

IN THE SUPREME COURT
OF THE STATE OF NEVADA

MICHAEL PATRICK LATHIGEE,

Appellant,

— *vs.* —

BRITISH COLUMBIA SECURITIES COMMISSION,

Respondent.

Case No. 78833

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Elizabeth A. Brown
Clerk of Supreme Court

JOINT APPENDIX
Volume 7, Bates Nos. JAX1204–1392

Appeal from Case No. A-18-771407-C
Eighth Judicial District Court For Clark County
Hon. Adriana Escobar

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British Columbia
Securities Commission

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First Amended Answer of Defendant Michael Patrick Lathigee (filed 06/06/18)	Vol. 1, Bates Nos. JAX21–25
Scheduling Order (filed 07/23/18)	Vol. 1, Bates Nos. JAX26–28
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<u>DOCUMENT DESCRIPTION</u>	<u>LOCATION</u>
Reply in Support of Defendant Lathigee's Motion for Summary Judgment (filed 11/21/18)	Vol. 7, Bates Nos. JAX1218–1235
Reply to Defendant's Opposition to Plaintiff's Countermotion for Summary Judgment (filed 11/30/18)	Vol. 7, Bates Nos. JAX1236–1392 through Vol. 8, Bates Nos. JAX1393–1409
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EXHIBIT 30

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DISTRICT COURT

CLARK COUNTY, NEVADA

BRITISH COLUMBIA SECURITIES
COMMISSION,

CASE NO.: A-18-771407-C
DEPT. NO.: XIV

Plaintiffs,
vs.

**PLAINTIFF'S NRCP 16.1(a)(2)
EXPERT DISCLOSURES**

MICHAEL PATRICK LATHIGEE,
Defendant.

Plaintiff, BRITISH COLUMBIA SECURITIES COMMISSION ("BCSC"), by and through
its counsel of record, ALVERSON TAYLOR & SANDERS, hereby submits its Expert Disclosures
by producing the following documents and list of witnesses pursuant to NRCP 16.1(a)(2) as follows:

I.

LIST OF EXPERT WITNESSES

REBUTTAL EXPERTS

(1) Gordon R. Johnson
Borden Ladner Gervais LLP
1200 Waterfront Centre
200 Burrard St, P.O. Box 48600
Vancouver, BC, Canada V7X 1T2
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Mr. Johnson will testify regarding his background and experience regarding the subject matter of his opinion, and his qualifications regarding the same. He will also testify regarding his review of the records in this matter, including, but not limited to, the declaration of Patrick J. Sullivan. He will also testify regarding his opinions as expressed in his expert reports.

II.

LIST OF DOCUMENTS

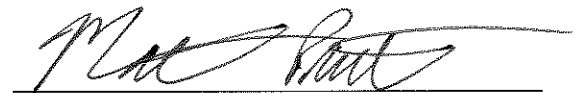
1. Exhibit A;

- Expert report prepared by Mr. Gordon R. Johnson
- Mr. Gordon R. Johnson Curriculum Vitae

Plaintiff reserves the right to use any document identified by any other party to this action and reserves the right to supplement this list of documents as discovery is ongoing.

DATED this 15th day of August, 2018.

ALVERSON TAYLOR & SANDERS



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Nevada Bar #6228

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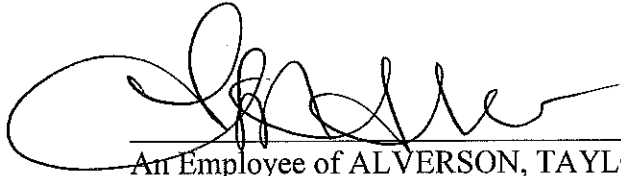
(702) 384-7000

Attorneys for Plaintiff

CERTIFICATE OF SERVICE VIA CM/ECF

I hereby certify that on this 15th day of August, 2018, I did serve, via Case Management/Electronic Case Filing, a copy of the above and foregoing PLAINTIFF'S NRCP 16.1(a)(2) EXPERT DISCLOSURES addressed to:

1 Jay D. Adkisson LLP
2 2505 Anthem Village Drive, Suite E599
3 Henderson, NV 89052


An Employee of ALVERSON, TAYLOR,
MORTENSEN & SANDERS

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Exhibit A

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August 13, 2018

Delivered by Email

Lawson Lundell LLP
Suite 1600 Cathedral Place
925 West Georgia Street
Vancouver, BC V6C 3L2

Attention: Mr. William L. Roberts

Dear Sir:

Re: Expert Opinion re: Declaration of Patrick J. Sullivan

I have been asked to review the opinion of Patrick Sullivan contained in his letter of July 9, 2018. To the extent my own opinion differs I have been asked to explain that in this letter, and to provide the basis and reasons for my opinions.

In compensation for my analysis and preparation of this letter, I expect that my fees will be slightly less than CAD \$10,000.00. If I am called upon to testify at depositions or trial, my rate for such work is \$600.00 per hour.

I have not provided any form of testimony as an expert in the past four years.

My Qualifications

I received my law degree from the University of British Columbia in 1985. After that I was a Clerk with the British Columbia Court of Appeal during the 1985-86 term. During the summer of 1986 I worked as a Research Intern in Ottawa with the Law Reform Commission of Canada. My assignment was to assist in the Commission's Criminal Code reform project by researching and commenting on the Criminal Code provisions related to securities offences.

In the fall of 1986 I began my articles with the Vancouver based law firm Ladner Downs. I remained with that firm, initially as an associate and then as a partner. In 2000 Ladner Downs merged with other firms to become Borden Ladner Gervais LLP, a firm with significant offices in Montreal, Ottawa, Toronto, Calgary and Vancouver. I am a partner in that firm.

Early in my career our firm became the lead enforcement counsel for what was then the Vancouver Stock Exchange (the "VSE"). The VSE then operated its own enforcement processes. I became one of the external enforcement counsel for that exchange. In that capacity I had conduct of approximately a dozen enforcement hearings, several appeals to the British Columbia



Securities Commission, one appeal to the British Columbia Court of Appeal and many dozen other proceedings that settled before a final hearing.

After the VSE merged with the Alberta Stock Exchange and its head office function moved to Alberta, I began to represent respondents in securities industry disciplinary hearings. I also began to represent investment dealers and advisors in liability claims and, at times, I was retained by self-regulatory organizations in the securities regulatory field to conduct disciplinary proceedings on an ad hoc basis. I have also represented various banks, fund managers, public companies and individuals in responding to regulatory concerns in the securities industry, frequently in response to proceedings initiated by the British Columbia Securities Commission.

I am familiar with the securities regulatory framework in Canada and specifically in British Columbia. My work experience has included a significant focus on securities law and regulation almost continuously for over 30 years.

A copy of my current Curriculum Vitae is attached.

Mr. Sullivan's Opinion

I have reviewed Mr. Sullivan's opinion. I accept his factual assumptions. I agree that the range of data and information he has considered is reasonable, and I have considered the same sources, excluding the complaint in the Nevada proceeding, which I did not review. Excluding Mr. Sullivan's summary of his opinions at page one of this letter and subject to minor issues that are largely questions of nuance, I agree with Mr. Sullivan up to about the middle of page 5 of his opinion. From there forward I disagree with the opinions he expresses in his letter.

It is my impression that Mr. Sullivan's opinion includes an implicit focus on the impact of Section 161(1)(g) remedy on Mr. Lathigee. Certainly I agree the impact of the remedy is significant in that the order in question requires Mr. Lathigee to pay \$21,700,000 Canadian without proof that Mr. Lathigee personally received that amount. Where my opinion diverges from that of Mr. Sullivan relates to where the analysis should focus. It is my opinion that under the laws applicable in British Columbia in the securities law context the classification of a remedy as a penalty or otherwise is determined by reference to the purpose of the remedy in question. This opinion is well supported in the decision of the British Columbia Court of Appeal in *Poonian v. British Columbia Securities Commission*, 2017 BCCA 207.

In the *Poonian* decision, our Court of Appeal makes it clear that its reasoning applies regardless of whether the Section 161(1)(g) remedy is imposed against a respondent who personally and directly obtained amounts or against a respondent who obtained amounts "indirectly". In this case the finding was that the amounts in question were received indirectly by Mr. Lathigee because the funds resulted from the fraud which had been proven and flowed to one or more corporate entities which Mr. Lathigee and Mr. Pasquill were controlling and directing (see paragraphs 157 to 159 of *Poonian*).

The British Columbia Court of Appeal expresses the purpose of the Section 161(1)(g) remedy most clearly at paragraph 111 of the *Poonian* decision. There the Court makes it clear that the



purpose is not to punish or to compensate. The purpose of the remedy is to deter non-compliance by removing the prospect of receiving and retaining moneys from non-compliance.

I agree with Mr. Sullivan that one of the purposes of imposing a penalty is deterrence. But I do not agree this means every remedy which includes a deterrent intent is a penalty and I believe this is clear from the reasoning of the British Columbia Court of Appeal in *Poonian*.

There are several other portions of the *Poonian* decision which, in my opinion, support my conclusion that the Section 161(1)(g) remedy is not a penalty under British Columbia law. I include some of those paragraphs below:

[112] Section 161(1)(g) must be read in the context of its neighbours in ss. 161 and 162. As Stratas J.A. put it in *Burchill v. Canada*, 2010 FCA 145 (CanLII) at para. 11, referring to the *Income Tax Act*, R.S.C., 1985, c. 1 (5th Supp.), “Subsection 56(1)(a)(i) does not stand in splendid isolation in the Act; rather, it is part of an interconnected web of provisions.” Section 161(1)(g) must be recognized as one in a list of enforcement tools open to the Commission. The Commission has a broad arsenal of sanctions to enable it to discharge its public interest mandate. Each tool, however, takes a specific form to achieve a specific purpose. Disgorgement is a specific tool, and the Commission must not, in the name of the public interest, use that tool in such a way as to extend it beyond its specific, permissible purpose. Its purpose is to prevent wrongdoers from retaining amounts obtained from their wrongdoing. It is not to punish or compensate, although those aims are achievable by other means in the *Act*, or in conjunction with other sections of the *Act*.

[113] In my view, the suggestion that limiting the scope of s. 161(1)(g) conflicts with the *Act*’s overarching protective goal erroneously conflates the discrete and recognized purposes of a s.161(1)(g) “disgorgement” order with the general purposes of the *Act* overall, which are achieved by the availability of the vast array of different enforcement tools employable in concert. This interpretation is not disharmonious with the remedial and protective nature of the *Act*. Instead, it recognizes that the *Act*’s overarching goals are achieved by a host of specific measures, which themselves may have different purposes and be informed by different principles (e.g., punishment, compensation, specific and general deterrence, removal of incentives for non-compliance, etc.). Indeed, the Commission’s public interest jurisdiction is not punitive, as the Court noted in *Committee for the Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)*, 2001 SCC 37 (CanLII):

[42] ... I agree with Laskin J.A. [(1999), 1999 CanLII 7316 (ON CA), 43 O.R. (3d) 257] that “[t]he purpose of the Commission’s public interest jurisdiction is neither remedial nor punitive; it is protective and preventive, intended to be exercised to prevent likely future harm to Ontario’s capital markets” (p.



272). ... It is also consistent with the objective of regulatory legislation in general. The focus of regulatory law is on the protection of societal interests, not punishment of an individual's moral faults...

[114] I agree with Vice Chair Cave that where a s. 161(1)(g) order is made to require someone to pay an amount to the Commission that person did not obtain, the only purpose of such a payment is punishment or compensation. It is not to surrender ill-gotten amounts because the amounts surrendered were not obtained in the first place. See also *Limelight* at para. 63, where the Ontario Securities Commission recognized that "it would be unfair and inconsistent with the principles underlying the disgorgement remedy for the aggregate amount ordered to be disgorged by Canadian securities regulators or courts to exceed the amounts obtained by [the respondents] from investors."

I believe that by this language the Court of Appeal in *Poonian* was accepting the accuracy of the following reasoning from the British Columbia Securities Commission's decision in *Streamline Properties Inc. (Re)*, 2015 BCSECCOM 66 as follows:

92 Section 161(1)(g) should be read to refer to the financial benefits respondents continue to have at the time the order is made. Amounts returned to investors should be deducted from the amount of the disgorgement order.

93 This is consistent with the purpose of a disgorgement order, namely to deprive a respondent of wrongly obtained benefits. If an order requires disgorgement of a benefit a respondent no longer has, then it will not serve the purpose of removing wrongly obtained benefits, and instead will simply be a penalty.

I think our Court of Appeal has made it clear that the various enforcement remedies which might be imposed can and do have different purposes which are not limited to punishment of wrongdoers or compensation of victims. The "disgorgement" remedy has the purpose of removing the incentive for non-compliance. It is not a penalty.

Other Comments

There is a broad range of remedies that might be imposed under Section 161 of the *Securities Act*. These include, for example, submitting to a review of practices and procedures, cancellation of registration, orders prohibiting the dissemination of certain types of information to the public and a number of other remedies. From the perspective of a respondent, any remedy that is imposed will feel burdensome. Some of those remedies might have a very significant impact on a respondent, for example by depriving a respondent of an ability to earn an income in the field for which he or she has trained and qualified. But many of those remedies are not penalties, even



some of the very burdensome remedies. They are intended to be remedial and to protect the public.

I disagree with the suggestion that Section 161(1)(g) remedies are “penalties” because they occur in a phase of an administrative proceeding that is often called a sanctions hearing.

I disagree with the suggestion that because compensation is not the objective of Section 161(1)(g) therefor disgorgement is not an objective. Disgorgement and compensation are different concepts.

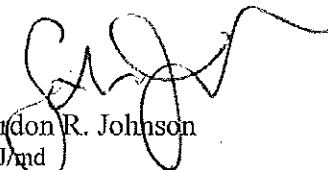
Conclusion

In conclusion, based on the analysis above, in my opinion Section 161(1)(g) of the *Securities Act* is not a penalty in British Columbia law.

Yours truly,

Borden Ladner Gervais LLP

by:


Gordon R. Johnson
GRJ/md
Encl.



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EDUCATION / BAR ADMISSIONS

LLB, University of British Columbia, 1985
British Columbia, 1987

PROFESSIONAL INVOLVEMENT

Chair, The Advocates Society, British Columbia Advisory Board
2016 – Present

Co-Chair, BC Branch of the Canadian Bar Association, Civil Litigation Subsection,
2009-10

Treasurer, BC Branch of the Canadian Bar Association, Civil Litigation Subsection,
2010 - 2016

COMMUNITY INVOLVEMENT

Board Member, Vancouver Symphony Orchestra (VSO), 2008-2015

Board Member and Board Chair, VSO School of Music, 2011-present

Board Member, Vancouver United Football Club, 2011-2015

Board Member, Dunbar Soccer Association, 2008-11

Board Member, Vancouver Youth Soccer Association, 2009-11

HOBBIES

Men's soccer, player and manager, Dunbar Physio Dragons

Competitive canoeing, including Yukon River Quest 2017 (World's Longest Ultra-Marathon Canoe Race)

EXECUTIVE SUMMARY

Gordon Johnson is a Partner and the Chair of BLG's Professional Committee. Gordon has a commercial litigation practice that covers many topics. In addition to his experience with a broad range of commercial disputes, Gordon's background includes many years' experience in securities industry disputes, including both prosecuting and defending regulatory issues, defending investment claims and dealing with disputes between investment firms. Gordon also has particular experience in dealing with real estate disputes.

Before commencing practice, Gordon was a clerk with the British Columbia Court of Appeal, and a research intern with the Law Reform Commission of Canada. Since then, he has frequently appeared as counsel before the British Columbia Supreme Court, the British Columbia Court of Appeal, the British Columbia Securities Commission, and various other tribunals.

REPRESENTATIVE WORK

- *TELUS v. CDS and Mason Advisors* — represented the Canadian Depository Service in the British Columbia Supreme Court and the British Columbia Court of Appeal in a claim which determined the ability of beneficial shareholders to exercise shareholder rights through Canada's share depository system.
- *Bank Gutenberg and BC Securities Commission* — resolved allegations of Non-Canadian Financial Institution responsibility for trades by clients.
- *Receivership of Symphony Development* — confirmed the circumstances where a constructive trust may be available in a claim against an insolvent business.
- *Mutual Fund Dealers Association v. British Columbia Securities Commission* — represented the MFDA in a proceeding relating to internal processes and meetings of members.
- Represented clients in two high profile Coroner's Inquests in 2014.
- Attorney General of British Columbia — represented the Province of British Columbia in a proceeding to enforce a mortgage against the owners of Burns Bog and defended the quality and good faith of the Province's environmental review of that location.
- HSBC Kelowna — defended investment dealer from allegations made by investors who suffered in technology collapse in 2000.
- Icon Omega — represented Alberta real estate developer in a claim that defined the extent to which British Columbia's *Real Estate Development and Marketing Act* applies to development outside of the Province.
- HSBC Pavlis — represented investment dealer in claim by former unrepresented employee; the case helped define (at the trial level) the type of breach of contract that



will be considered fundamental, and confirm (at the appeal level) that the *Canadian Charter of Rights and Freedoms* does not obligate Province to provide financial support to indigent individuals for appeals.

- Hypo Bank BCSC — represented a foreign bank in a securities proceeding that confirmed the ability of British Columbia regulators to hold off-shore institutions responsible if local "know your client" rules are not followed regarding investors.
- Eron Lenders Committee — represented a group of investors after the collapse of Eron Mortgage Corporation in establishing the ability of a class of investors to create a representative group and have it granted standing in an insolvency context.
- *Northern Securities Ltd. v. GLG Lifetech Inc.* — represented a public company in resisting a fee claim by its sponsor for acting as a sponsor in an application for a listing on the TSX.
- Merrill Lynch Canada — represented Merrill Lynch in the defence of a class action related to the method used by investment dealers in converting currency for transactions in investor accounts.
- *Vancouver Stock Exchange v. Delmas* — represented the VSE in the British Columbia Supreme Court and the British Columbia Court of Appeal on issues regarding jurisdiction and the ability of a regulatory body to delegate jurisdiction.

