii) varying any provision of Part 4 [*Prospectus Requirements*];

Exemptions from registration and prospectus requirements

5. respecting exemptions from the registration or prospectus requirements, or both, including, without limitation:
- (i) prescribing trades, distributions, securities and persons in respect of which registration is not required;
 - (ii) prescribing trades, distributions, securities and persons in respect of which the filing of a prospectus is not required;
 - (iii) respecting the revocation or variation of a decision under section 11.2 [*Exemption from securities laws*];

Exchange-traded derivatives

6. respecting exchange-traded derivatives, including, without limitation, providing that this Act does not apply to exchange-traded derivatives;

Continuous disclosure

7. prescribing requirements in respect of the preparation and dissemination and other use, by reporting issuers, of records providing for continuous disclosure and any other information for security holders, including, without limitation, requirements in respect of:
- (i) financial statements;
 - (ii) proxies and information circulars;
 - (iii) annual reports;
 - (iv) annual information forms;
 - (v) supplemental analysis of financial statements;
 - (vi) the reporting of material changes in the affairs of a reporting issuer;
 - (vii) press releases and technical reports;
 - (viii) designating a person or thing to be, or to cease to be a reporting issuer;

- (ix) entitlement events;
- 8. prescribing circumstances when a reporting issuer is in default of this Act and the consequences of being in default;
- 9. respecting the voluntary surrender of reporting issuer status;

Proxy solicitation

- 10. respecting the solicitation and voting of proxies, including, without limitation:
 - (i) the communication obligations imposed on a person
 - (A) who gives notice of a meeting of security holders of an issuer,
 - (B) solicits proxies of security holders of the issuer, or
 - (C) who votes proxies;
 - (ii) defining **form of proxy**, **proxy**, **solicit**, and **security holder** for the purpose of this Act;
 - (iii) the obligations of reporting issuers to communicate with security holders or beneficial owners of securities of reporting issuers and other persons, including depositories and registrants that hold securities on behalf of a beneficial owner;
 - (iv) requirements for reporting issuers, recognized entities, entities exempted from recognition under this Act, depositories, security holders, registrants and other persons who hold securities on behalf of other persons but who are not the registered holders;

Trade and related disclosure

- 11. respecting the form, content, filing and disclosure requirements of trade and related disclosure reports, including, without limitation:
 - (i) varying any requirements of Part 6 [*Trade and Related Disclosure*];
 - (ii) prescribing circumstances when a reporting issuer is in contravention of Part 6 [*Trade and Related Disclosure*];
- 12. respecting insider trading, self-dealing and conflicts of interest;

Early warning system

13. respecting the early warning system, including, without limitation:
 - (i) respecting additional transactions and offers to acquire securities of the class that is the subject of the disclosure required by Part 6, Division 2 [*Early Warning System*] by a prescribed class of persons and for a prescribed period of time after the occurrence of an event that gives rise to the disclosure requirement;
 - (ii) prescribing the method for determining which securities are a person's securities, which securities are beneficially owned by a person and which securities are considered to be outstanding;
 - (iii) requiring the filing of records and prescribing when and how they must be filed;
 - (iv) respecting what does or does not constitute an indirect offer to acquire, the indirect acquisition or ownership of securities, and indirect control or direction over securities, and prescribing any requirements resulting from that determination;

Control persons

14. prescribing requirements for control persons;

Trading, clearing and settlement

15. respecting trading, including, without limitation:
 - (i) respecting trading or advising in securities to prevent trading or advising that is fraudulent, manipulative, deceptive or unfairly detrimental to investors;
 - (ii) respecting trading or advising in penny stocks, including prescribing requirements in respect of additional disclosure and suitability for investment;
 - (iii) respecting advertising related to trading in securities;
 - (iv) respecting purchases and offers to purchase securities;
 - (v) respecting the listing and trading of securities whether on marketplaces or an exchange recognized by the securities regulatory authority or not;

- (vi) establishing principles for determining the market value, market price, closing price, average trading price and net asset value of a security, and authorizing the securities regulatory authority to make that determination;
 - (vii) prescribing which distributions and trading in relation to the distributions are distributions and trading outside [*insert name of local jurisdiction*];
 - (viii) respecting conditions applicable to any operation designed to fix, stabilize or influence the quoted price of a security;
 - (ix) the reporting of trades or quotations;
16. prescribing standards applicable to market participants to ensure efficient and reliable clearance and settlement of securities transactions, maintenance of securities accounts, and safeguarding of securities;
17. regulating any person that operates a system or network of systems used by market participants for the clearance and settlement of securities transactions, the maintenance of securities accounts, and the safeguarding of securities, including, without limitation, any system or network of systems operated or used by,
- (i) a transfer agent and registrar for securities of a reporting issuer for the registration of transfer of uncertificated securities and the recording of ownership and safeguarding of those securities, and
 - (ii) a dealer, adviser and custodian for the clearance and settlement of securities transactions, the maintenance of securities accounts, and the safeguarding of securities;
18. prescribing the methods by which cash entitlement payments may be made to a recognized clearing agency or nominee of it as registered or bearer holder of securities issued by a reporting issuer.

Take-over bids, issuer bids and related matters

19. respecting take-over bids, issuer bids and related matters, including, without limitation:
- (i) the rights and responsibilities of the directors and officers of an offeree issuer;

- (ii) requirements for valuations and involvement of independent persons;
- (iii) providing for restrictions on, and disclosure of, acquisitions or dispositions of securities in connection with or in the course of a take-over bid or issuer bid, including acquisitions or dispositions before, during and after a bid;
- (iv) requirements regarding equal treatment among holders of securities of a class subject to a take-over bid or issuer bid, including requirements in respect of collateral benefits;
- (v) prescribing the method for determining whether security holders of an issuer are in [*insert name of local jurisdiction*] and whether the address of a security holder is in [*insert name of local jurisdiction*];
- (vi) prescribing the method for determining which securities are an offeror's securities and which securities are beneficially owned by a person;
- (vii) prescribing criteria for determining which persons are considered to be acting jointly or in concert;
- (viii) respecting what does or does not constitute an indirect offer to acquire, the indirect acquisition or ownership of securities, and indirect control or direction over securities, and prescribing any requirements resulting from that determination;
- (ix) prescribing the regulatory treatment of convertible securities in relation to take-over bid and issuer bid requirements, including deeming underlying securities to be outstanding for the purpose of the definition of *take-over bid*;
- (x) respecting the criteria for granting exemptions from Part 7 [*Take-over Bids and Issuer Bids*] and rules relating to take-over bids and issuer bids;
- (xi) prescribing requirements relating to the conduct or management of the affairs of an issuer during or in anticipation of a take-over bid for securities of that issuer, including requirements respecting defensive tactics;
- (xii) requirements relating to the conduct of the offeror;
- (xiii) respecting communications with and among security holders of an offeree issuer;

- (xiv) prescribing measures to protect security holders with respect to the type of transactions, determined by the securities regulatory authority, that are carried out by issuers or other persons having access to the capital markets and that are likely to give rise to situations of conflict of interest;
- (xv) respecting going private transactions, business combinations and related party transactions, as those terms may be defined in the rules, including, without limitation, requirements for valuations, involvement of independent persons and approval by minority security holders;
- (xvi) prescribing requirements in respect of reverse take-overs, including requirements for disclosure that are substantially equivalent to that provided by a prospectus;

Investment funds

- 20. respecting investment funds and the distribution and trading of the securities of the funds, including, without limitation
 - (i) varying Part 4 [*Prospectus Requirements*] and Part 5 [*Continuous Disclosure*] by prescribing disclosure requirements in respect of the funds and requiring or permitting the use of particular forms or types of offering or other documents in connection with the funds;
 - (ii) respecting permitted investment policy and investment practices for the funds and respecting the investments or investment practices for the funds;
 - (iii) prescribing minimum initial capital requirements for any of the funds making a distribution and respecting the reimbursement of costs in connection with the organization of a fund;
 - (iv) prescribing requirements governing the custodianship of assets of the fund;
 - (v) prescribing matters affecting any of the funds that require the approval of security holders of the fund or the securities regulatory authority, including, in the case of security holders, the level of approval;
 - (vi) prescribing requirements in respect of the calculation of the net asset value of investment funds;

- (vii) prescribing requirements in respect of the content and use of sales literature, sales communications or advertising relating to the funds or the securities of funds;
- (viii) designating mutual funds as investment clubs and prescribing requirements for investment clubs;
- (ix) respecting sales charges imposed by a distribution company or contractual plan service company under a contractual plan on purchasers of shares or units of an investment fund, and commissions or sales incentives to be paid to registrants in connection with the securities of an investment fund;
- (x) prescribing the circumstances in which a planholder under a contractual plan has the right to withdraw from the contractual plan;
- (xi) prescribing procedures applicable to investment funds, registrants and other persons in respect of sales and redemptions of an investment fund securities and payments for sales and redemptions;
- (xii) prescribing requirements in respect of, or in relation to, promoters, advisers or persons who administer or participate in the administration of the affairs of investment funds;
- (xiii) establishing operating rules respecting the management, stewardship, safekeeping and composition of the assets of investment funds and prohibiting certain transactions for the protection of the holders of securities;
- (xiv) respecting conditions applicable to securities transactions with and loans made to persons who are not entirely independent of the investment fund;
- (xv) requiring a person responsible for the management of an investment fund to meet a standard of care specified in the rules;
- (xvi) providing for tests or criteria to determine persons responsible for the management of an investment fund company;
- (xvii) requiring persons responsible for the management of an investment fund to appoint officers, directors and members of an independent review agency or other independent individuals;
- (xviii) respecting the conflicts of interest between security holders of an investment fund and persons responsible for the management of