PUBLICATIONS & PRESENTATIONS

- Co-Chair, The Advocates Society Skills Certification Program on Making Objections During a Hearing, May 29, 2017.
- Co-Chair, The Advocates Society Skills Certification Program on Challenging Credibility, April 14, 2016.
- Author, "The Collapsing Deal" chapter, *British Columbia Real Estate Practice Manual*, Continuing Legal Education Society of British Columbia (CLE BC), updated yearly 2001-2016.
- Author, "Creating & Preserving Enforceable Rights," *Real Estate Deals: Creating and Enforcing them in Challenging Times*, CLE BC, June 2009.
- Author, "Streamlining Litigation — Choosing Procedural Tools to Reduce Cost," *Economical Litigation*, CLE BC, January 2009.
- Author, "Maximizing Examinations for Discovery," Insight Information Seminar on Litigation, Securities and Corporate Commercial Law, May 2008.
- Contributing Author, "Directors' and Officers' Liability for Failing to Prevent Internal Fraud," *Fraud: Detection, Recovery and Prevention*, CLE BC, October 1997.

RANKINGS & RECOGNITIONS

- Selected by peers for inclusion in the 2015 to present editions of *The Best Lawyers in Canada*® (Corporate and Commercial Litigation).
- Martindale-Hubbell® BV® Distinguished™ 4.4 out of 5 Peer Review Rated.
- Recognized in the 2014 to present editions of *Benchmark Canada* as a "local litigation star" and "securities litigation star."

ABOUT BLG

Borden Ladner Gervais LLP (BLG) is a pre-eminent full-service, national law firm focusing on business law, commercial litigation and intellectual property solutions for our clients. With more than 750 lawyers, intellectual property agents and other professionals in six Canadian cities, BLG assists clients with their legal needs, from major litigation to financing and patent registration. For further information, visit blg.com



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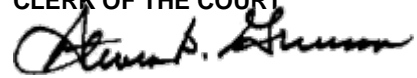
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- Recognized in the 2014 to present editions of *Benchmark Canada* as a "local litigation star" and "securities litigation star."

ABOUT BLG

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STATE OF NEVADA
EIGHTH JUDICIAL DISTRICT COURT AT CLARK COUNTY

HON. ADRIANA ESCOBAR, DISTRICT JUDGE

BRITISH COLUMBIA SECURITIES
COMMISSION,

Plaintiff,

— vs. —

MICHAEL PATRICK LATHIGEE,

Defendant.

Case No. A-18-771407-C {Dept. 14}

**REPLY IN SUPPORT OF DEFENDANT
LATHIGEE'S MOTION FOR
SUMMARY JUDGMENT**

Hearing: December 4, 2018 at 9:30 a.m.

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**REPLY IN SUPPORT OF DEFENDANT LATHIGEE'S
MOTION FOR SUMMARY JUDGMENT**

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1 Defendant, Michael Patrick Lathigee ("Lathigee"), hereby Replies to the BCSC's Opposition of
2 his own Motion for Summary Judgment, and hereby also Opposes the BCSC's Countermotion for
3 Summary Judgment.

4 5 **I. THERE ARE NO FACTS IN DISPUTE**

6 While the parties vehemently disagree as to the applicable law and the application of the law to
7 the facts, there is no disagreement as to the core facts of this matter and thus — one way or the
8 other — summary adjudication of this matter is entirely appropriate.

9 10 **II. CONFLICT-OF-LAWS AND CLASSIFICATION**

11 The BCSC's conflict-of-laws argument, on pages 9-12, begins in the wrong place, relies upon
12 inapplicable law, and ends with a wrong conclusion that is exactly opposite in effect to that reached
13 by the courts.

14 Citing to *Illustration 1* of § 7 of the Restatement (Second) of Conflict of Laws (1971), the
15 BCSC concludes that since British Columbia is the "place with the most significant relationship to
16 the judgment . . . then the local law of [British Columbia] will apply in regard to the definition and
17 classification of the disgorgement judgment". BCSC Opposition at pg. 10, lines 3-8. This is a
18 classic red herring.

19 The problem here is that *Illustration 1* is based on the **tort** rule of Restatement § 145 which
20 contemplates purely private tort actions between the injured party and the tortfeasor. The BCSC's
21 action and judgment does not arise in tort -- and thus the significant-relationship test is inapplicable
22 -- but instead is an administrative action under the British Columbia Securities Act, and more
23 particularly § 161(1)(g) of that Act. Thus, *Illustration 1* is simply not relevant and, as will be
24 shown, courts considering the classification issue in the area of foreign judgments and foreign-
25 country judgments use their own local law to determine classification issues.

26 The BCSC also references § 98 of the Restatement as requiring recognition of a foreign-
27 country judgment. BCSC Opposition at pg. 10, line 6. Section 98 provides, however in *Comment*
28 *g*:

1 g. Defenses: Enforcement of a foreign nation judgment can be resisted, in among
2 other ways, on the ground that . . . the judgment was on a governmental claim (§
3 120).

4 The referenced § 120 then states that a "non-penal governmental claim" will be recognized, *i.e.*, a
5 penal claim will not be recognized, which merely completes the circle to the salient issue of this
6 case, which is whether the disgorgement order constitutes a penalty.

7 The proper choice-of-law analysis begins with para. (2) of § 7 of the Restatement, which
8 states unambiguously that:

9 (2) The classification and interpretation of Conflict of Laws concepts and terms are
10 determined in accordance with the law of the forum, except as stated in § 8.¹

11 The law of the forum is that of Nevada; therefore, under § 7(2) of the Restatement, questions of
12 classification and interpretation are to be resolved in accordance with Nevada law.

13 The U.S. District Court for the District of Nevada has held that pursuant to § 7(2) of the
14 Restatement, Nevada law governs classification and interpretation of conflict-of-laws concepts
15 and terms. *Contreras v. American Family Mut. Ins. Co.*, 135 F.Supp.3d 1208 (D.Nev. 2015)
16 ("Nevada law governs whether this claim is classified as being based in tort or contract.
17 Restatement (Second) of Conflict of Laws § 7(2) (Generally, '[t]he classification and interpretation
18 of Conflict of Laws concepts and terms are determined in accordance with the law of the forum').").
19 *Id.*, at 1226 *fn.* 2.

20 Admittedly, these conflict-of-laws issues are extremely difficult to maneuver. It is much
21 easier to see how these issues were resolved in the context of actual court cases in the judgment
22 recognition context. For instance, in all three cases cited by the BCSC where the Canadian courts
23 had considered disgorgement orders, the Canadian courts applied their own local Canadian law —
24 not U.S. law — to determine what constituted a "penalty" for purposes of Canadian law. *See, e.g.*,

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27 ¹ Section 8 of the Restatement deals with that subject known as *renvoi*, being the situation where
28 a state is directed by statute or court rule, etc., to apply the law of another state or jurisdiction, and
which is plainly inapplicable here.

1 *U.S. v. Peever*, 2013 BCSC 1090 (2013); *U.S. v. Shull*, BCJ No. 1823 (1999); and *U.S. v. Cosby*,
2 2000 BCSC 338 (2000).²

3 However, the best example is found in Nevada, in *City of Oakland v. Desert Outdoor*
4 *Advertising, Inc.*, 127 Nev. 533, 267 P.3d 48 (2011), where Justice Cherry applied the law of the
5 forum, being Nevada law, to resolve the penalty classification issue in that case relating to a
6 California judgment.

8 III. THE PUBLIC INTEREST V. PRIVATE INTEREST RULE

9 The singularly critical issue in this case, controlling both recognition under NUF-CMJRA and
10 comity, is whether the BCSC's judgment furthers a public interest or a private interest. Neither the
11 NUF-CMJRA nor comity will recognize foreign judgment brought in the public interest, as well-
12 established by the precedential trifecta of *Huntington*,³ adopted by Nevada in *City of Oakland*,⁴
13 and applied to disgorgement orders in *Kokesh*.⁵

14 The BCSC concedes this entire issue *ex silentio*. The BCSC's Opposition makes no mention
15 of *Huntington* or *Kokesh*, at all, and *City of Oakland* is relegated to a passing footnote⁶ in support
16 of a very general and undisputed statement of law. Nor does the BCSC attempt to cope with Justice
17 Sotomayor's lengthy *Kokesh* analysis of how disgorgement should be characterized in the public
18 interest vs. private interest context, much less as applied to the instant facts.

22
23 ² The BCSC effectively takes the position that Canadian law governs entirely, *i.e.*, the Canadian
24 courts should apply Canadian law when considering a U.S. judgment as happened in the three
25 referenced Canadian opinions, and the U.S. courts should also apply Canadian law when
26 considering the instant Canadian judgment.

26 ³ *Huntington v. Attrill*, 146 U.. 657, 13 S.Ct., 224, 36 L.Ed. 1123 (1892).

27 ⁴ *City of Oakland v. Desert Outdoor Advert., Inc.*, 127 Nev. 533, 267 P.3d 48 (2011).

28 ⁵ *Kokesh v. SEC*, ___ U.S. ___, 137 S.Ct. 1635, 198 L.Ed.2d 86 (2017).

⁶ BCSC's Opposition, pg. 6 *fn.* 26.

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Desert Outdoor had a billboard in Oakland which violated that city's municipal laws. Oakland sued Desert Outdoor for unlawful business practices, and obtained a judgment against Desert Outdoor for the following:

- 127 Nev. at 50, 267 P.3d at 536 (**boldface** added)

Oakland's appeal presented two issues to the Nevada Supreme Court, the first of which was whether a penal judgment of another state must be given full faith & credit by the Nevada courts. On this point, Oakland argued that *Huntington*⁸ is a "relic [of] questionable authority" which was effectively supplanted by Nevada's adoption of the UEFJA. 127 Nev. at 50, 267 P.3d at 536.

⁷ U.S. Constitution, Art. IV § 1.

⁸ *Huntington v. Attrill*, 146 U.S. 657, 13 S.Ct. 224, 36 L.Ed. 1123 (1892).

1 "To further the principle of comity," Justice Cherry wrote, Nevada had adopted the UEFJA
2 to allow a properly filed sister-state judgment to be treated like a Nevada judgment for all purposes.
3 *Ibid.* But that does not end the issue since the UEFJA itself, he continued, is limited to the
4 registration of judgments "*which is entitled to full faith and credit in this state.*" 127 Nev. at 51,
5 267 P.3d at 537 (*italics in original*).

6 Justice Cherry then went on to note that there are numerous exceptions to full faith and
7 credit, and then turned back to the case at hand:

8 In addition, the United States Supreme Court has determined that the Full Faith and
9 Credit Clause does not apply to penal judgments. *Huntington v. Attrill*, 146 U.S.
10 657, 666, 672–73, 13 S.Ct. 224, 36 L.Ed. 1123 (1892); *Nelson v. George*, 399 U.S.
11 224, 229, 90 S.Ct. 1963, 26 L.Ed.2d 578 (1970) (reiterating that “the full faith and
12 credit clause does not require that sister states enforce a foreign penal judgment”).
13 This exception for penal judgments, most notably analyzed in *Huntington*, is the
14 law at issue here.

15 127 Nev. at 51, 267 P.3d at 537-538.

16 This was followed by Justice Cherry's analysis of the facts of *Huntington* and his
17 description of salient issue of that case:

18 After determining that the question of whether full faith and credit was denied to
19 the New York judgment in Maryland was a federal question, the *Huntington* Court
20 stated that “in order to determine this question, it will be necessary, in the first
21 place, to consider the true scope and meaning of the fundamental maxim of
22 international law stated by Chief Justice Marshall in the fewest possible words:
23 ‘The courts of no country execute the penal laws of another.’ ” *Id.* at 666, 13 S.Ct.
24 224 (citing *The Antelope*, 23 U.S. 66, 123, 10 Wheat. 66, 6 L.Ed. 268 (1825)). The
25 *Huntington* court then determined that

26 [t]he question whether a statute of one state, which in some aspects may be
27 called penal, is a penal law, in the international sense, so that it cannot be
28 enforced in the courts of another state, depends upon the question whether

1 its purpose is to punish an offense against the public justice of the state, or
2 to afford a private remedy to a person injured by the wrongful act.

3 *Id.* at 673–74, 13 S.Ct. 224.

4 127 Nev. at 51, 267 P.3d at 538.

5 Four paragraphs were next spent by Justice Cherry in deflating Oakland's claim that the
6 critical language of *Huntington* is mere dictum. 127 Nev. at 51-54, 267 P.3d at 538-540. Two more
7 paragraph were spent rejecting the argument that Nevada's adoption of UEFJA had the effect of
8 superseding *Huntington*. 127 Nev. at 53, 267 P.3d at 540-541.

9 The second issue before the Court was "whether the California judgment in this case was
10 penal in nature." 127 Nev. at 53, 267 P.3d at 541. Oakland argued that it was enforcing its non-
11 public individual rights under California's unfair competition laws, and had brought its action to
12 stop a private harm against that city. Justice Cherry disagreed, and held that Oakland's judgment
13 was penal in nature. 127 Nev. at 54, 267 P.3d at 542. Justice Cherry began his analysis by quoting
14 *Huntington*:

15 Under the *Huntington* test,

16 [t]he question whether a statute of one state, which in some aspects may be
17 called penal, is a penal law, in the international sense, so that it cannot be
18 enforced in the courts of another state, depends upon the question whether
19 its purpose is to punish an offense against the public justice of the state, or
20 to afford a private remedy to a person injured by the wrongful act.

21 146 U.S. at 673–74, 13 S.Ct. 224.

22 127 Nev. at 54, 267 P.3d at 542.

23 Justice Cherry also noted that, under *Huntington*, the relevant test is not what the remedy
24 is called by the foreign legislature, but whether the remedy seeks to redress an offense against the
25 public as opposed to grant a right of recovery to a private person. *Ibid.* As applied to Oakland's
26 judgment, Justice Cherry continued:

1 Thus, here, the central question is whether the statute provided civil penalties as a
2 means to punish a violator for an offense against the public or whether the statute
3 created a private right of action to compensate a private person or entity.

4 *Ibid.*

5 Applying this test, Justice Cherry concluded that Oakland "was not a private entity
6 enforcing a civil right". *Ibid.* Instead, Oakland was suing for Desert Outdoor's having violated its
7 zoning ordinances, under which ordinances affected private parties could not have brought their
8 own suit for damages. *Ibid.* Thus,

9 As such, it is clear that the statutes' remedies do not address private harms but rather
10 address only public wrongs—in this case, the abatement of a public nuisance—and
11 were intended to deter conduct deemed wrongful under California law.

12 127 Nev. at 54, 267 P.3d at 543.

13 Because Oakland was a public actor enforcing a public interest, Justice Cherry concluded,
14 "this penal judgment cannot be enforced in Nevada pursuant to *Huntington* . . ." *Ibid.* Thus, the
15 entity of Oakland's judgment, **which contained a substantial disgorgement portion**, was deemed
16 to be unenforceable in Nevada.

17 Very importantly, Justice Cherry finishes his opinion with the following footnote 10:

18 We have carefully considered Oakland's contention that the question of whether
19 Nevada will enforce a penal judgment is still permissive in nature and that the
20 judgment here should be enforced based on public policy grounds, and we conclude
21 that this contention is unpersuasive.

22 *Ibid.*, at fn. 10.

23 24 IV. RECOGNITION UNDER NUF-CMJRA

25 26 A. THE COMPENSATORY ARGUMENT

27 The BCSC's singular argument that disgorgement is not a penalty under the NUF-CMJRA is that
28 "these funds are compensatory in nature". BCSC's Opposition at pg. 8, ln. 15. The fatal problem

1 with this argument is that both the *Poonian*⁹ decision (which consolidated Lathigee's appeal) and
2 the opinion of the BCSC's own expert witness make clear that the purpose of disgorgement is not
3 — repeat not — compensatory. The numerous and unequivocal statements on this very topic from
4 *Poonian* and the BCSC's expert are found in Lathigee's Opening Brief at § III.C.2.a at pp. 16-17.

5 Against the statements in *Poonian* and of the BCSC's own expert witness that
6 compensation of investors is not a purpose of § 161(1)(g) of the British Columbia Securities Act,
7 the BCSC offers, well, nothing. This is another argument of the BCSC that is conceded *ex silentio*.

8 9 **B. THE USE OF FUNDS ARGUMENT**

10 Despite the numerous and unequivocal statements of the Canadian court in *Poonian* and the
11 BCSC's own expert witness that disgorgement is not compensatory, the BCSC persists in arguing
12 that because the BSCS promises on its website to use the funds to repay those investors who make
13 a claim for the funds, that somehow that takes the Disgorgement Order out of the penalty box.

14 This misses the point made by Justice Sotomayor that disgorgement is not compensatory,
15 since courts "have required disgorgement regardless of whether the disgorged funds will be paid
16 to investors as restitution." 137 S.Ct. 1644 (mentioning insider trader cases where there is
17 disgorgement by the defendant but no payments to investors). It also misses the point that if the
18 amount disgorged by the defendant exceeds investor claims, then the BCSC cannot return the
19 money to the defendant but instead must use the moneys for other purposes, such as public
20 education about investing. *Poonian*, Ex. 2 to Lathigee's Opening Brief, pp. 23-4 at ¶ 72. *See also*
21 Lathigee's Opening Brief at pg. 17, line 24 through pg. 18, line 20 ("Disgorgement Can Exceed
22 Wrongful Profits).

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⁹ *Poonian v. BCSC (including Lathigee v. BCSC)*, 2017 BCCA 207 (2017) [Ex. 2 to Lathigee's Opening Brief].

C. THE MIXED-USE ARGUMENT

The BCSC also makes the "mixed motives" argument, *i.e.*, that even if the Disgorgement Order serves the public interest, there is also a compensatory purpose which takes it out of the penalty box. BCSC Opp., pg. 10, lines 16-17. First, as noted in Part IV.A. of this brief, *supra*, the BCSC cannot refute the statements in found in *Poonian* and its expert witness's own opinion that there is no compensatory purpose § 161(1)(g). Second, as noted in Lathigee's Opening Brief at pp. 18-19, that a disgorgement may have *some* compensatory purpose still would not keep disgorgement from being a penalty under American law.

D. THE GROUNDS FOR NON-RECOGNITION

The BCSC attempts to argue that the only grounds for denying recognition to a foreign-country judgment under NUF-CMJRA is found in NRS 17.750. Opposition at pg. 12, lines 6-8. This simply ignores NRS 17.740(2)(b), which says that to the extent that a judgment is for a "fine or other penalty", then NUF-CMJRA doesn't apply at all.

V. RECOGNITION UNDER COMITY

The tenor of the BCSC's argument regarding international comity is that so long as due process is afforded to the defendant, the U.S. courts can do whatever they want because comity is not statutory, citing *Hilton v. Guyot*, 159 U.S. 113, 16 S. Ct. 139, 40 L. Ed. 95 (1895). BCSC Opp., at 17. Indeed, considered in the abstract, one finds sympathy with the observation about international comity by the Second Circuit that:

The doctrine has never been well-defined, leading one scholar to pronounce it "an amorphous never-never land whose borders are marked by fuzzy lines of politics, courtesy, and good faith."

1 *JP Morgan Chase Bank v. Altos Hornos de Mexico, S.A. de C.V.*, 412 F.3d 418, 423 (2d Cir.
2 2005).¹⁰

3 Fortunately, this Court is not confronted by the doctrine of international comity in the
4 abstract, but rather as applied to the instant case with undisputed material facts. And, quite unlike
5 the Second Circuit in the *JP Morgan Chase Bank* case, which had no relevant Restatement
6 guidance upon which to rely as to the peculiar Mexican bankruptcy issue before it, the instant case
7 has plentiful guidance about how to resolve this issue of the Restatement (Third) of Foreign
8 Relations Law, which has been adopted as guidance in this area by the Nevada courts in *Gonzales-*
9 *Alpizar v. Griffith*, 130 Nev. 10, 18, 317 P.3d 820, 826 (2014) and *Las Vegas Sands v. Eighth Jud.*
10 *Dist. Ct.*, 130 Nev. 578, 583, 331 P.3d 876, 879 (2014).

11 Comity is not a purely discretionary or arbitrary concept, but instead there exists "rules of
12 comity" *City of Oakland*, 127 Nev. at 50, 267 P.3d at 537. As noted in Lathigee's Opening Brief,
13 § 483 of the Restatement adopts the Public Interest v. Private Interest Test of *Huntington* and its
14 progeny, including Justice Sotomayor's opinion in *Kokesh* and Justice Cherry's opinion in *City of*
15 *Oakland*, which has the practical effect of harmonizing Nevada's statutory law of the NUF-
16 CMJRA with Nevada's common law doctrine of comity since the underlying test is exactly the
17 same, *i.e.*, under both the NUF-CMJRA and comity, if the judgment sought to be recognized
18 furthers a private interest, the judgment will be recognized, but if the judgment furthers a public
19 interest then the judgment will not be recognized.

21 A. THE LIMITS OF RECIPROCITY

22 The BCSC's Opposition argues at pp. 16-19 that considerations of reciprocity justifies this Court's
23 extension of comity to the Disgorgement Order. While certainly the promotion of reciprocity is
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27 ¹⁰ Quoting Harold G. Maier, EXTRATERRITORIAL JURISDICTION AT A CROSSROADS: AN
28 INTERSECTION BETWEEN PUBLIC AND PRIVATE INTERNATIONAL LAW, 76 Am.J.Int'l L. 280, 281
(1982).

1 something that is generally desirable between nations, as Judge Calabrese has noted, that also has
2 its limits:

3 Although courts in this country have long recognized the principles of international
4 comity and have advocated them in order to promote cooperation and reciprocity
5 with foreign lands, comity remains a rule of “practice, convenience, and
6 expediency” rather than of law. *Somportex Ltd.*,¹¹ 453 F.2d at 440; *see also id.*
7 (“Although more than mere courtesy and accommodation, comity does not achieve
8 the force of an imperative or obligation.”); *Cunard S.S. Co.*,¹² 773 F.2d at 457
9 (quoting *Somportex*).

10 *Pravin Banker Assocs., Ltd. v. Banco Popular*
11 *Del Peru*, 109 F.3d 850, 854 (2d Cir. 1997).

12 As repeatedly noted, the limits to comity have been established by *Huntington* and its
13 progeny, recalling that *Huntington* was itself a comity case.¹³ Thus, just by way of one example,
14 the court in *Bank Leumi Trust Co. v. Wulkan*, 735 F.Supp. 72 (S.D.N.Y. 1990), in refusing to
15 extend comity to Israeli currency laws , noted, after citing to *Huntington*, that “where there is
16 confliction between our public policy and application of comity, our own sense of justice and
17 equity embodied in our public policy must prevail.” *Id.*, at 76-77 (internal quotation and citation
18 omitted).

19 The very same argument that the BCSC attempts here — that comity is permissive and
20 thus should be recognized on public policy grounds — was considered and rejected by the *City of*
21 *Oakland* court:

22 We have carefully considered Oakland’s contention that the question of whether
23 Nevada will enforce a penal judgment is still permissive in nature and that the
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26 ¹¹ *Somportex Ltd. v. Philadelphia Chewing Gum Corp.*, 453 F.2d 435, 440–44 (3d Cir.1971).

27 ¹² *Cunard Steamship Co. v. Salen Reefer Servs. AB*, 773 F.2d 452, 456–60 (2d Cir.1985).

28 ¹³ *See Huntington v. Attrill*, 146 U.S. 657, 669, 13 S. Ct. 224, 228, 36 L. Ed. 1123 (1892).

1 judgment here should be enforced based on public policy grounds, and we conclude
2 that this contention is unpersuasive.

3 127 Nev. at 54, 267 P.3d at 543., at *fn.* 10.
4

5 **B. THE BOTTOM LINE: COMITY CANNOT BE EXTENDED BECAUSE AMERICAN AND CANADIAN**
6 **LAW TAKE FUNDAMENTALLY DIFFERENT POSITIONS ON DISGORGEMENT AS A PENALTY**

7 The *sine qua non* of this case is whether a disgorgement order is in the nature of a penalty. On the
8 one hand, the British Columbia courts have concluded that it is not based on their own unique laws
9 and precedents. On the other hand, the highest U.S. court, through the rigorous analysis of Justice
10 Sotomayor in *Kokesh*, has unequivocally held that "[b]ecause disgorgement orders go beyond
11 compensation, are intended to punish, and label defendants wrongdoers as a consequence of
12 violating public laws . . . they represent a penalty . . ." 137 S.Ct., at 1646.

13 Thus, the British Columbia courts will recognize a disgorgement order and give it comity.
14 But American courts will not, because per *Kokesh* the disgorgement order is a penalty and thus is
15 not enforceable under *Huntington* and its progeny, which includes the Nevada Supreme Court's
16 holding in *City of Oakland*.

17 For this same reason, the BCSC's assertion that "[i]f we want Canada's Provinces to
18 continue to recognize our securities judgments, then we need to recognize theirs" rings false. The
19 Canadian courts simply take a different viewpoint of "penalty" than do the courts of the United
20 States and Nevada; that is neither wrong or right, but simply different. Among other differences
21 with Americans, Canadians have a Prime Minister, not a President, follow the metric system; and
22 Canadian football teams use 12 players (which would be a penalty in the NFL). There are similar
23 differences in our legal systems, for example, Canada typically does not recognize a right to jury
24 trial in civil cases.

25 There simply is no evidence in the instant record that Canada will suddenly refuse to start
26 recognizing some U.S. judgments unless this Court recognizes the BCSC's judgment against
27 Lathigee. Further, were this to be a larger concern, then the solution would be in the nature of
28

1 treaty or other reciprocal agreement between the two nations, as opposed to abrogating *Huntington*
2 and its progeny, including *City of Oakland*.

3 4 VI. SUNDRY NON SEQUITURS

5 6 A. THE BCSC'S SPECULATION ABOUT LATHIGEE'S CURRENT AFFAIRS

7 The BCSC speculates without any proof that Lathigee has "brought his fraud to Nevada", and then
8 suggests that "[i]t would be in the best interest of Nevada's citizens to allow the Judgment to be
9 enforced against Defendant" Opposition, pg. 5, lines 8-17.

10 There is no evidence, record or otherwise, that Lathigee has broken any United States or
11 Nevada laws. If the BCSC has any proof that Lathigee has engaged in any fraud in the United
12 States or Nevada then it is warmly invited to provide proof of the same to the U.S. Securities &
13 Exchange Commission or the Securities Division of the Nevada Office of the Secretary of State,
14 which is another way of saying that the BCSC is not the proper agency to enforce U.S. and Nevada
15 securities laws, since we have our own very efficient agencies staffed by quite capable enforcement
16 personnel who prove that every day.

17 The BCSC's argument that it is attempting to enforce a public right (protect citizens) of
18 course plays right into the Public Interest vs. Private Interest Rule of *Huntington* as adopted in *City*
19 *of Oakland*.

20 21 B. THE SEPARATE FINE ARGUMENT

22 The BCSC argues at pg. 9, lines 1-2, that because Lathigee was also subject to a fine in addition
23 to disgorgement, then *ipso facto* the Disgorgement Order was not in way of a penalty. This of
24 course disregards all the foregoing authority that disgorgement does indeed constitute a penalty.

VII. CONCLUSION

As shown in Lathigee's Opening Brief, *Huntington* and its progeny, including our own *City of Oakland*, determine whether a judgment is in the nature of a penalty by employing a Public Interest vs. Private Interest Test. Under that test, a disgorgement order is a penalty per *Kokesh* and *City of Oakland* (recalling that the latter involved disgorgement too). The undisputed material facts of this case demonstrate that the BCSC's judgment furthers the public interest of Canada, not the private interest of any individual, and so resolution of that test should be in favor of this Court denying recognition to the BCSC's judgment, and thus on that basis entering summary judgment in favor of Lathigee.

Respectfully submitted this 21st day of November, 2018, by:

/s/ Jay D. Adkisson

Jay D. Adkisson
Counsel for Defendant
Michael Patrick Lathigee

CERTIFICATE OF SERVICE

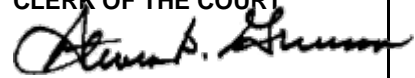
The following signature certifies that on the date of e-filing, a full, true, and correct copy of the above and foregoing document was deposited in the U.S. Mail, with correct first-class postage affixed thereto, and address to counsel for the Plaintiff, British Columbia Securities Commission, to wit:

Kurt R. Bonds, SBN 6228
Matthew M. Pruitt, SBN 12474
ALVERSON TAYLOR *et al.*
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/s/ Jay D. Adkisson

Jay D. Adkisson

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DISTRICT COURT
CLARK COUNTY, NEVADA

-*-

BRITISH COLUMBIA SECURITIES
COMMISSION,

CASE NO.: A-18-771407-C
DEPT. NO.: XIV

Plaintiffs,
vs.

**REPLY TO DEFENDANT'S
OPPOSITION TO PLAINTIFF'S
COUNTERMOTION FOR
SUMMARY JUDGMENT**

MICHAEL PATRICK LATHIGEE,

Defendant.

COMES NOW Plaintiff, BRITISH COLUMBIA SECURITIES COMMISSION ("BCSC"),
and hereby files its REPLY TO DEFENDANT'S OPPOSITION TO PLAINTIFF'S
COUNTERMOTION FOR SUMMARY JUDGMENT.

This Reply is made and based upon the summary of points and authorities contained herein,
the pleadings and papers already on file, any attached exhibits and affidavits, and oral argument as
may be heard by this Honorable Court.

DATED this 30th day of November, 2018.

ALVERSON TAYLOR & SANDERS



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POINTS AND AUTHORITIES

INTRODUCTION

Of utmost importance for the Court to understand is that a British Columbia disgorgement judgment is not a penalty. Defendant focuses his arguments on a few statements by Canadian courts that the main purpose of disgorgement is not compensatory; however, these courts have also found disgorgement not to be penal.¹ So, in British Columbia, the purpose of disgorgement is neither penal nor compensatory, but its purpose is as its name suggests, to disgorge Defendant's ill-gotten gains.

One key difference between US disgorgement and disgorgement orders under British Columbia securities laws is that while in the US it is optional for the SEC to compensate victims and anything left over goes into the general fund, the law in British Columbia mandates that funds received under a disgorgement order be used to compensate all victims who submit proper claims, and anything left over goes to investor education rather than into the general revenue or fund. But the British Columbia disgorgement judgment is not penal, and does not exceed the ill-gotten gains of the Defendant. It is only enough to disgorge the Defendant of his ill-gotten gains, and with the effect of compensating victims

Additionally, the law in the United States, as recognized by the Restatement (Fourth) of Foreign Relations Law of the United States, declares that "A judgment in favor of a foreign state awarding restitution for the benefit of private persons is not penal..."² It is established US law that foreign state judgments awarding restitution, for the benefit of private persons is not penal. That is the effect of a British Columbia disgorgement judgment— a judgment in favor of the foreign state disgorging funds from Defendant and restoring them to the benefit of his victims. It does not matter

¹ Ex 1, SEC v Cosby, p. 14-15.

² Restatement (Fourth) of Foreign Relations Law of the United States § 489 cmt. 4; see also § 489(b).

whether the judgment has a mixed purpose, or is partially penal, as an enforceable judgment is not barred “because it is joined with, or awarded in the same proceeding as, a judgment the enforcement of which would be barred...”³ Here, the British Columbia judgment includes an administrative penalty which is in fact penal, but which the BCSC is not seeking to have domesticated by this court. The disgorgement judgment is separate and apart from that penalty, imposed under separate sections of the statute, with the effect of compensation as noted above.

**The US *Huntington* Court would Hold that British Columbia
Disgorgement Judgments are Not Penalties**

Huntington did not involve a disgorgement judgment, or even a foreign country judgment, but it instead determined that the Full Faith and Credit Clause does not apply to penal judgments.⁴ So it did not say that courts could not recognize penal judgments, but instead decided only the constitutional question of whether courts were *required* to recognize them under the Full Faith and Credit Clause.⁵ While *Huntington* does not apply to foreign country judgments, the court developed a test for whether a sister-state judgment is penal, determining that the penal status of such a judgment “depends upon the question whether its purpose is to punish an offense against the public justice of the state, or to afford a private remedy to a person injured by the wrongful act.”⁶

While *Huntington*’s test would not apply to this case, because it does not apply to foreign country judgments, the test still leads to a conclusion that a British Columbia disgorgement judgment is not a penalty. As discussed at length herein and in Plaintiff’s Countermotion, such a judgment’s purpose is not to punish an offense against the public justice of the state, but to disgorge the

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³ Restatement (Fourth) of Foreign Relations Law of the United States § 489(d)(regarding mixed judgments).

⁴ *City of Oakland v. Desert Outdoor Advertising, Inc.*, 127 Nev 533, 538 (2011).

⁵ *Id.*

⁶ *Huntington v. Attrill*, 146 US 657, 673-674 (1892).

1 Defendant of his ill-gotten gains, and then those gains are mandatorily returned to the claimants who
2 are Defendant's victims.⁷

3 The British Columbia disgorgement judgment does not perfectly fall into the *Huntington* test,
4 but it is much more similar, for the purpose of this analysis, to a private remedy than a punishment.
5 The funds from disgorgement orders are strictly required to compensate victims and not go into the
6 general operating revenue.⁸ This is different from administrative penalties which don't compensate
7 victims, but go directly toward investor education.⁹ The more appropriate test to follow in this case is
8 that which is set forth by the Restatement (Fourth) of Foreign Relations of the United States, which
9 states that when the judgment (1) is in favor of a foreign state, and (2) results in restitution for the
10 benefit of private persons, then it is not a penalty.¹⁰

11
12
13 ***Oakland Involved a Matter Which Involved No Private Injury or Compensation, which is***
14 ***Wholly Different than the Matter at Hand***

15 The *Oakland* case focused on a judgment with a strictly public purpose where no private
16 injury was had, and no right to compensation for individuals existed. Indeed, the judgment in the
17 *Oakland* case came from a municipal code violation for the erection of a billboard determined to be a
18 public nuisance.¹¹ Plaintiff's judgment is not for some public nuisance, but for the disgorgement of
19 stolen funds and profits, and a return of such funds to Defendant's victims. Plaintiff's judgment is
20 not the result of some municipal code prescribing penalties and fines, like a traffic ticket or zoning
21 violation, but is a judgment based on important securities regulations which provide disgorgement
22 which results in those funds being available to victims of the fraud.¹²

23
24 ///

25
26 ⁷ See attached Reply Declaration of Plaintiff § 4.

27 ⁸ See attached Reply Declaration of Plaintiff § 5.

28 ⁹ *Id.*

¹⁰ Restatement (Fourth) of Foreign Relations Law of the United States § 489 cmt.
4; see also § 489(b).

¹¹ *City of Oakland v. Desert Outdoor Advertising, Inc.*, 127 Nev 533, 534 (2011).