- investment funds, including, without limitation, the composition, appointment, qualifications, proficiency and duties of an independent review agency of an investment fund, including any matters respecting independence;
- (xix) respecting fees or charges imposed by a person responsible for the management of an investment fund;
 - (xx) respecting requirements governing the qualifications and obligations of investment fund managers;
 - (xxi) requirements relating to the qualification of a registrant to act as an adviser to an investment fund;
 - (xxii) regulating scholarship plans and the distribution and trading of the securities of scholarship plans;
 - (xxiii) 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 investment fund;
 - (xxiv) respecting the reimbursement of costs in connection with the organization of an investment fund;
21. respecting commodity pools, including, without limitation:
- (i) the disclosure requirements in respect of commodity pools and requiring or permitting the use of particular forms or types of offering documents or other documents in connection with commodity pools;
 - (ii) the requirements in respect of, or in relation to, promoters, advisers and persons who administer or participate in the administration of the affairs of commodity pools;
 - (iii) the standards in relation to the suitability of investors in commodity pools;
 - (iv) respecting 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) the requirements with respect to the voting rights of security holders;

- (vi) prescribing requirements in respect of the redemption of securities of a commodity pool;
22. respecting labour sponsored investment fund corporations and the distribution and trading of the securities of the corporations and varying this Act in respect of the corporations and,
- (i) prescribing proficiency requirements that apply in respect of registrants trading in securities of the corporations;
 - (ii) respecting the use of particular forms or types of offering documents for or in respect of the securities of the corporations;
 - (iii) prescribing disclosure requirements for or in respect of the securities of the corporations;
 - (iv) prescribing insider reporting requirements for or in respect of the corporation;

Derivatives

23. respecting derivatives, including, without limitation:
- (i) prescribing disclosure requirements and respecting the use of particular forms or types of offering documents or other documents;
 - (ii) varying this Act with respect to derivatives;
 - (iii) prescribing requirements for derivatives that apply to investment funds, commodity pools and other issuers;

Civil liability

24. prescribing documents for the purpose of the definition of *core document* in section 9.1 [*Definitions*];
25. providing for the application of Part 9 [*Civil Liability for Secondary Market Disclosure*] to
- (i) the acquisition of an issuer's security pursuant to a distribution that is exempt from the prospectus requirement or that continues after the lapse date of a prospectus;
 - (ii) the acquisition or disposition of an issuer's security in connection with or pursuant to a take-over bid or issuer bid;

26. prescribing transactions for the purpose of section 9.2(d) [*Application*];
27. prescribing the meaning of *market capitalization*, *trading price* and *principal market* and such other terms as are used in Part 9 [*Civil Liability for Secondary Market Disclosure*] and are not otherwise defined in this Act;

Foreign issuers

28. respecting foreign issuers and the application of securities law to them, including, without limitation, varying any provision of securities laws to facilitate distributions and compliance with requirements applicable or relating to
 - (i) insiders, and
 - (ii) the making of take-over bids, issuer bids, insider bids, going-private transactions and related party transactions

if the foreign issuers are subject to requirements of the laws of a foreign jurisdiction that the securities regulatory authority considers are adequate in light of the purposes of this Act;

Governance issues

29. governing minimum requirements respecting the governance of reporting issuers, including, without limitation:
 - (i) requiring directors and officers of reporting issuers to act honestly and in good faith with a view to the best interests of the reporting issuer;
 - (ii) requiring directors and officers to exercise the skill and judgment that a reasonably prudent person would exercise in comparable circumstances;
 - (iii) respecting the composition of the board of directors of a reporting issuer and any committees of the directors and the qualifications and requirements concerning directors, officers and committee members, including any matters respecting independence, required courses and expertise;
 - (iv) respecting the mandate, responsibilities and functioning of the board of directors of a reporting issuer;

- (v) requiring reporting issuers to appoint audit committees and other committees of directors, and requirements relating to the mandate, functioning and responsibility of, and the minimum standards for, those committees;
 - (vi) requiring reporting issuers to adopt a code of business conduct and ethics and governance guidelines for directors, officers, employees and persons performing similar functions or that are in a special relationship with the reporting issuer;
 - (vii) respecting procedures to regulate conflicts of interest between the interests of a reporting issuer and those of a director or officer or a person performing similar functions on behalf of a reporting issuer;
30. requiring reporting issuers to devise and maintain a system of internal controls related to the effectiveness and efficiency of their operations, including financial reporting and asset control, sufficient to provide reasonable assurances that
- (i) transactions are executed in accordance with management's general or specific authorization;
 - (ii) transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles or any other criteria applicable to those statements;
 - (iii) transactions are recorded as necessary to maintain accountability for assets;
 - (iv) access to assets is permitted only in accordance with management's general or specific authorization;
 - (v) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences;
31. requiring reporting issuers to devise and maintain disclosure controls and procedures sufficient to provide reasonable assurances that
- (i) information required to be disclosed under securities laws is recorded, processed, summarized and reported, within the time periods specified under securities laws, and
 - (ii) information required to be disclosed under securities laws is accumulated and communicated to the reporting issuer's

management, including its chief officer and financial officers, as appropriate, to allow timely decisions regarding required disclosure;

32. requiring the chief executive officers and chief financial officers of reporting issuers, or persons performing similar functions, to provide a certification that addresses the reporting issuer's internal controls, including certifications that address
 - (i) the establishment and maintenance of internal controls,
 - (ii) the design of internal controls, and
 - (iii) the evaluation of the effectiveness of internal controls;
33. requiring the chief executive officers and chief financial officers of reporting issuers, or persons performing similar functions, to provide a certification that addresses the reporting issuer's disclosure controls and procedures, including certifications that address
 - (i) the establishment and maintenance of disclosure controls and procedures,
 - (ii) the design of disclosure controls and procedures, and
 - (iii) the evaluation of the effectiveness of disclosure controls and procedures;
34. defining *internal control* and *disclosure controls and procedures* for the purpose of the rules;

General matters

35. respecting the administration of securities laws generally, including, without limitation:
 - (i) those matters for which securities laws provide that rules be made;
 - (ii) those matters for which securities laws provide that definitions, requirements or other matters be prescribed;
 - (iii) requiring a person to provide a bond, guarantee or other assurance;
36. designating a person or Canadian jurisdiction or foreign jurisdiction for any purpose under securities laws;

37. designating one or more persons to perform the function of market integration or market transparency or a function relating to market integration or market transparency;
38. respecting terms that must be contained in an escrow or pooling agreement with respect to securities issued for consideration other than cash;
39. respecting the form and content of disclosure requirements for equity compensation plans or other compensation arrangements that involve a security of a reporting issuer or a derivative of a security of a reporting issuer;
40. respecting requirements for financial accounting, reporting and auditing for the purpose of securities laws, including, without limitation:
 - (i) the records to be established and maintained;
 - (ii) defining accounting principles and auditing standards acceptable to the securities regulatory authority;
 - (iii) financial reporting requirements for the preparation and dissemination of future-oriented financial information and pro forma financial statements;
 - (iv) standards of independence and other qualifications for auditors;
 - (v) requirements respecting a change in auditors by a reporting issuer or a registrant;
 - (vi) requirements respecting a change in the financial year of an issuer or in an issuer's status as a reporting issuer under securities laws; and
 - (vii) defining auditing standards for attesting to and reporting on a reporting issuer's internal controls;
41. respecting the media, format, preparation, form, contents, execution, certification, approval, dissemination and other use, filing, review and public inspection of all records required under or governed by securities laws, including, without limitation:
 - (i) applications for registration and other purposes related to registration, and the renewal, transfer, reactivation of, or amendment to, registration;
 - (ii) preliminary prospectuses and prospectuses;

- (iii) interim financial statements and financial statements;
 - (iv) proxies and information circulars;
 - (v) take-over bid circulars, issuer bid circulars and directors' circulars;
42. respecting the procedures and requirements in respect of the use of any electronic or computer-based system for the filing, delivery or deposit of records;
 43. requiring the use of an electronic or computer-based system for filing, delivery or deposit of records;
 44. prescribing the circumstances in which persons are deemed to have signed or certified records on an electronic or computer-based system for the purpose of securities laws;
 45. determining, from among the records required by securities laws to be filed, sent, delivered, deposited or otherwise transmitted to it, those that must be filed or transmitted using the medium or technology it specifies in the rules;
 46. the use of records, prepared in accordance with extra-provincial laws or the laws of a foreign jurisdiction, to satisfy the requirements of securities laws;
 47. respecting methods of filing, delivery, deposit or transmission to or by the securities regulatory authority, issuers, registrants, security holders or others, information, records, property or things, required to be communicated under or governed by securities laws;
 48. respecting the amendment or modification of a record and the effect of the amendment or modification;
 49. respecting the circumstances under which a person is deemed to have been served with a record;
 50. determining what constitutes approval of a person's records for which approval is required under this Act;
 51. governing the provision or distribution of information or records by a person, including the securities regulatory authority or SRA delegate, to any person, and the payment of fees for providing that information or those records;

52. respecting records, including, without limitation,
 - (i) the records to be kept and maintained and disclosed;
 - (ii) to whom and when information or records must be provided and the nature, form and contents of the information or record;
53. respecting the time periods within which or by which anything must be filed, delivered, sent, deposited, provided or otherwise transmitted;
54. designating
 - (i) an issuer to be or to cease to be a reporting issuer;
 - (ii) a trade to be a distribution;
 - (iii) an instrument or interest to be a derivative;
 - (iv) a right, obligation, instrument or interest not to be a derivative;
 - (v) a person to be a market participant;
 - (vi) an issuer to be or not to be a mutual fund;
 - (vii) an issuer to be or not to be a non-redeemable investment fund;
 - (viii) an exchange for the purpose of the definition of *exchange-traded derivative*;
 - (ix) an exchange for the purpose of the definition of *reporting issuer*;
55. subject to any other requirement of securities laws, if securities laws provide that a record must be prepared, filed, provided or sent in a specified form, the securities regulatory authority may
 - (i) for a record, specify the form, content and other particulars relating to the record,
 - (ii) for different classes of a particular kind of record, specify a different form, content and other particulars relating to the record,
 - (iii) specify the principles to be applied in the preparation of the record,
 - (iv) specify the accompanying records to be filed with it, and