A British Columbia Disgorgement Order Results in Compensation to Victims

The statute under which the judgment was granted provides for the judgment debtor to “pay to the commission any amount obtained, or payment or loss avoided, directly or indirectly, as a result of the failure to comply or the contravention.”¹³ If the commission receives money pursuant to a judgment under 161(1)(g), it must give notice, and persons who have been harmed by the fraud can submit an application to have such funds distributed to them.¹⁴ Pursuant to section 15.1 of the British Columbia Securities Act, and Securities Regulation 196-97, it is *mandatory* that the BCSC distribute disgorgement funds to proper claimants, and it is therefore the BCSC’s strict policy to do so.¹⁵ Whatever the “purpose” of the law, clearly the effect is to compensate victims – something the law mandates by its terms. As stated above, the law as set forth by the Restatement (Fourth) Of Foreign Relations Law of the United States, clearly shows that the effects of the Plaintiff’s judgment removes it from the classification of a penalty.¹⁶

This Court has the Discretion to Recognize a Penalty under Principles of Comity

Defendant claims that there are rules of comity, but fails to tell us what those rules are. But Plaintiff has quoted the law, which again states: “NRS 17.700 to 17.820, inclusive, do not prevent the recognition under principles of comity or otherwise of a foreign-country judgment not within the scope of NRS 17.700 to 17.820, inclusive.”¹⁷ A Court may grant comity in recognizing a foreign

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¹² See attached Reply Declaration of Plaintiff § 4.

¹³ Ex 2, Canada Securities Act [RSBC 1996] Chapter 418, Part 18, § 161(1)(g).

¹⁴ *Id* at Part 3, § 15.1.

¹⁵ *Id* at Part 3, § 15.1; See Countermotion Declaration of Plaintiff § 6; Ex 3, Securities Regulation, B.C. Reg. 196/97, Ministerial Regulation M244/97, Part 3, § 7.4(6).

¹⁶ Restatement (Fourth) of Foreign Relations Law of the United States § 489 cmt. 4; see also § 489(b).

¹⁷ NRS 17.820.

country judgment even if the judgment is a tax, fine or penalty.¹⁸ The Restatement (Third) of Foreign Relations states that “Nonrecognition [is] not required but permitted,” and that “no rule of United States law or of international law would be violated if a court in the United States enforced [such] a judgment.”¹⁹

“‘[C]omity is a principle whereby the courts of one jurisdiction may give effect to the laws and judicial decisions of another jurisdiction out of deference and respect.’”²⁰

“A court applying the principle of comity should consider the ‘duties, obligations, rights and convenience of its own citizens and of persons who are within the protection of its jurisdiction.’”²¹

Comity is a rule of practice, convenience, and expediency, rather than rule of law, that courts have embraced to promote cooperation and reciprocity with foreign lands.²²

It is entirely within this Court’s discretion to grant comity to Plaintiff’s judgment whether the judgment is penal or not.

CONCLUSION

For all reasons set forth herein, and in Plaintiff’s Opposition and Counter-motion, this Honorable Court should GRANT Plaintiff’s Counter-motion for Summary Judgment, and recognize

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¹⁸ Restatement (Third) of Foreign Relations Law of the United States, § 483 cmt a (“Nonrecognition not required but permitted”).

¹⁹ *Id.*

²⁰ *In re Chao-Te*, 2015 WL 3489560, p.2 (Nev.) (citing *Mianecki v. Second Judicial Dist. Court*, 99 Nev, 93, 98, 658 P.2d 422, 424–25 (1983)).

²¹ *Id.*

²² *Mujica v. AirScan, Inc.*, 771 F.3d 580, 598 (9th Cir. 2014) (citing *Pravin Banker Assocs., Ltd. v. Banco Popular Del Peru*, 109 F.3d 850, 854 (2d Cir.1997) (quoting *Somportex Ltd. v. Phila. Chewing Gum Corp.*, 453 F.2d 435, 440 (3d Cir.1971)).

Plaintiff's judgment against Defendant for the disgorgement of his ill-gotten gains, and the restitution of those gains to Defendant's victims.

DATED this 30th day of November, 2018.

ALVERSON TAYLOR & SANDERS



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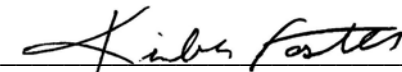
(702) 384-7000

Attorneys for Plaintiff

CERTIFICATE OF SERVICE VIA CM/ECF

I hereby certify that on this 30th day of November, 2018, I did serve, via Case Management/Electronic Case Filing, a copy of the above and foregoing **REPLY TO DEFENDANT'S OPPOSITION TO PLAINTIFF'S COUNTERMOTION FOR SUMMARY JUDGMENT** addressed to:

Jay D. Adkisson LLP
2505 Anthem Village Drive, Suite E599
Henderson, NV 89052
Phone: 702-953-9617
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E-Mail: jay@risad.com



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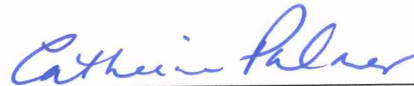
DECLARATION OF PLAINTIFF'S REPRESENTATIVE

I, Catherine Palmer, deposes and says:

1. I am over 21 years of age and competent to testify as to matters set forth herein.
2. The matters set forth herein are true and correct and of my own personal knowledge, and if called upon to testify to these matters, I could and would do so competently, except as to those matters stated on information and belief, and as to such matters I believe them to be true.
3. I am Senior Enforcement Officer with the British Columbia Securities Commission (the "Commission").
4. The purpose of a disgorgement order issued by the Commission is to compel a wrongdoer to give up any ill-gotten amounts, and not to punish the wrongdoer.
5. Any funds received under disgorgement orders issued by the Commission must be administered and distributed in accordance with the British Columbia *Securities Act* and related regulations. This legislation requires that the Commission make the funds available to claimants who suffered losses as a result of the related misconduct. Any funds remaining after the claims process is completed may only be used by the Commission for investor education, and not for general revenue purposes..
6. I declare under penalty of perjury that the foregoing is true and correct.

FURTHER YOUR DECLARANT SAYETH NAUGHT.

DATED this 30 day of November, 2018.



CATHERINE PALMER
SENIOR ENFORCEMENT OFFICER
BRITISH COLUMBIA SECURITIES COMMISSION

EXHIBIT 1

Citation: United States Securities and
Exchange Commission v. Date: 20000329
Robert H. Cosby AND Global Docket No.: C992041
Action Investments Limited Registry: Vancouver
2000 BCSC 0338

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

PLAINTIFF/RESPONDENT

AND:

ROBERT H. COSBY and GLOBAL ACTION INVESTMENTS LIMITED

DEFENDANTS/APPLICANTS

REASONS FOR JUDGMENT

OF THE

HONOURABLE MR. JUSTICE WARREN

Counsel for the Plaintiff/Respondent:

M.N. Ruby
J.G. Howard

Counsel for the Defendant/Applicant,
Global Action Investments Limited:

G.G. Plottel

Place and Date of Hearing:

Vancouver, B.C.
May 27 & 28, 1999

Written submissions: August 6, October 5, November 1, 8, 19,

22 and December 13, 1999

2000 BCSC 338 (CanLII)

**United States Security and Exchange Commission v.
Robert H. Cosby and Global Action Investments Limited** **Page: 2**

[1] This is an application by the defendant, Global Action Investments Ltd., ("Global") under Rule 34 of the **Rules of Court** to have determined a point of law arising from the pleadings in this action. The plaintiff, the United States Securities and Exchange Commission ("SEC"), had obtained a final default judgment in the United States District Court for the Southern District of New York against the defendant, Robert H. Cosby ("Cosby") in the amount of \$779,971 (U.S.) based upon an original complaint that Cosby had engaged in fraudulent schemes to raise capital for a Nevada corporation. Cosby left the United States prior to the hearing and default judgment followed. Some time later Cosby was detained at Vancouver International Airport upon his arrival on a flight from Hong Kong. He was refused entry to Canada and returned to Hong Kong, but only after the R.C.M.P. had seized over \$100,000 (U.S.) in various currencies that Cosby was carrying with him. That money is claimed by the plaintiff under its judgment and, as well, by Global which bases its claim upon a written direction from Cosby that the seized funds should be paid over to Global.

[2] The plaintiff says that the seized funds are traceable to Cosby's fraudulent conduct and should be used in satisfaction of the judgment of the U.S. District Court.

[3] Global defends the claim asserting ownership of the funds. Global is seeking an order that the funds be disbursed

**United States Security and Exchange Commission v.
Robert H. Cosby and Global Action Investments Limited Page: 3**

to it. More importantly, for the purposes of this application, Global says that the default judgment of the U.S. District Court is unenforceable in this Court because it is a foreign penal judgment.

[4] The narrow issue therefore to be determined is whether the foreign default judgment against Cosby is a foreign penal judgment and unenforceable in this jurisdiction. The parties agree that the determination of this issue will either substantially dispose of the entire action or provide a distinct ground for defence.

Submissions of the Applicant/Defendant, Global

[5] Global relies heavily on the decision in **Huntington v. Attrill**, [1893] A.C. 150 (P.C.) in support of its submission that a foreign penal claim is unenforceable and since the claim of the plaintiff is based upon an unenforceable judgment, the British Columbia proceeding is groundless.

[6] Defendant's counsel argues that the statutory and regulatory provisions make it clear that the monetary elements of the default judgment are in the nature of a penalty imposed by the state and enforceable by the state and, accordingly, the default judgment is penal in nature. Further, because the focus of the **Securities Act** and the **Exchange Act** is clearly to regulate securities transactions by providing **in part** for

**United States Security and Exchange Commission v.
Robert H. Cosby and Global Action Investments Limited Page: 4**

punitive sanctions for breaches thereby protecting the "national public interest", the enforcement of the protective interests clearly distinguishes the proceedings in the United States from a private action designed to reimburse an individual from losses he has suffered. Because the judgment refers to "disgorgement of ill-gotten gains" and not to any "losses suffered by an investor", the monetary penalties clearly relate to the alleged profit and not to any damages suffered by any investor. Thus, the default judgment must be punitive and not compensatory or remedial.

[7] A number of authorities were referred to by Global's counsel including J.G. Castel, **Canadian Conflict of Laws**, 3d ed. (Toronto: Butterworths, 1994) at pp. 161-162; L. Collins, gen. ed., **Dicey and Morris on the Conflict of Laws**, 11th ed. (London: Stevens, 1987); **A.G. New Zealand v. Ortiz**, [1982] 3 All E.R. 432 (C.A.); **United States v. Harden**, (1962), 36 D.L.R.(2d) 602 (B.C.C.A.), affirmed (1963), 44 W.W.R. 630 (S.C.C.); **Old North State Brewing Co. v. Newlands Services Inc.** (1998), 58 B.C.L.R. (3d) 144; **Schemmer v. Property Resources Ltd.**, [1974] 3 All E.R. 451 (Ch.D.); **McIntyre Porcupine Mines Ltd. v. Hammond** (1975), 119 D.L.R. (3d) 139 (Ont. H.C.). In supplemental submissions Global also relies upon the decision of the Supreme Court of Canada in **Prudential Exchange Company Ltd. v. Edwards**, [1939] S.C.R. 135.

[8] In *Ortiz*, *supra*, at page 466 Ackner L.J. stated:

The question whether a foreign law is penal must be decided by the English court. It must determine for itself, in the first place, the substance of the right sought to be enforced; and in the second place whether its enforcement would, either directly or indirectly, involve the execution of the penal law of another state. The rule has its foundation in the well-recognised principle that crimes, including in that term all breaches of public law, punishable by pecuniary mulct, or otherwise, at the instance of the state government, or someone representing the public, are local in this sense, that they are only cognisable and punishable in the country where they were committed. Accordingly, no proceeding, even in the shape of a civil suit, which has for its object the enforcement by the state, whether directly or indirectly, of punishment imposed for such breaches by the *lex fori*, ought to be admitted in the courts of any other country...

... The right which it is sought to enforce may be a right which arises under legislation which is essentially designed to regulate commercial activities such as company legislation which may well contain a penal provision. I agree with the learned judge that it cannot be right simply to categorise the statute sought to be enforced as a whole. The court must pay regard to the particular provision of the foreign law which it is sought to enforce.

Ackner L.J. went on to say that he did not find it necessary to consider whether there was a third category of foreign laws which the courts would not enforce - public law - being impressed with the reasoning of the trial judge that there was "no such vague general residual category".

Submissions of the Respondent/Plaintiff

[9] The plaintiff opposes the application arguing that the funds are traceable to the acts of Cosby, that it seeks to enforce only the "disgorgement" aspect of the U.S. District

Court judgment, and that any funds received will be turned over to a receiver to be distributed amongst the former shareholders or investors of the Nevada corporation. Accordingly, as it is only the disgorgement aspect of the foreign judgment that the plaintiff seeks to enforce, the judgment is not a foreign penal claim and it is enforceable or actionable in this jurisdiction.

[10] The plaintiff also argues that the trend in Canadian courts is to enforce foreign judgments as a matter of comity (*Morguard Investments Ltd. v. De Savoye*, [1990] 3 S.C.R. 1077, as applied in *Moses v. Shore Boat Builders Ltd.* (1993), 106 D.L.R. (4th) 654 (B.C.C.A.)), including judgments with an underlying public purpose in favour of a foreign sovereign, particularly where the judgment is restitutionary in nature: see *United States of America v. Ivey* (1995), 26 O.R. (3d) 533 (Gen. Div.), affirmed (1996), 30 O.R. (3d) 370 (C.A.). Accordingly, this foreign judgment is enforceable in this Court.

[11] Finally, the plaintiff argues that British Columbia courts ought not to extend the penal law exception as argued by the applicant in the circumstances of the case at bar for to do so would be to condone or even encourage commercial activity which is legally or morally reprehensible.

The Evidence

[12] The application proceeded against the evidentiary

background found in three affidavits of Alexander M. Vasilescu, a Senior Trial Counsel of the SEC in the United States. In sum, his evidence is that the SEC is strictly a civil agency quite separate from the U.S. Department of Justice. Unlike the Department of Justice which is pursuing a criminal action against Cosby, the SEC has already obtained a civil judgment against Cosby in an action entitled *SEC v. Softpoint Inc., Robert H. Cosby, Ronald G. Stoecklein, Remington Publications, Inc., and John W. Lane*, 95 Civ. 2951 (SS). In his affidavit sworn November 16, 1999, he deposes that the SEC is seeking "to enforce only the disgorgement aspect of the civil judgment, which is not based upon, and does not even mention, a criminal proceeding or criminal forfeiture."

[13] Global introduced an affidavit of Janet Clark sworn after this application was first heard in May 1999. The plaintiff opposed the introduction into evidence of this affidavit arguing that I ought not to exercise my discretion in admitting the affidavit because the affidavit did not fulfill one of the usual requirements favouring an exercise of discretion, namely, demonstrating that the evidence would have an important influence on my decision.

[14] The typical factors the court considers includes whether the evidence could have been uncovered with reasonable diligence and presented in the usual manner during the hearing; whether the evidence would likely have had an important bearing

United States Security and Exchange Commission v.
Robert H. Cosby and Global Action Investments Limited Page: 8

on the decision; and whether the evidence is presumably reliable: see *B.C. Gas Utility Ltd. v. Alpha Manufacturing Inc.*, (2 February 1999), Vancouver C952794 (B.C.S.C.); *Gold v. Gold* (26 March 1992), Vancouver A873445 (B.C.S.C.); *Hornak v. Paterson* (1965), 53 D.L.R. (2d) 566 (B.C.S.C.); and *Clayton v. British American Securities Ltd.*, [1935] 1 D.L.R. 432 (B.C.C.A.).

[15] The evidence in the Clark affidavit sworn September 10, 1999 shows that Cosby was indicted in the State of Nevada in July 1999 and arrested later that month in Hong Kong. I consider this evidence to be relevant and potentially capable of having an important bearing on my considerations, and therefore admissible. I also consider that the affidavit of Vasilescu sworn November 16, 1999 to be equally admissible.

United States Security and Exchange Commission v.
Robert H. Cosby and Global Action Investments Limited Page: 9

Is the SEC Directly or Indirectly Enforcing the Criminal Statutes Under Which Cosby is Indicted?

[16] Global argues that Cosby's indictment in Nevada (and his later arrest in Hong Kong in extradition proceedings flowing from the indictment) shows a substantial connection between the facts upon which the indictment is based and the proceedings at bar. The indictment seeks to forfeit the very same funds that the plaintiff seeks in the action at bar. Further, Global argues that because the criminal forfeitures provisions of U.S. Code, Title 21, s. 853, provide that any funds subject to forfeiture vests in the United States, the SEC will be obliged to deliver the funds to the U.S. Attorney General. Thus, the SEC is either directly or indirectly enforcing a penal criminal statute: the plaintiff is doing the bidding of the United States Attorney General and the result of an enforcement order in this Court would be to enforce a foreign penal judgment.

[17] In the supplemental affidavit sworn November 16, 1999 responding to some of Global's submissions, Vasilescu states that where there are parallel actions, the Department of Justice generally defers to the SEC or other civil bodies and does not seek to recover monies from the SEC which have previously been recovered in civil proceedings and which have been designated by the civil courts for restitution to victims of fraud. This evidence goes directly to Global's submission that under the U.S. Code referred to in the indictment against Cosby, the funds automatically vest in the United States and as a result the SEC

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would be obliged to hand over to the United States Attorney General the funds it seeks in the action at bar. Vasilescu goes further in his affidavit and deposes that he has spoken with the Assistant United States Attorney overseeing the criminal proceeding against Cosby and he has been "specifically informed ... that the U.S. Justice Department does not object to, and will not interfere with, the Commission's efforts to retrieve ill-gotten gains from Cosby and Global Action in the B.C. proceeding for purposes of distribution to defrauded investors in accordance with the civil disgorgement judgement...". This information is supported by a letter from the Assistant United States Attorney which includes the statement, "[W]e fully endorse your efforts to enforce the SEC judgment through the Canadian courts." Vasilescu also advised that the SEC would undertake to submit to the U.S. District Court for the Southern District of New York an order directing that any monies recovered in this action be deposited with the clerk of the U.S. District Court for the Southern District of New York and that a distribution agent be appointed with directions to distribute the funds recovered from Cosby to defrauded investors.

[18] This evidence, in my view, effectively answers Global's argument that the SEC is, if not directly, then indirectly enforcing the criminal penal statutes that are the basis of the criminal proceedings against Cosby.

Is the Judgment Sought to be Enforced Based on a Foreign Penal Law?