56. adopting or incorporating, as amended from time to time, whether before or after adoption or incorporation, with or without modification, all or any provisions of extra-provincial securities laws or laws of a foreign jurisdiction;
57. respecting when an opportunity to be heard must be provided before a decision is made by a securities regulatory authority or SRA delegate;
58. respecting the exercise of any power or function, and the performance of any duty, that the securities regulatory authority or SRA delegate has under securities laws;
59. respecting exemptions of a person, security, trade, distribution or transaction from all or any provisions of securities laws, and the variation or revocation of the exemption, including exemptions from any requirement of section 12.9 [*Front running*] or from liability under section 8.9 [*Liability for insider trading, tipping, procuring and front running*], and providing for terms, conditions, restrictions and limitations on the exemption, removal of the exemption or variation of the exemption;
60. prescribing standards or criteria for determining when a material fact or material change has been generally disclosed;
61. defining words or terms used in the rules for the purpose of the rules generally;
62. respecting transitional matters to meet any difficulty that may arise by reasons of the repeal of the [*Securities Act*,] and the enactment of this Act and the *Securities Administration Act*, or either of them;
63. respecting any matter that is advisable for carrying out the purposes of this Act.

Explanatory note: Each jurisdiction will have a minimum harmonized rule-making authority. In jurisdictions where a broader rule-making authority exists, that authority will be retained.

What the rules can do

11.4(1) In making rules respecting a matter described or referred to in section 11.3 [*Rule-making authority*], the securities regulatory authority may

- (a) prohibit, regulate, restrict, limit or control a person, an action, activity or conduct;

- (b) adopt or incorporate, as amended from time to time, whether before or after adoption or incorporation, with or without modification, any code, standard, procedure or guideline;
 - (c) impose or provide for the imposition of terms, conditions, restrictions and limitations, or any of them, before, during or after an action, activity or conduct is taken, in addition to any other terms, conditions, restrictions and limitations that may be imposed by the securities regulatory authority.
- (2) Rules may
- (a) be of general or specific application and applicable to classes, categories or sub-categories of persons, securities, trades, transactions or other matters or things;
 - (b) be limited as to time or place, or both.
- (3) The securities regulatory authority may amend or repeal rules and make others.

Procedure for making rules

11.5 The securities regulatory authority must follow the requirements described in or under the *Securities Administration Act* respecting the procedure to be followed in making, amending or repealing rules and their publication.

PART 12: PROHIBITIONS, DUTIES, OFFENCES AND PENALTIES

Division 1 Prohibitions

Misrepresentations prohibited

12.1(1) A person must not make a misrepresentation.

(2) A contravention of subsection (1) does not give rise to a statutory right of action for damages except under Part 8 [*Civil Liability – General*] or Part 9 [*Civil Liability for Secondary Market Disclosure*].

Representations while involved in investor-relations activities and trading

12.2(1) A person, while engaging in investor-relations activities or with the intention of effecting a trade, must not

- (a) represent that the person or another person will
 - (i) resell or repurchase the security, or
 - (ii) refund all or any of the purchase price of the security;
- (b) give an undertaking relating to the future value or price of the security;
- (c) represent, without obtaining the prior permission of the securities regulatory authority,
 - (i) that a security will be listed and posted for trading on an exchange or quoted on a quotation and trade reporting system, or
 - (ii) that an application has been or will be made to list the security on an exchange or to quote the security on a quotation and trade reporting system, unless
 - (A) an application has been made to list or quote the securities traded and securities of the same issuer are currently listed on an exchange or quoted on a quotation and trade reporting system, or
 - (B) the exchange or quotation and trade reporting system has granted approval to the listing or quoting of the securities,

conditional or otherwise, or has consented to, or indicated that it does not object to, the representation.

- (2) Subsection (1)(a) does not apply to a security that carries or is accompanied by
- (a) an obligation of the issuer to redeem or repurchase the security, or
 - (b) a right of the owner of the security to require the issuer to redeem or repurchase the security.
- (3) A person must not represent that they are offering to trade in a security
- (a) at the market price, or
 - (b) at a price related to the market price,

unless a market for the security exists that is not made, created or controlled by that person, the person's employer or an affiliate or by a person for whom the person is acting in the transaction.

Representations about registration

- 12.3(1) A person must not represent that they are registered under securities laws unless
- (a) the representation is true, and
 - (b) in making the representation the person specifies their category of registration.

(2) A person who is not registered must not, directly or indirectly, hold out that they are registered.

Use of a registrant's name

12.4 No registrant may use the name of another registrant unless that person

- (a) is authorized in writing to do so by the registrant, or

is a director, officer, partner, agent, employee or representative of the registrant.

Representing regulatory bodies

12.5 A person must not represent that the securities regulatory authority, extra-provincial SRA, regulator, SRA delegate or officer, employee, appointee or agent of the securities regulatory authority has in any manner expressed an opinion or passed judgment on

- (a) the financial standing, fitness, or conduct of a registrant;
- (b) the merits of a security or of an issuer;
- (c) the record of disclosure of an issuer under securities laws.

Unfair practices prohibited

12.6(1) A person must not engage in an unfair practice

- (a) while engaging in investor-relations activities,
- (b) while advising in relation to the purchase or sale of a security, or
- (c) with the intention of effecting the purchase or sale of a security.

(2) In subsection (1), an **unfair practice** includes

- (a) putting unreasonable pressure on a person to purchase, hold or sell a security;
- (b) taking advantage of a person's
 - (i) inability or incapacity to reasonably protect their own interests because of physical or mental infirmity, ignorance, illiteracy or age, or
 - (ii) inability to understand the character, nature or the language of any matter relating to a decision to purchase, hold or sell a security;
- (c) imposing terms, conditions, restrictions or limitations in respect of transactions that are harsh or oppressive.

False or misleading statements prohibited

12.7 A person must not make a statement or provide information or a record to the securities regulatory authority, extra-provincial SRA, regulator, SRA delegate or officer, employee, appointee or agent of the securities regulatory authority that, in a material respect

and at the time and in light of the circumstances under which the statement was made or the information or record was provided,

- (a) is false or misleading,
- (b) omits to state a fact that is required to be stated by securities laws, or
- (c) omits to state a fact that is necessary to be stated so that the statement, information or record is not false or misleading.

Fraud and market manipulation

12.8 A person must not, directly or indirectly, engage in or participate in any act, practice or course of conduct relating to securities that

- (a) results in or contributes to a misleading appearance of trading activity in, or an artificial price for, a security, or
- (b) perpetrates a fraud on any person.

Front running

12.9(1) A person that knows of material order information must not, and must not recommend or encourage another person to,

- (a) purchase or sell the securities to which the material order information relates,
- (b) acquire, dispose of, or exercise a put or call option or other right or obligation to purchase or sell the securities,
- (c) enter into a related financial instrument or acquire or dispose of rights or obligations under a related financial instrument, or
- (d) change their
 - (i) direct or indirect beneficial ownership of, or control or direction over,
 - (A) the securities, or
 - (B) a put or call option or other right or obligation to purchase or sell the securities, or

- (ii) interest in, or rights or obligations associated with, a related financial instrument.

(2) A person that knows of material order information must not inform another person of the material order information unless it is necessary in the course of the person's business.

Defences

12.10(1) A person does not contravene section 12.9 [*Front running*] if at the time of the action described in that section, the person reasonably believed that the other party to the action had knowledge of the material order information.

(2) A person, other than an individual, that acts as described in section 12.9(1) [*Front running*] with knowledge of material order information does not contravene that section and is not liable under section 8.9(5) [*Liability for insider trading, tipping, procuring and front running*] if:

- (a) the person had knowledge of the material order information only because the material order information was known to one or more of the person's directors, officers, partners, employees or agents,
- (b) the decision to act was made by one or more of the person's directors, officers, partners, employees or agents and none of the individuals who participated in the decision had actual knowledge of the material order information, and
- (c) none of the person's directors, officers, partners, employees or agents that had actual knowledge of the material order information gave any advice related to the action based on the actual knowledge to the person's directors, officers, partners, employees or agents that made or participated in the decision to act.

(3) In determining if a person has met the burden of proof under subsection (2), it will be relevant whether and to what extent the person has implemented and maintained reasonable policies and procedures to prevent contraventions of section 12.9 [*Front running*].

(4) A person that acts as described in section 12.9 [*Front running*] with knowledge of material order information does not contravene that section and is not liable under section 8.9(5) [*Liability for insider trading, tipping, procuring and front running*] if

- (a) the person acted because of the person's participation in a written automatic dividend reinvestment plan, or a written automatic purchase plan or another similar written automatic plan that the person entered into before having knowledge of the material order information,

- (b) the person acted under a written legal obligation to complete the acts described in section 12.9 [*Front running*] that the person had entered into before having knowledge of that material order information, or
- (c) the person acted
 - (i) as agent for another person under specific unsolicited instructions given by that other person to take the specified action;
 - (ii) as agent for another person under specific solicited instructions given by that other person to take the specified action before the person that acted as agent had knowledge of that material order information;
 - (iii) as agent or trustee for another person because of that other person's participation in a written automatic dividend reinvestment plan or a written automatic purchase plan or another similar written automatic plan, or
 - (iv) as agent or trustee for another person to fulfill in whole or in part a written legal obligation of that other person.

Trading, tipping and procuring prohibited

12.11(1) For the purpose of this section, a reference to a **reporting issuer** in section 1.13 [*Special relationship with reporting issuer*] includes an issuer that is a reporting issuer under extra-provincial securities laws.