[19] The sole question then to be answered is whether the judgment which the SEC has obtained in the United States and which it seeks to enforce in British Columbia is a penal judgment. If I conclude that it is, then I am satisfied that the courts of this province have no jurisdiction to entertain an action for the enforcement, either directly or indirectly, of a penal law of a foreign country. In *Huntington, supra*, at p. 155 Lord Watson said:

[The Courts of Ontario] had to construe and apply an international rule, which is a matter of law entirely within the cognizance of the foreign Court whose jurisdiction is invoked. Judicial decisions in the State where the cause of action arose are not precedents which must be followed, although the reasoning upon which they are founded must always receive careful consideration, and may be conclusive. The Court appealed to must determine for itself, in the first place, the substance of the right sought to be enforced; and, in the second place, whether its enforcement would, either directly or indirectly, involve the execution of the penal law of another State.

...

The rule has its foundation in the well recognised principle that crimes, including in that term, all breaches of public law punishable by pecuniary mulct or otherwise, at the instance of the State Government, or of some one representing the public, are local in this sense, that they are only cognizable and punishable in the country where they were committed. Accordingly no proceeding, even in the shape of a civil suit, which has for its object the enforcement by the State, whether directly or indirectly, of punishment imposed for such breaches by the *lex fori*, ought to be admitted in the Courts of any other country. [emphasis added]

[20] This very question was before Baker J. in *United States of America (Securities Exchange Commission) v. Shull*

(5 August 1999), Vancouver A980249 (B.C.S.C.). In that case, the plaintiff was seeking to enforce a judgment obtained in the United States District Court for the District of Massachusetts which arose out of an action by the plaintiff against Shull and others alleging that Shull had participated in a fraudulent scheme to manipulate stock. The plaintiff alleged violations of both the Securities Act of 1933 and the Securities Exchange Act of 1934. Initially Shull defended the action but then consented to judgement and to disgorgement in the amount of \$667,770.46. Shull then waived the right to appeal and agreed that the U.S. District Court retained jurisdiction to enforce the judgment. In an application for a stay of proceedings in a summary trial process in British Columbia Shull argued, inter alia, that because there were criminal proceedings pending in the U.S. his right against self incrimination there would be violated if the motion were to proceed. He also submitted that there should be an adjournment to permit further discovery.

[21] Baker J., in the course of dismissing the applications, dealt with an ancillary ground raised by Shull: that the motions should succeed because the civil disgorgement order was based on an unenforceable foreign penal or revenue law. The plaintiff here says that this is the identical point raised by Global on this application. At para. 29 Baker J. wrote:

While the action in British Columbia does arise out of the same transactions which have led to the criminal charges in the United States, I do not agree with the submission of Mr. Shull's counsel that the

circumstances are "exceptional" or "extraordinary" because [a witness for the plaintiff] has participated in both civil and criminal investigations in the United States. I am also satisfied that the disgorgement order is neither a penal sanction nor a taxation measure. The fact that the plan of the Receiver for distribution of any funds which may be recovered from these or other defendants provides for the payment of some taxes does not convert this action into a proceeding for the enforcement of a taxing statute. [emphasis added]

[22] Plaintiff's counsel argues that Shull, supra, deals with precisely the same point of law and precisely the same fact pattern. Conceding that the finding concerning "penal" law may not have been essential for Baker J.'s decision to refuse the stay, plaintiff's counsel argues that nevertheless the finding is not obiter because the finding with respect to foreign "penal" law exception was directed at an independent submission by Shull's counsel. Accordingly, and relying upon the principle, or well known rule, in *Re Hansard Spruce Mills Limited* (1954), 13 W.W.R. (N.S.) 285 (B.C.S.C.), the plaintiff argues that I am obliged to follow the decision of Baker J. unless there have been subsequent decisions affecting its validity; some binding authority or statute was not considered; or it was a *nisi prius* judgment made during the heat of the trial and not fully considered.

[23] It is significant, in my view, that the courts of the United States have held that the purpose of the securities laws is to protect investors and the American courts accordingly treat these laws as remedial [Affidavit of A.M. Vasilescu sworn

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May 19, 1999, par. 7: *Tcherepnin v. Knight*, 389 U.S. 332 at 336 (1967); *SEC v. Capital Gains Research Bureau*, 375 U.S. 180 at 195 (1963); *Affiliated Ute Citizens v. United States*, 406 U.S. 128 at 151 (1972)].

Decision

[24] In *Huntington*, *supra*, Lord Watson observed that the court should determine the substance of the right sought to be enforced and then consider whether the enforcement would, either directly or indirectly, involve the execution of the penal law of a foreign state.

[25] I conclude that the default judgment of the United States Court is not a foreign penal judgment and that the plaintiff is able to take steps to enforce it in British Columbia. The fact that there are contemporaneous criminal proceedings involving Cosby and arising out of the same delict does not convert the civil judgment into a penal order. The civil proceedings brought by SEC are distinct from the criminal proceedings initiated by the U.S. Attorney General and the criminal proceedings do not prevent the plaintiff from pursuing its enforcement remedies in British Columbia on the civil judgment: see *Raulin v. Fisher*, [1911] 2 K.B. 93; *U.S.S.E.C. v. Shull*, *supra*; *London Life Insurance Co. v. Zavitz* (1992), 65 B.C.L.R. (2d) 140 (C.A.).

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[26] Neither, in my view, does it ineluctably result in a conclusion that the judgment is the result of a breach of a public law punishable by public mulct. The judgment of the U.S. District Court for the Southern District of New York required Cosby to disgorge or give up all of the "ill-gotten gains." It also imposed "civil penalties" pursuant to the Securities Act of 1933 in an amount to be determined. The order imposing civil penalties, which the plaintiff does not seek to enforce in the proceeding at bar, would not be enforceable in British Columbia. The disgorgement order is.

"T.P. Warren, J."
The Honourable Mr. Justice Warren

EXHIBIT 2

This Act is current to August 29, 2018

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

SECURITIES ACT

[RSBC 1996] CHAPTER 418

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Part 1 — Interpretation

Definitions

1 (1) In this Act:

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

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

(a) a partner, other than a limited partner, of that person,

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

"auditor oversight body" means a self regulatory body that

- (a) regulates the auditing or review of financial statements that are required to be filed under this Act, and
- (b) is recognized under section 24;

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

"Business Development Bank of Canada" means the Business Development Bank of Canada incorporated under the *Business Development Bank of Canada Act* (Canada);

"class of exchange contracts" includes a series of a class of exchange contracts;

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

"clearing agency" means a person who

- (a) in connection with trades in securities, acts as an intermediary in paying funds, in delivering securities or in doing both of those things,
- (b) provides centralized facilities through which trades in securities or exchange contracts are cleared, or
- (c) provides centralized facilities as a depository of securities;

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

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

"commodity" means

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

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

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

"control person" means

- (a) a person who holds a sufficient number of the voting rights attached to all outstanding voting securities of an issuer to affect materially the control of the issuer, or
- (b) each person in a combination of persons, acting in concert by virtue of an agreement, arrangement, commitment or understanding, which holds in total a sufficient number of the voting rights attached to all outstanding voting securities of an issuer to affect materially the control of the issuer,

and, if a person or combination of persons holds more than 20% of the voting rights attached to all outstanding voting securities of an issuer, the person or combination of persons is deemed, in the absence of evidence to the contrary, to hold a sufficient number of the voting rights to affect materially the control of the issuer;

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

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

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

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

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

- (a) a trade in a security of an issuer that has not been previously issued,
- (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) a trade by or on behalf of an underwriter in a security that was acquired by the underwriter, acting as underwriter, before February 1, 1987, if the security continues, on February 1, 1987, to be owned by or on behalf of that underwriter so acting,
- (e) a trade deemed to be a distribution
 - (i) in an order made under section 76 by the commission or the executive director, or
 - (ii) in the regulations,
- (f) a transaction or series of transactions involving further purchases and sales in the course of or incidental to a distribution, and
- (g) a prescribed class of trade or transaction;

"distribution contract" means a contract under which a mutual fund or its legal representative grants to a person the right to purchase the securities of the mutual fund for distribution or to distribute the securities of the mutual fund on behalf of the mutual fund;

"economic interest" means

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

"exchange contract" means a futures contract or an option that meets both of the following requirements:

- (a) its performance is guaranteed by a clearing agency;
- (b) it is traded on an exchange pursuant to standardized terms and conditions set out in that exchange's bylaws, rules or regulatory instruments, at a price agreed on when the futures contract or option is entered into on the exchange,

and includes another instrument or class of instruments that meets both of those requirements and is designated as an exchange contract in an order the commission may make for the purpose of this definition;

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

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

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

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

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

"futures contract" means any obligation to make or take future delivery of

- (a) a commodity,
- (b) a security, or
- (c) cash if the amount of cash is derived from, or by reference to, a variable including
 - (i) a price or quote for a commodity or security,
 - (ii) an interest rate,
 - (iii) a currency exchange rate, or
 - (iv) an index or benchmark,

but does not include an obligation, or a class of obligations, described in an order made under section 3.1;

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

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

- (a) a partnership, unincorporated association, unincorporated syndicate, unincorporated organization or trust, or
- (b) a natural person in the person's capacity as a trustee, executor, administrator or personal or other legal representative;

"insider" means

- (a) a director or an officer of an issuer,
- (b) a director or an officer of a person that is itself an insider or a subsidiary of an issuer,
- (c) a person that has
 - (i) beneficial ownership of, or control or direction over, directly or indirectly, or
 - (ii) a combination of beneficial ownership of, and control or direction over, directly or indirectly,

securities of an issuer carrying more than 10% of the voting rights attached to all the issuer's outstanding voting securities, excluding, for the purpose of the calculation of the percentage held, any

securities held by the person as underwriter in the course of a distribution,

- (d) an issuer that has purchased, redeemed or otherwise acquired a security of its own issue, for so long as it continues to hold that security,
- (e) a person designated as an insider in an order made under section 3.2, or
- (f) a person that is in a prescribed class of persons;

"insurer" means an insurance company;

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

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

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

- (a) the dissemination of information provided, or records prepared, in the ordinary course of the business of the issuer
 - (i) to promote the sale of products or services of the issuer, or
 - (ii) to raise public awareness of the issuer,that cannot reasonably be considered to promote the purchase or sale of securities of the issuer,
- (b) activities or communications necessary to comply with the requirements of
 - (i) this Act or the regulations, or
 - (ii) the bylaws, rules or other regulatory instruments of a self regulatory body, exchange or quotation and trade reporting system,
- (c) communications by a publisher of, or writer for, a newspaper, news magazine or business or financial publication, that is of general and regular paid circulation, distributed only to subscribers to it for value or to purchasers of it, if
 - (i) the communication is only through the newspaper, magazine or publication, and
 - (ii) the publisher or writer receives no commission or other consideration other than for acting in the capacity of publisher or writer, or
- (d) activities or communications that may be prescribed for the purpose of this definition;

"issuer" means a person who

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

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

"material change" means,

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

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

"misrepresentation" means

- (a) an untrue statement of a material fact, or
- (b) an omission to state a material fact that is
 - (i) required to be stated, or

- (ii) necessary to prevent a statement that is made from being false or misleading in the circumstances in which it was made;

"mutual fund" means

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

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

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

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

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

"non-redeemable investment fund" means

- (a) an issuer
 - (i) whose primary purpose is to invest money provided by its security holders,
 - (ii) that does not invest
 - (A) for the purpose of exercising or seeking to exercise control of an issuer, other than a mutual fund or a non-redeemable investment fund, or
 - (B) for the purpose of being actively involved in the management of any issuer in which it invests, other than a mutual fund or a non-redeemable investment fund, and
 - (iii) that is not a mutual fund,
 - (b) an issuer designated in an order made under section 3.2, and
 - (c) an issuer that is in a class of prescribed issuers,
- but does not include an issuer, or a class of issuers, described in an order made under section 3.1;

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

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

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

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

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

"private mutual fund" means a mutual fund that is

- (a) operated as an investment club, if
 - (i) the securities issued by it are held by not more than 50 persons and it has never sought to borrow money from the public,
 - (ii) it does not pay or give any remuneration for investment, management or administration advice in respect of trades in securities or exchange contracts, except normal brokerage fees, and
 - (iii) all of its members are required, for the purpose of financing its operations, to make contributions in proportion to the securities issued by it that each member holds, or
- (b) administered by a trust company but which has no promoter or manager other than a trust company, and consists of
 - (i) a pooled fund that is maintained solely to serve registered retirement savings plans, retirement income plans, deferred profit sharing plans, pension plans or other similar plans registered under the *Income Tax Act* (Canada),
 - (ii) a common trust fund as defined by the *Financial Institutions Act*, or
 - (iii) a pooled fund that is maintained by a trust company in which money, belonging to various estates and trusts in its care, is commingled, with the authority of the settlor, will-maker or trustee, for the purpose of facilitating investment if no general solicitations are made to sell securities in the fund;

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

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

but does not include a person who

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

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

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

"related financial instrument" means

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

"reporting issuer" means an issuer that

- (a) has issued securities in respect of which
 - (i) a prospectus was filed and a receipt was issued,
 - (ii) a statement of material facts was filed and accepted, or
 - (iii) a securities exchange take over bid circular was filed, under a former enactment,
- (b) has filed a prospectus or statement of material facts and the executive director has issued a receipt for it under this Act,
- (c) has any securities that have been at any time listed and posted for trading on any exchange in British Columbia, regardless of when the listing and posting for trading began,

- (d) is an issuer that has exchanged its securities with another issuer or with the holders of the securities of that other issuer in connection with an amalgamation, merger, reorganization, arrangement or similar transaction if one of the parties to the amalgamation, merger, reorganization, arrangement or similar transaction was a reporting issuer at the time of the amalgamation, merger, reorganization, arrangement or similar transaction,
 - (e) is designated as a reporting issuer in an order made under section 3.2,
 - (e.1) is a person that is within a prescribed class of persons, or
 - (f) has filed a securities exchange take over bid circular under this Act for the acquisition of securities of a reporting issuer and has taken up and paid for securities subject to the bid in accordance with the circular,
- unless the commission orders under section 88 that the issuer has ceased to be a reporting issuer;

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

"securities regulatory authority" means a person empowered by the laws of a jurisdiction to regulate trading in securities or exchange contracts or to administer or enforce laws respecting trading in securities or exchange contracts;

"security" includes

- (a) a document, instrument or writing commonly known as a security,
- (b) a document evidencing title to, or an interest in, the capital, assets, property, profits, earnings or royalties of a person,
- (c) a document evidencing an option, subscription or other interest in or to a security,
- (d) a bond, debenture, note or other evidence of indebtedness, share, stock, unit, unit certificate, participation certificate, certificate of share or interest, preorganization certificate or subscription other than
 - (i) a contract of insurance issued by an insurer, and
 - (ii) an evidence of deposit issued by a savings institution,
- (e) an agreement under which the interest of the purchaser is valued, for the purposes of conversion or surrender, by reference to the value of a proportionate interest in a specified portfolio of assets, but does not include a contract issued by an insurer that provides for payment at maturity of an amount not less than 3/4 of the premiums paid by the purchaser for a benefit payable at maturity,

- (f) an agreement providing that money received will be repaid or treated as a subscription to shares, stock, units or interests at the option of the recipient or of any person,
- (g) a profit sharing agreement or certificate,
- (h) a certificate of interest in an oil, natural gas or mining lease, claim or royalty voting trust certificate,
- (i) an oil or natural gas royalty or lease or a fractional or other interest in either,
- (j) a collateral trust certificate,
- (k) an income or annuity contract, other than one made by an insurer,
- (l) an investment contract,
- (m) a document evidencing an interest in a scholarship or educational plan or trust,
- (n) an instrument that is a futures contract or an option but is not an exchange contract, or
- (o) a permit under the *Oil and Gas Activities Act*,

whether or not any of the above relate to an issuer, but does not include an exchange contract;

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

"spouse" means a person who

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

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

"trade" includes

- (a) a disposition of a security for valuable consideration whether the terms of payment be on margin, instalment or otherwise, but does not include a purchase of a security or a transfer, pledge, mortgage or other encumbrance of a security for the purpose of giving collateral for a debt,
- (a.1) entering into a futures contract,
- (b) entering into an option that is an exchange contract,
- (c) participation as a trader in a transaction in a security or exchange contract made on or through the facilities of an exchange or reported through the facilities of a quotation and trade reporting system,

- (d) the receipt by a registrant of an order to buy or sell a security or exchange contract,
- (e) a transfer of beneficial ownership of a security to a transferee, pledgee, mortgagee or other encumbrancer under a realization on collateral given for a debt, and
- (f) any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of any of the activities specified in paragraphs (a) to (e);

"underwriter" means a person who,

- (a) as principal, agrees to purchase a security for the purpose of 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 paragraph (a) or (b),

but does not include

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

"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) For the purposes of this Act, an issuer is affiliated with another issuer if

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

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

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

(4) For the purposes of this Act, 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 an affiliate of any issuer controlled by that person.

Insiders

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

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

(2) and (3) [Repealed 2006-32-2.]

Definition of special relationships

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

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

ought to have known of the special relationship referred to in subparagraph (i).

Exemption orders

- 3.1** (1) If the commission considers that to do so would not be prejudicial to the public interest, the commission may, for the purposes of this Act and the regulations, order that
- (a) an obligation, or a class of obligations, is not a futures contract,
 - (b) an issuer, or a class of issuers, is not a mutual fund, or
 - (c) an issuer, or a class of issuers, is not a non-redeemable investment fund.
- (2) An order under subsection (1) may be made on application by an interested person or on the commission's own motion.

Designations

- 3.2** (1) If the commission considers it to be in the public interest, the commission may, for the purposes of this Act, order that
- (a) a person is an insider, or
 - (b) a person or a person within a class of persons is a mutual fund, a non-redeemable investment fund or a reporting issuer.
- (c) and (d) [Repealed 2007-37-3.]
- (2) An order under subsection (1) may be made on application by an interested person or on the commission's own motion.

Part 2 — The Commission

Commission continued

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

limited, specified purposes or functions or for all purposes or functions of the commission.

(5) [Repealed 2003-47-61.]

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

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

(a) is not to be considered a member of the commission for any other purpose or function than that specified, and

(b) must not participate in any aspect of the commission's business outside the limited, specified purpose or function for which the member was appointed.

(8) [Repealed 2003-47-61.]

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

(9.1) [Repealed 2006-32-6.]

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

Application of *Administrative Tribunals Act* to commission

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

(a) Part 1 [*Interpretation and Application*];

(b) Part 2 [*Appointments*], except the following:

(i) section 7 (3) [*powers after resignation or expiry of term*];

(ii) section 9 [*responsibilities of the chair*];

(iii) section 10 [*remuneration and benefits for members*];

(c) section 43 [*discretion to refer questions of law to court*];

(d) section 46 [*notice to Attorney General if constitutional question raised in application*];

(e) section 46.1 [*discretion to decline jurisdiction to apply the Human Rights Code*];

(f) section 55 [*compulsion protection*];

(g) section 61 [*application of Freedom of Information and Protection of Privacy Act*].

Commission is an agent of the government

- 5** (1) The commission is an agent of the government.
- (2) The commission has the power and capacity of a natural person of full capacity.
- (3) The *Business Corporations Act* does not apply to the commission, but the Lieutenant Governor in Council may order that one or more of the provisions of that Act apply.
- (4) The commission is not liable to taxation, except insofar as the government is liable.

Panels of commission

- 6** (1) The chair may establish one or more panels of the commission, and, in matters referred to a panel by the chair, a panel has the powers of the commission.
- (2) The chair may refer a matter that is before the commission to a panel or a matter that is before a panel to the commission or another panel.
- (3) A panel consists of 2 or more members of the commission appointed by the chair.
- (4) The chair may terminate an appointment to a panel and may fill a vacancy on a panel before the commencement of a hearing.

Delegation of commission powers and duties

- 7** (1) Subject to subsections (2) and (3), the commission may delegate its powers and duties under this Act or another enactment to the chair, a vice chair, a member of the commission or the executive director.
- (2) The commission must not delegate a power or duty referred to in section 114 (1), 137, 142, 143, 145, 148 to 152, 157, 162, 163 or 165 to the executive director.
- (3) The commission must not delegate the power to make rules under section 184.
- (4) Unless the parties consent, a member of the commission must not sit on any hearing required to be held by the commission with respect to any matter in relation to which the member exercised a power or performed a duty referred to in section 142, 143, 145 or 148 to 152 and which was delegated to the member under subsection (1).

Executive director

- 8** (1) The commission must appoint a person to be the executive director.
- (2) The executive director is the chief administrative officer of the commission and must obey the policy directives given by the commission.
- (3) The executive director may exercise the powers and must perform the duties vested in or imposed on
- (a) the executive director under this Act, and

- (b) the commission under this Act that are delegated to the executive director by the commission.
- (4) The executive director, by conditional or unconditional written authority, may delegate the executive director's powers and duties under this Act or another enactment to any person employed under section 9.
- (5) Despite subsection (4), the executive director must not delegate
 - (a) powers or duties of the commission that are delegated to the executive director by the commission, or
 - (b) a power or duty referred to in section 81, 89, 161, 166 (3) or 182.
- (6) A person to whom the executive director, by written authority under subsection (4), delegates powers and duties may exercise the powers and must perform the duties in accordance with the written authority.
- (7) Persons employed in the office of the executive director as directors are deputies of the executive director.

Officers and employees

9 The commission may

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

Public service benefits

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

(2) and (3) [Repealed 1999-44-104.]

Obligation to keep information confidential

- 11** (1) Every person acting under the authority of this Act must keep confidential all facts, information and records obtained or provided under this Act, or under a former enactment, except so far as the person's public duty requires or this Act permits the person to disclose them or to report or take official action on them.
- (2) Subject to subsections (3) and (4), the facts, information and records referred to in subsection (1) must be released to the Ombudsperson at the request of the Ombudsperson.
- (3) All facts, information and records that are obtained
 - (a) from a law enforcement agency, or

(b) pursuant to an investigation under this Act,
must only be released to the Ombudsperson if the Ombudsperson first
produces the written consent of

(c) the law enforcement agency, or

(d) the person from whom the facts, information or records were
obtained pursuant to the investigation,

to release the facts, information or records.

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

Repealed

12 [Repealed 2006-32-8.]

Appointment of experts

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

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

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

Part 3 — Financial Administration

Minister of Finance

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

Revenue and expenditure

15 (1) Revenue received under this Act, including but not limited to revenue from administrative penalties under section 162 and any cost recoveries under this Act, but not including revenue

(a) from fines referred to in section 155,

(b) [Repealed 2006-32-9.]

must be paid to the commission.

- (2) Subject to subsection (3), money received by the commission may be expended for any costs involved in the administration and enforcement of this Act and for any costs involved in operating the commission.
- (3) Money received by the commission under section 155.1 (b), 157 (1) (b), 161 (1) (g) or 162 may be expended only for the purpose of educating securities market participants and members of the public about investing, financial matters or the operation or regulation of securities markets.
- (3.1) The commission may not expend money received under section 155.1 (b), 157 (1) (b) or 161 (1) (g) unless the period referred to in section 15.1 (5) has expired.
- (4) [Repealed 2006-32-9.]
- (5) This section applies despite section 12 of the *Financial Administration Act*.

Claim for wrongful benefit

- 15.1** (1) The commission must notify the public in accordance with the regulations if the commission receives money from an order made under section 155.1 (b), 157 (1) (b) or 161 (1) (g).
- (2) A person may make a claim to money referred to in subsection (1) by submitting an application in accordance with the regulations within 3 years from the date of the first notification made under subsection (1).
 - (3) If the commission receives an application under subsection (2), the commission may, in accordance with the regulations, pay to the applicant all or a part of the amount claimed.
 - (4) [Repealed 2011-29-120.]
 - (5) After 3 years from the date of the first notification made under subsection (1), and after adjudicating all claims in accordance with the regulations, the commission may retain any money not paid or payable under subsection (3).

Administrative services

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

Fiscal agent

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

Investment

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

- (2) Money placed with the Minister of Finance under this section is to be treated for all purposes as money placed with that minister under section 40 (5) of the *Financial Administration Act*.

Borrowing powers

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

Accounting

- 20** (1) The commission must establish and maintain accounting policies and systems satisfactory to the Minister of Finance.
- (2) Whenever required by the Minister of Finance, the commission must render detailed accounts of the commission's revenues and expenditures for the period or to the day the Minister of Finance designates.
- (3) All books or records of account and other financial records must at all times be open for inspection by the Minister of Finance or a person designated by that minister.
- (4) The chair of the Treasury Board may direct the Comptroller General to examine and report to Treasury Board on any or all of the financial and accounting operations of the commission.
- (5) At least once in every fiscal year, the accounts of the commission must be audited and reported on by an auditor appointed by the Lieutenant Governor in Council, and the costs of the audit must be paid by the commission.
- (6) The fiscal year for the commission is a period of 12 months beginning on April 1 in each year and ending on March 31 in the next year.

Business plan

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

Annual report

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

- (2) The report must be laid before the Legislative Assembly by the minister as soon as practicable.
- (3) The report must contain
 - (a) a summary of the commission's operations for the fiscal year of the report,
 - (b) a financial statement in the form required by the Minister of Finance showing the revenues, expenditures, assets and liabilities of the commission for the fiscal year of the report, and
 - (c) any other information that the minister may specify.
- (4) The financial statement referred to in subsection (3) (b) must be prepared in accordance with generally accepted accounting principles.

Part 4 — Self Regulatory Bodies, Exchanges, Quotation and Trade Reporting Systems and Clearing Agencies

Interpretation

- 23** A reference in sections 26 to 32 to a self regulatory body, an exchange, a quotation and trade reporting system or a clearing agency means a person that has been recognized as a self regulatory body, an exchange, a quotation and trade reporting system or a clearing agency, as the case may be, under section 24.

Recognition

- 24** On application, the commission may recognize a person as
- (a) a self regulatory body,
 - (b) an exchange,
 - (c) a quotation and trade reporting system, or
 - (d) a clearing agency.

Recognition required for exchanges and clearing agencies

- 25** A person must not carry on business as an exchange or clearing agency in British Columbia unless the person is recognized by the commission under section 24.

Designated exchange

- 25.1** (1) If a person is not carrying on business as an exchange, but is carrying on business as a quotation and trade reporting system, or is otherwise facilitating transactions of securities or exchange contracts, the commission may, if it considers it to be in the public interest, order that
- (a) the person is an exchange for the purposes of this Act and the regulations, and
 - (b) the person must not carry on business as a quotation and trade reporting system, or facilitate transactions of securities or exchange

contracts, unless the person is recognized by the commission under section 24 (b).

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

Duty to regulate, conduct and provide information

- 26** (1) Subject to this Act, the regulations and any decision made by the commission, a self regulatory body, an exchange or a quotation and trade reporting system must regulate the operations, standards of practice and business conduct of its members or participants, and the representatives of its members or participants, in accordance with its bylaws, rules or other regulatory instruments.
- (2) A self regulatory body, an exchange or a quotation and trade reporting system must provide to the commission or to the executive director, at the request of the commission or the executive director,
- (a) a copy, or a partial copy as specified in the request, of the charter, as defined in section 1 of the *Financial Institutions Act*, of the self regulatory body or exchange, or
 - (b) any information or record in the possession of the self regulatory body, exchange or quotation and trade reporting system relating to
 - (i) a registrant or former registrant,
 - (ii) a client or former client of a registrant or of a former registrant,
 - (iii) an issuer,
 - (iv) trading in securities or exchange contracts,
 - (v) any of the self regulatory body's, exchange's or quotation and trade reporting system's
 - (A) bylaws, rules, other regulatory instruments or policies, or
 - (B) directions, decisions, orders or rulings that are made under any of its bylaws, rules, other regulatory instruments or policies,
 - (vi) the charter, as defined in section 1 of the *Financial Institutions Act*, of the self regulatory body, exchange or quotation and trade reporting system, or
 - (vii) this Act or the regulations.

Powers of the commission

- 27** (1) If the commission considers it to be in the public interest, the commission may make any decision respecting the following:
- (a) a bylaw, rule or other regulatory instrument or policy, or a direction, decision, order or ruling made under a bylaw, rule or other regulatory instrument or policy, of a self regulatory body, an exchange, a quotation and trade reporting system or a clearing agency;

- (b) the procedures or practices of a self regulatory body, an exchange, a quotation and trade reporting system or a clearing agency;
 - (c) the manner in which an exchange or a clearing agency carries on business;
 - (d) the trading of securities or exchange contracts on or through the facilities of an exchange, or the trading of securities on or through the facilities of a quotation and trade reporting system;
 - (e) an exchange contract trading on an exchange;
 - (f) a security listed on an exchange or quoted on a quotation and trade reporting system;
 - (g) issuers, whose securities are listed on an exchange or quoted on a quotation and trade reporting system, to ensure that they comply with this Act and the regulations.
- (2) A person affected by a decision made by the commission under subsection (1) must act in accordance with the decision.

Review of action

- 28** (1) The executive director or a person directly affected by a direction, decision, order or ruling made under a bylaw, rule or other regulatory instrument or policy of a self regulatory body, an exchange, a quotation and trade reporting system, or a clearing agency may apply by notice to the commission for a hearing and review of the matter under Part 19, and section 165 (3) to (8) applies.
- (2) An applicant under subsection (1), other than the executive director, must send a copy of the notice requesting a hearing and review to
- (a) the executive director, and
 - (b) the affected self regulatory body, exchange, quotation and trade reporting system or clearing agency.
- (3) If the executive director is the applicant under subsection (1), the executive director must send a copy of the notice requesting a hearing and review to
- (a) the affected self regulatory body, exchange, quotation and trade reporting system or clearing agency, and
 - (b) the persons directly affected by the direction, decision, order or ruling referred to in subsection (1).

Repealed

- 29** [Repealed 2007-37-7.]

Records of transactions

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

quotation and trade reporting system was recorded.

- (2) If a client of a member or participant produces to an exchange or a quotation and trade reporting system a written confirmation of a transaction on the exchange or quotation and trade reporting system, the exchange or quotation and trade reporting system must supply to the client
 - (a) particulars of the time at which the transaction was recorded, and
 - (b) verification or otherwise of the matters set out in the confirmation.

Auditors

- 31** (1) An exchange or a quotation and trade reporting system must appoint an auditor.
- (2) If the commission determines it is appropriate, a self-regulatory body must appoint an auditor.
- (3) An auditor appointed under subsection (1) or (2) must
 - (a) be practising as an auditor in Canada, and
 - (b) first be approved by the commission.

Audits of members of exchanges and self regulatory bodies

- 32** (1) An exchange must appoint a panel of auditors from auditors who are practising as auditors in Canada.
- (2) If the commission determines it is appropriate, a self regulatory body must appoint a panel of auditors from auditors who are practising as auditors in Canada.
- (3) Each member of an exchange and a self regulatory body, as the case may be, must appoint an auditor from the panel appointed under subsection (1) or (2).
- (4) An auditor appointed under subsection (3) must
 - (a) examine the financial affairs of the member
 - (i) as required by the bylaws, rules or other regulatory instruments or policies of the self regulatory body or exchange, and
 - (ii) in a manner satisfactory to the commission, and
 - (b) report on each examination to the self regulatory body or exchange, as the case may be.
- (5) A bylaw, rule or regulatory instrument referred to in subsection (4) respecting the practice and procedure of examinations does not come into force until it has been approved by the commission.

Duties of auditor oversight body

- 32.1** For the purposes of section 26, an auditor oversight body is not required to regulate the operations, standards of practice and business conduct of its members or participants except to the extent that the regulation relates to the

auditing or review of financial statements that are required to be filed under this Act.

Auditor oversight body may adopt rules, standards or policies

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

Auditor oversight body may require disclosure

- 32.3** (1) If a member or participant of an auditor oversight body receives from the auditor oversight body a written request to provide information or records relevant to the auditing or review of financial statements that are required to be filed under this Act, the member or participant must provide the information or records specified, or that are within the class described, in the request, including information or records relating to or prepared by an issuer whether or not the issuer is named in the request.
- (2) An auditor oversight body may, in a written request under subsection (1), specify a reasonable time or interval when the information or records are to be provided to the auditor oversight body.
- (3) For greater certainty, if a member or participant of an auditor oversight body is in possession of information or a record that is subject to solicitor-client privilege, the member or participant must not provide the information or record to the auditor oversight body unless the person, in respect of which the solicitor-client privilege exists, consents to its disclosure.
- (4) If a person consents to the disclosure to an auditor oversight body of information or a record that is subject to solicitor-client privilege, the consent neither negates nor constitutes a waiver of solicitor-client privilege and the privilege continues for all other purposes.

Directors, officers of auditor oversight body not compellable

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

Exemption order by commission

- 33** (1) If the commission considers that to do so would not be prejudicial to the public interest, it may order that
- (a) a self regulatory body, an exchange or a quotation and trade reporting system, or
 - (b) a class of self regulatory bodies, exchanges or quotation and trade reporting systems

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

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

Part 5 — Registration

Persons who must be registered

34 A person must not

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

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

Granting registration

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

- (a) the executive director considers that the applicant is not suitable for registration in the capacity applied for, or that the proposed registration is objectionable, or
- (b) the applicant has not paid the prescribed fee.

- (2) If an applicant or partner, director or officer of an applicant is not a resident of British Columbia on the date of application, the executive director may refuse to register the applicant unless, at the time of application, the applicant meets the requirements of subsection (1) and, in addition, the applicant or the applicant's partner, director or officer

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

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

Conditions imposed on registration and registrants

- 36** (1) The executive director may restrict a registration or a renewal or reinstatement of registration and may impose conditions of registration on the registrant and, without limiting these powers, may
- (a) restrict the duration of the registration,
 - (b) restrict the registration to trades in specified securities or exchange contracts or a specified class of securities or class of exchange contracts, and
 - (c) direct that any or all of the registration exemptions set out in the regulations do not apply to the registrant.
- (2) The executive director acting under subsection (1) must not restrict a registration or impose a condition of registration on a registrant without giving the registrant or intended registrant an opportunity to be heard.
- (3) A registrant must comply with a restriction or condition imposed
- (a) under the regulations, or
 - (b) by the executive director under subsection (1).

Repealed

37 [Repealed 2006-32-11.]

Further information may be required from applicant

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

Repealed

39 [Repealed 2007-37-9.]

Termination or suspension of employment

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

Suspension of registration

- 40.1** (1) After giving a registrant an opportunity to be heard, if the executive director considers it in the public interest to do so, the executive director may suspend the registration or impose conditions or restrictions on the registration.
- (2) If the executive director considers that the length of time required to provide an opportunity to be heard under subsection (1) could be prejudicial to the public interest, the executive director may, without providing an opportunity to be heard, suspend a registration, or impose conditions or restrictions on the registration, to have effect for not longer than 15 days.

Surrender of registration

- 41** (1) If a registrant applies to surrender registration, the executive director must accept the surrender unless the executive director considers it prejudicial to the public interest to do so.
- (2) On receiving an application under subsection (1), the executive director may, without providing an opportunity to be heard, suspend the registration or impose conditions or restrictions on the registration.

Repealed

42 [Repealed 2002-32-18.]

Part 6 — Exemption from Registration Requirements**Repealed**

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

Exemption order by commission or executive director

- 48** (1) If the commission or the executive director considers that to do so would not be prejudicial to the public interest, the commission or the executive director may order that
- (a) a trade, intended trade, security, exchange contract or person, or
 - (b) a class of trades, intended trades, securities, exchange contracts or persons

is exempt from one or more of the requirements of Part 5 or the regulations related to Part 5.

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

Part 7 — Trading in Securities Generally

Calling at or telephoning residence

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

- (2) A person must not

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

for the purpose of trading in a security or exchange contract.