(2) A person that is in a special relationship with a reporting issuer and that knows of inside information relating to the reporting issuer must not

- (a) purchase or sell a security of the reporting issuer,
- (b) acquire, dispose of, or exercise a put or call option or other right or obligation to purchase or sell securities of the reporting issuer,
- (c) enter into a related financial instrument or acquire or dispose of rights or obligations under a related financial instrument, or

- (d) change their
 - (i) direct or indirect beneficial ownership of, or control or direction over,
 - (A) a security of the reporting issuer, or
 - (B) a put or call option or other right or obligation to purchase or sell securities of the reporting issuer, or
 - (ii) interest in, or rights or obligations associated with, a related financial instrument.

(3) A person that is in a special relationship with a reporting issuer and that knows of inside information relating to the reporting issuer must not inform another person of inside information relating to the reporting issuer, unless it is necessary in the course of the reporting issuer's business or the person's business.

(4) Unless it is necessary to effect the transaction, a person must not inform another person of inside information relating to a reporting issuer if the person

- (a) proposes to make or is making a take-over bid for the reporting issuer,
- (b) proposes to become or is becoming a party to an amalgamation, merger, arrangement, reorganization or similar transaction with the reporting issuer, or
- (c) proposes to acquire or is acquiring a substantial portion of the property of the reporting issuer.

(5) A person that is in a special relationship with a reporting issuer and that knows of inside information relating to the reporting issuer, must not recommend or encourage another person to

- (a) purchase or sell a security of the reporting issuer,
- (b) acquire, dispose of, or exercise a put or call option, or exercise any other right or obligation to purchase or sell, securities of the reporting issuer,
- (c) enter into a related financial instrument or acquire or dispose of rights or obligations under a related financial instrument, or

- (d) change their
 - (i) direct or indirect beneficial ownership of, or control or direction over,
 - (A) a security of the reporting issuer, or
 - (B) a put or call option or other right or obligation to purchase or sell securities of the reporting issuer, or
 - (ii) interest in, or rights or obligations associated with, a related financial instrument.

Exemptions from tipping, trading and procuring prohibitions

12.12(1) A person does not contravene section 12.11(2), (3), (4) or (5) [*Trading, tipping and procuring prohibited*] if at the time of the action described in that section the person reasonably believed that the other party to the action had knowledge of the inside information.

(2) A person, other than an individual, that acts as described in section 12.11(2) [*Trading, tipping and procuring prohibited*] with knowledge of inside information does not contravene that subsection and is not liable under section 8.9(2), (3), (4) or (6) [*Liability for insider trading, tipping, procuring and front running*], if

- (a) the person had knowledge of the inside information only because the inside information was known to one or more of the person's directors, officers, partners, employees or agents,
- (b) the decision to act was made by one or more of the person's directors, officers, partners, employees or agents and none of the individuals who participated in the decision had actual knowledge of the inside information, and
- (c) none of the person's directors, officers, partners, employees or agents that had actual knowledge of the inside information gave any advice related to the action based on the actual knowledge to the person's directors, officers, partners, employees or agents that made or participated in the decision to act.

(3) In determining if a person has met the burden of proof under subsection (2), it will be relevant whether and to what extent the person has implemented and maintained reasonable policies and procedures to prevent contraventions of section 12.11(2), (3), (4) and (5) [*Trading, tipping and procuring prohibited*].

(4) A person that acts as described in section 12.11(2) [*Trading, tipping and procuring prohibited*] with knowledge of inside information does not contravene that section and is not liable under section 8.9(2), (3), (4) or (6) [*Liability for insider trading, tipping, procuring and front running*] if

- (a) the person acted because of the person's participation in a written automatic dividend reinvestment plan or a written automatic purchase plan or another similar written automatic plan that the person entered into before having knowledge of the inside information,
- (b) the person acted under a written legal obligation to complete the acts described in section 12.11(2) [*Trading, tipping and procuring prohibited*] and that obligation was incurred before the person acquired knowledge of the inside information, or
- (c) the person acted
 - (i) as agent for another person under specific unsolicited instructions given by that other person to take the specified action,
 - (ii) as agent for another person under specific solicited instructions given by that other person to take the specified action before the person that acted as agent had knowledge of that inside information,
 - (iii) as agent or trustee for another person because of that other person's participation in a written automatic dividend reinvestment plan, written automatic purchase plan or another similar written automatic plan, or
 - (iv) as agent or trustee for another person to fulfill in whole or in part a written legal obligation of that other person.

Withholding and destroying information and hindering

12.13(1) A person must not, and must not attempt to, in any manner, withhold, destroy, conceal, or refuse to give or produce, any information, record, property or thing required

- (a) in a review under section 2.18 [*Review of market participants*],
- (b) in a review under section 5.2 [*Review of disclosure*],
- (c) under an order for production issued under securities laws,

- (d) under an investigation order issued under securities laws or any summons issued pursuant to an investigation order,
- (e) under an order for seizure issued pursuant to securities laws, or
- (f) in a proceeding, hearing, review or inquiry conducted under securities laws.