- (3) Subsection (2) does not apply if

- (a) the person calls at or telephones the residence

- (i) of a close personal friend, a business associate or a client with whom or on whose behalf the person calling or telephoning has been in the habit of trading in securities or exchange contracts, or

- (ii) of a person who

- (A) has received a copy of a prospectus filed under this Act, and

- (B) has requested that information respecting a security offered in that prospectus be provided to that person by the person calling or telephoning,

and the person calling or telephoning refers only to the request for information respecting that security.

- (b) [Repealed 2006-32-15.]

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

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

- (a) securities or exchange contracts generally,
- (b) a specific security or exchange contract, or
- (c) class of securities or a class of exchange contracts.

Representations prohibited

- 50** (1) A person, while engaging in investor relations activities or with the intention of effecting a trade in a security, must not do any of the following:
- (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 written permission of the executive director,
 - (i) that the security will be listed and posted for trading on an exchange or quoted on any quotation and trade reporting system, or
 - (ii) that application has been or will be made to list and post the security for trading on an exchange or quote the security on any quotation and trade reporting system;
 - (d) make a statement that the person knows, or ought reasonably to know, is a misrepresentation;
 - (e) engage in an unfair practice.
- (2) Subsection (1) (a) does not apply to a representation
- (a) in respect of a security that carries an obligation of the issuer to redeem or purchase, or a right of the owner to require redemption or purchase, or
 - (b) contained in a written agreement if the security involved has an aggregate acquisition cost in excess of a prescribed amount.
- (3) A person, with the intention of effecting a trade in an exchange contract, must not do any of the following:
- (a) represent that the person or another person will
 - (i) refund all or part of any margin put up or premium paid in respect of the exchange contract, or
 - (ii) assume all or part of the obligation under the exchange contract;
 - (b) give an undertaking relating to the future value of the exchange contract;
 - (c) make a statement that the person knows, or ought reasonably to know, is a misrepresentation;
 - (d) engage in an unfair practice.
- (4) For the purposes of this section, an **"unfair practice"** includes any of the following:

- (a) putting unreasonable pressure on a person to purchase, hold or sell a security;
- (b) taking advantage of the person's inability or incapacity to reasonably protect his or her own interest because of physical or mental infirmity, ignorance, illiteracy, age or inability to understand the character, nature or language of any matter relating to a decision to purchase, hold or sell a security;
- (c) imposing terms or conditions that make a transaction inequitable.

Registered dealer acting as principal

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

(2) If a registered dealer

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

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

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

Disclosure of investor relations activities

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

- (a) the fact of the engagement, and
- (b) on whose behalf the person is engaged.

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

Use of name of another registrant

- 53** A registrant must not use the name of another registrant on letterheads, forms, advertisements or signs, as correspondent or otherwise, unless the first registrant is a partner, officer or agent of, or is authorized in writing by, the other registrant.

Representation or holding out of registration

- 54** (1) A person must not represent that the person is registered under this Act unless
- (a) the representation is true, and
 - (b) in making the representation, the person specifies the person's category of registration under this Act.
- (2) A person must not make a statement about something that a reasonable investor would consider important in deciding whether to enter or maintain a trading or advising relationship with the person if the statement is untrue or omits information necessary to prevent the statement from being false or misleading in the circumstances in which it is made.

Approval of commission or executive director not to be represented

- 55** A person must not represent that the commission or the executive director has in any manner approved or passed on the merits of
- (a) the financial standing, suitability for registration or conduct of any registrant,
 - (b) any security, exchange contract or issuer,
 - (c) an issuer's disclosure, or
 - (d) a credit rating organization or a credit rating.

Declaration as to short position

- 56** (1) A person who places an order for the sale of a security through a registered dealer acting on the person's behalf and who
- (a) does not own the security, or
 - (b) if the person is acting as agent knows that the person's principal does not own the security,
- must, at the time of placing the order to sell, declare to the registered dealer that the person or the person's principal, as the case may be, does not own the security, and that fact must be disclosed by the dealer in the written confirmation of sale.
- (2) Subject to the regulations, for the purposes of subsection (1), a person does not own a security that
- (a) has been borrowed by that person,
 - (b) is subject to any restriction on its sale, or
 - (c) may be acquired by that person on the exercise of a right to acquire the security by purchase, conversion, exchange or any other means.

Manipulation and fraud

- 57** A person must not, directly or indirectly, engage in or participate in conduct relating to securities or exchange contracts if the person knows, or reasonably should know, that the conduct
- (a) results in or contributes to a misleading appearance of trading activity in, or an artificial price for, a security or exchange contract, or
 - (b) perpetrates a fraud on any person.

Repealed

57.1 [Repealed 2007-37-14.]

Insider trading, tipping and recommending

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

- (a) a reporting issuer, or
 - (b) any other issuer whose securities are publicly traded.
- (2) A person must not enter into a transaction involving a security of an issuer, or a related financial instrument of a security of an issuer, if the person
- (a) is in a special relationship with the issuer, and
 - (b) knows of a material fact or material change with respect to the issuer, which material fact or material change has not been generally disclosed.
- (3) An issuer or a person in a special relationship with an issuer must not inform another person of a material fact or material change with respect to the issuer unless
- (a) the material fact or material change has been generally disclosed, or
 - (b) informing the person is necessary in the course of business of the issuer or of the person in the special relationship with the issuer.
- (4) A person who proposes to
- (a) make a take over bid, as defined in section 92, for the securities of an issuer,
 - (b) become a party to a reorganization, amalgamation, merger, arrangement or similar business combination with an issuer, or
 - (c) acquire a substantial portion of the property of an issuer,
- must not inform another person of a material fact or material change with respect to the issuer unless
- (d) the material fact or material change has been generally disclosed, or
 - (e) informing the person is necessary to effect the take over bid, business combination or acquisition.

- (5) If a material fact or material change with respect to an issuer has not been generally disclosed, the issuer, or a person in a special relationship with the issuer with knowledge of the material fact or material change, must not recommend or encourage another person to enter into a transaction involving a security of the issuer or a related financial instrument of a security of the issuer.

Front running

57.3 (1) In this section:

"investor" means a person

- (a) who has indicated an intention to purchase or trade a security or an exchange contract, or
- (b) for whose account an order is or would be placed;

"material order information" means information that relates to

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

"order" means an order to purchase or trade a security or an exchange contract.

- (2) For the purposes of this section, a person is connected to an investor if the person

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

- (ii) the person that acquired knowledge of the material order information from that other person knew or reasonably ought to have known of the connection referred to in subparagraph (i).
- (3) A person that is connected to an investor and knows of material order information relating to the investor must not enter into a transaction involving
 - (a) a security or an exchange contract that is the subject of the material order information, or
 - (b) a related financial instrument of a security or an exchange contract referred to in paragraph (a).
- (4) A person that is connected to an investor must not inform another person of material order information relating to the investor unless it is necessary in the course of the business of the person or the investor.
- (5) A person that is connected to an investor and knows of material order information relating to the investor must not recommend or encourage another person to enter into a transaction involving
 - (a) a security or an exchange contract that is the subject of the material order information, or
 - (b) a related financial instrument of a security or an exchange contract referred to in paragraph (a).

Defences

- 57.4** (1) A person does not contravene section 57.2 (2) if, at the time the person enters into the transaction involving the security, exchange contract or related financial instrument, the person reasonably believes that the other party to the transaction knows of the material fact or material change.
- (2) A person does not contravene section 57.2 (3) or (4) if, at the time the person informs the other person of the material fact or material change, the person reasonably believes that the other person knows of the material fact or material change.
- (3) A person does not contravene section 57.2 (2) or 57.3 (3) if the person
- (a) enters into the transaction under a written automatic dividend reinvestment plan, written automatic purchase plan or other similar written automatic plan, in which the person agreed to participate before obtaining knowledge of the material fact, material change or material order information, or
 - (b) enters into the transaction as a result of a written legal obligation
 - (i) imposed on the person, or
 - (ii) that the person entered into before obtaining knowledge of the material fact, material change or material order information.
- (4) A person does not contravene section 57.2 (2) or 57.3 (3) if the person entered into the transaction

- (a) as agent under the specific unsolicited instructions of the principal,
 - (b) as agent under specific instructions that the agent solicited from the principal before obtaining knowledge of the material fact, material change or material order information,
 - (c) 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 other similar written automatic plan, or
 - (d) as agent or trustee for another person to fulfill a written legal obligation of the other person.
- (5) A person that is not an individual does not contravene section 57.2 (2) or (5) or 57.3 (3) or (5) if no individual involved in making the decision to enter into the transaction or make the recommendation on behalf of the person
- (a) has knowledge of the material fact, material change or material order information, and
 - (b) is acting on the recommendation or encouragement of an individual who has that information.
- (6) A person does not contravene section 57.3 (3) if, at the time the person enters into the transaction, the person reasonably believes that
- (a) the investor has consented to the person entering into the transaction, and
 - (b) the other party to the transaction knows of the material order information.
- (7) A person does not contravene section 57.3 (4) if, at the time the person informs the other person of the material order information,
- (a) the person reasonably believes that the investor has consented to the person informing the other person, and
 - (b) the person informs the other person that both the person and the other person are connected to the investor for the purposes of section 57.3.
- (8) A person does not contravene section 57.3 (5) if, at the time the person recommends or encourages the other person to enter into a transaction,
- (a) the person reasonably believes that the investor has consented to the person recommending or encouraging, and
 - (b) the person informs the other person
 - (i) of the material order information, and
 - (ii) that both the person and the other person are connected to the investor for the purposes of section 57.3.

Obstruction of justice

57.5 (1) A person must not

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

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

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

Duty to comply with undertaking

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

Records

- 57.7** Subject to the regulations, a person referred to in section 141 (2) must keep records of the person's business transactions and financial affairs, and of the transactions that the person executes on behalf of others, for a period of 6 years from the date the record is created.

Part 8 — Trading in Exchange Contracts

Trading on an exchange in British Columbia

- 58** (1) A person must not trade in an exchange contract on an exchange in British Columbia unless
- (a) the exchange is recognized by the commission under section 24 (b), and
 - (b) the form of the exchange contract has been accepted by the commission.
- (2) On application by an exchange in British Columbia, the commission by order may accept a form of exchange contract for the purpose of subsection (1) (b).
- (3) The commission must not refuse to accept a form of exchange contract under subsection (2) without giving the applicant an opportunity to be heard.

Trading on an exchange outside British Columbia

- 59** (1) A registrant must not trade in an exchange contract on behalf of another person on an exchange outside British Columbia unless the exchange is recognized by the commission.
- (2) On application by an exchange outside British Columbia or on the commission's own motion, the commission by order may recognize an exchange outside

British Columbia for the purposes of subsection (1).

- (3) The commission must not refuse to recognize an exchange under subsection (2) without giving the applicant an opportunity to be heard.

Exemption order by commission or executive director

- 60** (1) If the commission or the executive director considers that to do so would not be prejudicial to the public interest, the commission or executive director may order that
- (a) a trade, intended trade, exchange contract or person, or
 - (b) a class of trades, intended trades, exchange contracts or persons
- is exempt from one or more of the requirements of this Part or the regulations relating to this Part.
- (2) An order under subsection (1) may be made on application by an interested person or on the commission's or the executive director's own motion.

Part 9 — Prospectus

Prospectus required

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

Voluntary filing of prospectus

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

Contents of prospectus

- 63** (1) A prospectus must provide full, true and plain disclosure of all material facts relating to the securities issued or proposed to be distributed.
- (2) A preliminary prospectus must substantially comply with the requirements of this Act and the regulations respecting the content of a prospectus.
- (3) and (4) [Repealed 2006-32-18.]

Executive director's discretion

- 64** (1) Before issuing a receipt for a preliminary prospectus or for a prospectus, the executive director may impose additional filing requirements and conditions if the executive director considers that it is in the public interest to do so.
- (2) The executive director may accept a form of prospectus or preliminary prospectus that is in accordance with the law of another jurisdiction if it contains full, true and plain disclosure of all material facts relating to the security to be distributed.

Receipts for prospectus

- 65** (1) Subject to section 64 (1), the executive director must issue a receipt for a preliminary prospectus as soon as practicable after it has been filed under this Part.
- (2) Subject to the regulations, the executive director must issue a receipt for a prospectus filed under this Part unless the executive director considers it to be prejudicial to the public interest to do so.
- (3) The executive director must not refuse to issue a receipt for a prospectus without giving the person who filed the prospectus an opportunity to be heard.

Repealed

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

Order to provide information regarding distribution

- 72** (1) If a person proposing to make a distribution of previously issued securities of an issuer is unable to obtain from the issuer information or material that is necessary to enable the person to comply with this Part or the regulations, the executive director may order the issuer to provide to that person the information and material that the executive director considers necessary.
- (2) The information and material supplied under subsection (1) may be used by the person to whom it is provided for the purpose of complying with this Part and the regulations.
- (3) If a person proposing to make a distribution of previously issued securities of an issuer is unable
- (a) to obtain any or all of the signatures to the certificates required by this Part and the regulations, or
 - (b) to comply otherwise with this Part and the regulations,
- the executive director may make an order exempting that person from any of the provisions of this Part or the regulations, on being satisfied that
- (c) the person has made all reasonable efforts to comply, and
 - (d) no person is likely to be prejudicially affected by the failure to comply.

Part 10 — Exemptions from Prospectus Requirements

Repealed

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

Exemption order by commission or executive director

- 76** (1) If the commission or the executive director considers that to do so would not be prejudicial to the public interest, the commission or the executive director may order that
- (a) a trade, intended trade, security or person or class of trades, intended trades, securities or persons is exempt from one or more of the requirements of Part 9 or the regulations related to Part 9, and
 - (b) a trade or intended trade or class of trades or intended trades is deemed to be a distribution.
- (2) An order under subsection (1) may be made on application by an interested person or on the commission's or the executive director's own motion.
- (3) On application of an interested person, the commission or the executive director may determine whether the distribution of a security has been concluded or is currently in progress.

List of defaulting reporting issuers

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

Part 11 — Circulation of Materials**Waiting period**

- 78** (1) In this section, "**waiting period**" means the interval between the issue of a receipt by the executive director for a preliminary prospectus and the issue of a receipt by the executive director for the prospectus in respect of the same distribution.
- (2) Despite section 61, but subject to Part 7, during the waiting period for the distribution of a security, a dealer or the issuer of the security may
- (a) communicate with a person
 - (i) identifying the security proposed to be distributed,
 - (ii) stating the price of the security, if determined,
 - (iii) stating the name and address of a person from whom purchases of the security may be made, and
 - (iv) stating further information permitted or required by the regulations,so long as the dealer or issuer states the name and address of a person from whom a preliminary prospectus may be obtained,
 - (b) give out a preliminary prospectus, and

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

Repealed

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

Defective preliminary prospectus

- 81** If the executive director considers that a preliminary prospectus does not substantially comply with section 63 (1), the executive director may, without giving notice, order that trading that is permitted by section 78 (2) in the security to which the preliminary prospectus relates cease until a revised preliminary prospectus satisfactory to the executive director is filed and sent to each recipient of the defective preliminary prospectus in accordance with the regulations.

Material given on distribution

- 82** From the date of issue of a receipt for a prospectus relating to a security, a person distributing the security may give out
- (a) the prospectus,
 - (b) any record filed with or referred to in the prospectus, and
 - (c) any record used in section 78 (2) (a).

Obligation to send prospectus

- 83** (1) A dealer, not acting as agent of the purchaser, who receives an order or subscription for a security offered in a distribution to which section 61 applies must, subject to the regulations, send to the purchaser,
- (a) before entering into the written confirmation of the agreement of purchase and sale resulting from the order or subscription, or
 - (b) not later than midnight on the second business day after entering into the agreement,
- the latest prospectus filed or required to be filed, with respect to the security, and any amendment to that prospectus, filed or required to be filed, under this Act.
- (2) Despite subsection (1), a dealer is not required to send an amendment to a prospectus to a purchaser if the agreement of purchase and sale of the security has been entered into before the obligation to file the amendment arises under section 67.
- (3) An agreement of purchase and sale referred to in subsection (1) is not binding on the purchaser if the dealer from whom the purchaser purchases the security receives, not later than 2 business days after receipt by the purchaser of the latest prospectus, any amendment to the prospectus or another prescribed document, that the purchaser is entitled to receive under this Act, written

notice sent by the purchaser, evidencing the intention of the purchaser not to be bound by the agreement.

- (4) Subsection (3) does not apply if the purchaser
- (a) is a registrant, or
 - (b) disposes of the beneficial ownership of the security referred to in subsection (3), otherwise than to secure indebtedness, before the end of the time referred to in subsection (3).
- (5) For the purposes of this section, subject to subsection (7), receipt of the latest prospectus, any amendment to the prospectus or another prescribed document, that the purchaser is entitled to receive under this Act, by a dealer who
- (a) is acting as agent of the purchaser, or
 - (b) after receipt begins to act as agent of the purchaser,
- with respect to the purchase of a security referred to in subsection (1), is deemed to be receipt by the purchaser on the date on which the dealer received that prospectus, amendment or other prescribed document.
- (6) For the purposes of this section, receipt of the notice referred to in subsection (3) by a dealer who acted as agent of the seller with respect to the sale of the security referred to in subsection (1) is deemed to be receipt by the seller on the date on which the dealer received the notice.
- (7) For the purposes 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 sale in question and has not received and has no agreement to receive compensation from or on behalf of the seller with respect to that sale.
- (8) The onus of proving that the time for giving notice under subsection (3) has ended is on the dealer from whom the purchaser has agreed to purchase the security.
- (9) If the issuer acts as the issuer's own dealer in respect of a trade, this section applies to the issuer as if the issuer were a dealer.