(2) A person must not hinder or interfere with the securities regulatory authority, extra-provincial SRA or its delegate, regulator, SRA delegate or a member, officer, employee, appointee or agent of the securities regulatory authority in the performance of their powers, functions or duties.

General due diligence defence

12.14(1) A person does not contravene securities laws if

- (a) the person reasonably believed in mistaken facts which, if true, would not have resulted in the contravention of securities laws, and
- (b) that person exercised all reasonable diligence.

(2) Subsection (1) does not apply to actions under Part 8 [*Civil Liability – General*] or Part 9 [*Civil Liability for Secondary Market Disclosure*].

Division 2 Duties

Declaration about short position

12.15 A person that places an order for the sale of a security through a dealer acting on that person's behalf and that,

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

must at the time of placing the order to sell, declare to the dealer that the person or principal, as the case may be, does not own the security.

Binding effect of decisions and undertakings

12.16 A person must comply with

- (a) a decision of the securities regulatory authority or SRA delegate as it affects the person in respect of whom it is made or to whom it applies;
- (b) a written undertaking given to the securities regulatory authority or SRA delegate.

Division 3 Offences and Penalties

General offences

12.17(1) Every person who contravenes securities laws commits an offence.

(2) If a person, other than an individual, commits an offence, whether or not in respect of that offence a charge has been laid, a finding of guilt has been made or a plea of guilty has been entered with respect to that person,

- (a) every director and every officer of the person who authorized, permitted or acquiesced in the offence, and
- (b) every person, other than an officer or director of the person who authorized or permitted the offence,

also commits an offence.

Penalties on conviction

12.18(1) Every person that is convicted of an offence under section 12.17 [*General offences*] is liable to a fine of not more than \$5 million or to imprisonment for a term of not more than five years less one day, or to both fine and imprisonment.

(2) Despite subsection (1), and in addition to any imprisonment that is or may be imposed under subsection (1), if a person has contravened section 12.9 [*Front running*] or section 12.11(2), (3), (4) or (5) [*Trading, tipping and procuring prohibited*], the person is liable to a minimum fine equal to the profit made or loss avoided by any person by reason of the contravention, and a maximum fine equal to the greater of:

- (a) \$5 million, and

- (b) an amount equal to triple the profit made or loss avoided by any person by reason of the contravention.

(3) If it is not possible to determine the profit made or loss avoided by any person by reason of the contravention, subsection (2) does not apply but subsection (1) continues to apply.

(4) For the purpose of subsections (2) and (3), **profit made** and **loss avoided** have prescribed meanings.

Additional remedies

12.19(1) If a person is convicted of an offence under securities laws, the [*name of court imposing sentence*] may, in addition to any other penalty imposed on the person, order the person to compensate or make restitution to an aggrieved person who has suffered a loss of personal property as a result of the offence

- (a) in an amount not exceeding the replacement value of the personal property as of the date the order is imposed, less
- (b) the value of any part of the personal property that is returned to that person as of the date it is returned, if the amount is readily ascertainable.

(2) If

- (a) the court finds it applicable and appropriate in the circumstances to make an order of restitution or compensation,
- (b) the court is considering ordering the person to pay a fine, and
- (c) it appears to the court that the person would not have the means or ability to comply with both the order of restitution or compensation and the order to pay the fine,

the court must first make the order of restitution or compensation and must then consider whether and to what extent an order to pay a fine is appropriate in the circumstances.

(3) If a court makes an order of restitution or compensation, it must cause a copy of the order to be sent to the aggrieved person to whom the restitution or compensation is ordered to be paid.

(4) If a person is convicted of an offence, the court imposing sentence may, in addition to any other penalty imposed on the person and in addition to any order under subsection (1), make one or more of the following orders:

- (a) that trading in or purchasing any securities by or of a person cease permanently or for such period as is specified in the order;
- (b) that the person resign one or more positions that the person holds as a director or officer of an issuer, a registrant, an investment fund manager, a promoter or a person involved in investor-relations activities;
- (c) that the person is prohibited from becoming or acting as a director or officer of an issuer, a registrant, an investment fund manager, a promoter or a person involved in investor-relations activities;
- (d) that the person disgorge to the securities regulatory authority any amounts obtained or losses avoided by reason of the contravention.

Enforcement of restitution or compensation orders

12.20(1) The person to whom the amount was ordered to be paid under section 12.19 [*Additional remedies*] may file the order with the court.

(2) An order filed with the court under subsection (1) has the same effect as if it were a judgment of that court.

(3) A person is not entitled to participate in a proceeding in which an order may be made under section 12.19 [*Additional remedies*] solely on the basis that the person has a right of action against a defendant to the proceeding or that the person may be entitled to receive an amount under the order.

(4) A civil remedy for an act or omission is not affected by reason only that an order for restitution or compensation has been made in respect of that act or omission.

Division 4 Coming into Force

Coming into force

12.21(1) This Act comes into force on a date or dates to be fixed by Proclamation.

(2) Subsection (1) does not apply to the rules.