Exemption order by commission or executive director

- 84** (1) If the commission or the executive director considers that to do so would not be prejudicial to the public interest, the commission or the executive director may order that a person or class of persons is exempt from one or more of the requirements of this Part or of the regulations relating to this Part.
- (2) An order under subsection (1) may be made on application by an interested person or on the commission's or the executive director's own motion.

Part 12 — Continuous Disclosure

Repealed

84.1 [Repealed 2006-32-22.]**Continuous disclosure**

- 85** A reporting issuer must, in accordance with the regulations,
- (a) provide prescribed periodic disclosure about its business and affairs,
 - (b) provide disclosure of a material change, and
 - (c) provide other prescribed disclosure.

Repealed**86** [Repealed 2006-32-24.]**Initial and subsequent insider report**

- 87** (1) In this section, "**reporting issuer**" does not include a mutual fund.
- (2) An insider of a reporting issuer must, in accordance with the regulations,
- (a) file reports disclosing the insider's
 - (i) beneficial ownership of, or control or direction over, directly or indirectly, securities of the issuer, and
 - (ii) interest in, or right or obligation associated with, a related financial instrument of a security of the issuer, and
 - (b) make other prescribed disclosure.

Repealed**87.1** [Repealed 2006-32-26.]**Order relieving reporting issuer**

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

Halt trading order

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

- (iv) considers that circumstances exist or are about to occur that could result in other than an orderly trading of a security or exchange contract, and
 - (b) the commission or the executive director considers it to be in the public interest,
- the commission or executive director may, without providing an opportunity to be heard, order that all trading in that security or exchange contract be halted for a specified period not longer than 15 business days.
- (2) Notice of every order made under subsection (1) must be sent immediately to the issuer whose securities are affected by it.
- (3) If
 - (a) a security affected by an order made under subsection (1) is listed and posted for trading on an exchange in British Columbia, or
 - (b) an exchange contract affected by an order made under subsection (1) is traded on an exchange in British Columbia,the commission or executive director must immediately send written notice of the order to the exchange, and the order becomes effective, for all purposes and in respect of all persons, as soon as the exchange receives the notice.
- (4) If the commission or the executive director considers it necessary and in the public interest, the commission or executive director may, after providing the issuer whose securities are affected by it with an opportunity to be heard, make an order extending the order made under subsection (1) until a hearing is held and a decision is rendered.

Further information from directors, officers, promoters or control persons

- 90** (1) The commission or the executive director may require a director, an officer, a promoter or a control person of an issuer, within the time the commission or executive director specifies, to submit information.
- (2) Information submitted under subsection (1) must be in the required form.

Exemption order by commission or executive director

- 91** (1) The commission or the executive director may order that a person or class of persons is exempt from one or more of the requirements of this Part or the regulations related to this Part if
- (a) the requirement in respect of which an exemption is to be granted conflicts with a similar requirement of the law of the jurisdiction in which the reporting issuer is incorporated, organized or continued, or
 - (b) the commission or the executive director considers that to do so would not be prejudicial to the public interest.
- (2) An order under subsection (1) may be made on application by an interested person or on the commission's or the executive director's own motion.

Part 13 — Take Over Bids and Issuer Bids

Division 1 — Interpretation

Definitions

92 In this Part:

"interested person" means

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

"issuer bid" means a direct or indirect offer to acquire or redeem a security or a direct or indirect acquisition or redemption of a security that is

- (a) made by the issuer of the security, and
- (b) within a prescribed class of offers, acquisitions or redemptions;

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

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

Repealed

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

Division 2 — Exemptions

Making a bid

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

Recommendation relating to bid

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

- (a) determine whether to recommend acceptance or rejection of the take over bid or determine not to make a recommendation, and

- (b) make the recommendation, or a statement that they are not making a recommendation, in accordance with the regulations.
- (2) An individual director or officer of the issuer whose securities are the subject of a take over bid may recommend acceptance or rejection of the take over bid if the recommendation is made in accordance with the regulations.

Repealed

100 [Repealed 2006-32-30.]

Division 3 - 6

Repealed

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

Division 7 — Special Applications

Applications to the commission

- 114** (1) On application by an interested person, if the commission considers that a person has not complied or is not complying with a requirement under this Part, the commission may make an order
- (a) restraining the distribution of any record used or issued in connection with a take over bid or an issuer bid,
 - (b) requiring an amendment to or variation of any record used or issued in connection with a take over bid or an issuer bid and requiring the distribution of amended, varied or corrected information,
 - (c) directing any person to comply with a requirement under this Part,
 - (d) restraining any person from contravening a requirement under this Part, or
 - (e) directing the directors and officers of any person to cause the person to comply with or to cease contravening a requirement under this Part.
- (2) On application by an interested person or on the commission's own motion, the commission may order that a person is exempt from any requirement under this Part or the regulations relating to this Part if the commission considers that it would not be prejudicial to the public interest to do so.

Applications to the court

- 115** (1) On application by an interested person, if the Supreme Court is satisfied that a person has not complied with a requirement under this Part, the Supreme Court may make whatever interim or final order the Supreme Court thinks fit, including, without limitation, an order
- (a) compensating any interested person who is a party to the application for damages suffered as a result of a contravention of a requirement

- of this Part or the regulations,
- (b) rescinding a transaction with any interested person, including the issue of a security or an acquisition and sale of a security,
 - (c) requiring any person to dispose of any securities acquired in connection with a take over bid or an issuer bid,
 - (d) prohibiting any person from exercising any or all of the voting rights attaching to any securities, or
 - (e) requiring the trial of an issue.
- (2) If, in a proceeding under subsection (1), the executive director is not the applicant, the executive director
- (a) must be given notice of the application, and
 - (b) may appear at the proceeding as a party.

Part 14 — Proxies

Definitions

116 In this Part:

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

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

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

Repealed

117 [Repealed 2003-24-10.]

Voting if proxies provided

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

(2) Subsection (1) does not apply if

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

otherwise be the meeting's decision on the matters referred to in subsection (1).

(3) Voting securities of an issuer that are

(a) registered in the name of

(i) a registrant or the registrant's nominee, or

(ii) a custodian or the custodian's nominee, and

(b) not beneficially owned by the registrant or the custodian, as the case may be,

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

(4) Subsection (3) does not apply to a registrant or custodian who is a trustee of securities held under a trust instrument that regulates how those securities are to be voted.

Exemptions

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

(2) The commission may order that a person or class of persons is exempt from one or more of the requirements of this Part or the regulations related to this Part if

(a) the requirement in respect of which an exemption is to be granted conflicts with a similar requirement of the law of the jurisdiction in which the reporting issuer is incorporated, organized or continued, or

(b) the commission considers that to do so would not be prejudicial to the public interest.

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

Part 15 — Self Dealing

Repealed

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

Repealed

123 [Repealed 2006-32-34.]

Repealed

124 [Repealed 2006-32-33.]

Standard of care for investment fund manager

125 Every investment fund manager must

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

Repealed

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

Repealed

128 [Repealed 2006-32-36.]

Repealed

129 [Repealed 2006-32-33.]

Exemptions

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

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

Independent committee for mutual funds

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

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

Part 16 — Civil Liability**Liability for misrepresentation in prospectus**

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

- (a) is deemed to have relied on the misrepresentation if it was a misrepresentation at the time of purchase, and
- (b) has a right of action for damages against
 - (i) the issuer or a selling security holder on whose behalf the distribution is made,
 - (ii) every underwriter that is in a contractual relationship with the issuer or selling security holder on whose behalf the distribution is made,
 - (iii) every director of the issuer at the time the prospectus was filed,
 - (iv) every person whose consent to disclosure of information in the prospectus has been filed, and
 - (v) every person who signed the prospectus.
- (2) A person referred to in subsection (1) (b) (iv) is liable only with respect to a misrepresentation contained in a report, opinion or statement made by the person.
- (3) If the person referred to in subsection (1) purchased the security from a person or underwriter referred to in subsection (1) (b) (i) or (ii) or from another underwriter of the securities, the purchaser may elect to exercise a right of rescission against that person or underwriter, in which case the purchaser has no right of action for damages against that person under subsection (1).
- (4) A person is not liable under subsection (1) if the person proves that the purchaser had knowledge of the misrepresentation.
- (5) A person is not liable under subsection (1) 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 gave reasonable general notice that it was so filed,
 - (b) after the issue of a receipt for the prospectus and before the purchase of the securities by the purchaser, on becoming aware of any misrepresentation in the prospectus, 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 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, opinion or statement 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, opinion or statement of the expert, or
 - (B) was not a fair copy of, or an extract from, the report, opinion or statement of the expert,
- (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, opinion or statement as an expert,
- but that contained a misrepresentation attributable to failure to fairly represent the person's report, opinion or statement as an expert,
- (iii) the person had, after reasonable investigation, reasonable grounds to believe and did believe that the relevant part of the prospectus fairly represented the person's report, opinion or statement as an expert, or
 - (iv) on becoming aware that the relevant part of the prospectus did not fairly represent the person's report, opinion or statement as an expert, the person, as soon as practicable, advised the commission and gave reasonable general notice that
 - (A) the person's report, opinion or statement was not fairly represented, and
 - (B) the person would not be responsible for that part of the prospectus, or
- (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.
- (6) A person 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, opinion or statement 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 is not liable under subsection (1) 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, opinion or statement 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) Subsections (5) to (7) do not apply to the issuer or a selling security holder.
- (8.1) A person is not liable for a misrepresentation in forward-looking information if the person proves that
- (a) the document containing the forward-looking information contained, proximate to that information,
 - (i) reasonable cautionary language identifying the forward-looking information as such, and identifying material factors that could cause actual results to differ materially from a conclusion, forecast or projection in the forward-looking information, and
 - (ii) a statement of the material factors or assumptions that were applied in drawing a conclusion or making a forecast or projection set out in the forward-looking information, and
 - (b) the person had a reasonable basis for drawing the conclusions or making the forecasts and projections set out in the forward-looking information.
- (8.2) Subsection (8.1) does not relieve a person of liability respecting forward-looking information in a financial statement or forward-looking information in a document released in connection with an initial public offering.
- (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) (b) is joint and several as between themselves 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.
- (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.
- (16) [Repealed 1999-20-23.]

Liability for misrepresentation in circular or notice

- 132** (1) If a take over bid circular, issuer bid circular, notice of change or notice of variation is required to be sent under the regulations and that document contains a misrepresentation, a person to whom the circular or notice was sent is deemed to have relied on the misrepresentation, and has a right of action for
- (a) rescission against the offeror, or
 - (b) damages against
 - (i) each person who signed the certificate in the circular or notice,
 - (ii) every director of the offeror at the time the circular or notice was signed,
 - (iii) every person whose consent has been filed as prescribed, and
 - (iv) the offeror.
- (2) A person referred to in subsection (1) (b) (iii) is liable only with respect to a misrepresentation contained in a report, opinion or statement made by the person.
- (3) 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 is required to be sent under the regulations and that document contains a misrepresentation, a person to whom the circular or notice was sent is deemed to have relied on the misrepresentation and has a right of action for damages against every director or officer who signed the circular or notice.
- (4) A person is not liable under subsection (1) or (3) if the person proves that the person exercising the right of action had knowledge of the misrepresentation.
- (5) A person is not liable under subsection (1) or (3) 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 gave, as soon as practicable, reasonable general notice that it was so sent,
 - (b) after 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, opinion or statement of an expert,

the person had no reasonable grounds to believe and did not believe that

- (iii) there had been a misrepresentation, or

- (iv) the relevant part of the circular or notice

- (A) did not fairly represent the report, opinion or statement of the expert, or

- (B) was not a fair copy of, or extract from, the report, opinion or statement of the expert,

- (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, opinion or statement as an expert,

but that contained a misrepresentation attributable to failure to fairly represent the person's report, opinion or statement as an expert

- (iii) the person had, after reasonable investigation, reasonable grounds to believe and did believe that the relevant part of the circular or notice fairly represented his report, opinion or statement as an expert, or

- (iv) on becoming aware that the relevant part of the circular or notice did not fairly represent the person's report, opinion or statement as an expert, the person, as soon as practicable, advised the commission and gave reasonable general notice that

- (A) the person's report, opinion or statement was not fairly represented, and

- (B) the person would not be responsible for that part of the circular or notice, or

- (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.

- (6) A person is not liable under subsection (1) or (3) 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, opinion or statement 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 is not liable under subsection (1) or (3) 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, opinion or statement 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) Subsections (5) to (7) do not apply to the offeror.

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

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

(9) The liability of

- (a) all persons referred to in subsection (1) (b), or
- (b) all directors and officers referred to in subsection (3),

is joint and several as between themselves 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 (3) based on a misrepresentation affecting a security offered by the offeror in exchange for securities of the offeree issuer, the defendant is not liable for all or any part of the damages that the defendant proves does not represent the depreciation in value of the security resulting from the misrepresentation.
- (12) [Repealed 2006-32-40.]
- (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.

Liability for misrepresentation in prescribed disclosure document

- 132.1** (1) If a prescribed disclosure document contains a misrepresentation, a purchaser who purchases a security offered by the disclosure document
- (a) is deemed to have relied on the misrepresentation if it was a misrepresentation at the time of purchase, and
 - (b) has a right of action for damages against
 - (i) the issuer,
 - (ii) every director of the issuer at the date of the disclosure document, and
 - (iii) every person who signed the disclosure document.
- (2) The purchaser may elect to exercise a right of rescission against the issuer, in which case the purchaser has no right of action for damages against the issuer.
- (3) A person is not liable under subsection (1) if the person proves that the purchaser had knowledge of the misrepresentation.
- (4) A person is not liable under subsection (1) if the person proves that
- (a) the disclosure document was delivered to purchasers without the person's knowledge or consent and that, on becoming aware of its delivery, the person gave written notice to the issuer that it was delivered without the person's knowledge or consent,
 - (b) on becoming aware of any misrepresentation in the disclosure document, the person withdrew the person's consent to the disclosure document and gave written notice to the issuer of the withdrawal and the reason for it, or
 - (c) with respect to any part of the disclosure document purporting
 - (i) to be made on the authority of an expert, or
 - (ii) to be a copy of, or an extract from, a report, an opinion or a statement of an expert,the person had no reasonable grounds to believe and did not believe that
 - (iii) there had been a misrepresentation, or
 - (iv) the relevant part of the disclosure document

- (A) did not fairly represent the report, opinion or statement of the expert, or
 - (B) was not a fair copy of, or an extract from, the report, opinion or statement of the expert.
- (5) A person is not liable under subsection (1) with respect to any part of a disclosure document not purporting
- (a) to be made on the authority of an expert, or
 - (b) to be a copy of, or an extract from, a report, opinion or statement of an expert
- unless the person
- (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.
- (6) Subsections (4) and (5) do not apply to the issuer.
- (7) 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.
- (7.1) A person is not liable for a misrepresentation in forward-looking information if the person proves that
- (a) the document containing the forward-looking information contained, proximate to that information,
 - (i) reasonable cautionary language identifying the forward-looking information as such, and identifying material factors that could cause actual results to differ materially from a conclusion, forecast or projection in the forward-looking information, and
 - (ii) a statement of the material factors or assumptions that were applied in drawing a conclusion or making a forecast or projection set out in the forward-looking information, and
 - (b) the person had a reasonable basis for drawing the conclusions or making the forecasts and projections set out in the forward-looking information.
- (8) The liability of all persons referred to in subsection (1) (b) is joint and several as between themselves with respect to the same cause of action.
- (9) 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.
- (10) The amount recoverable by a plaintiff under this section must not exceed the price at which the securities were offered under the disclosure document.

- (11) The right of action for rescission or damages conferred by this section is in addition to and not in derogation from any other right the purchaser may have.
- (12) If a misrepresentation is contained in a record incorporated by reference in, or deemed incorporated into, a disclosure document, the misrepresentation is deemed to be contained in the disclosure document.

Standard of reasonableness

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

Liability in margin contracts

- 134** (1) If a registered dealer makes a contract with a client to buy and carry on margin the securities of any issuer, and
- (a) while the contract continues, the dealer sells securities of the same issuer for any account in which the dealer, the dealer's director, the dealer's firm, or a partner in the dealer's firm has a direct or indirect interest, and
 - (b) the effect of the sale is to reduce the amount of those securities in the hands of the dealer or under the dealer's control in the ordinary course of business to below the amount of those securities that the dealer should be carrying for all the dealer's clients,
- the dealer must immediately disclose those facts to the client, and the contract with the client is voidable at the election of the client.
- (2) If a client elects under subsection (1) to void the contract, the client may, in respect of that contract, recover from the dealer
- (a) all money paid by the client to the dealer with interest, and
 - (b) any securities deposited by the client with the dealer.
- (3) If a client elects under subsection (1), the client must send written notice to the registered dealer within 30 days after the disclosure made to the client under that subsection.
- (4) A dealer is not liable under subsection (1) if the dealer proves that the reduction of the amount of securities to below the amount the dealer should be carrying was unintentional.

Right of action for failure to deliver documents

- 135** A person who is
- (a) a purchaser of a security to whom a prospectus, any amendment to a prospectus or other prescribed document was required under section 83 to be sent but which prospectus, amendment to a prospectus or

other prescribed document was not sent or was not filed under the Act, or

- (b) a person to whom a take over bid circular, issuer bid circular, notice of change or notice of variation was required under the regulations to be sent but which circular or notice was not sent,

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

Right of action for failure to deliver prescribed disclosure documents

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

Liability for insider trading, tipping and recommending

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

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

- (a) starting when the contravention occurred, and
- (b) ending at the time the material fact or material change is generally disclosed.

(3) If a court finds a person liable in an action under subsection (1), the amount payable to the plaintiff by the person is the lesser of

- (a) the losses incurred by the plaintiff, and
- (b) an amount determined in accordance with the regulations.

(4) For the purposes of subsection (1), in determining the losses incurred by a plaintiff, a court must not include an amount that the defendant proves is attributable to a change in the market price of the security that is unrelated to the material change or the material fact.

Accounting for benefits

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

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

- (2) If a person contravenes section 57.3, the person must pay to the investor, as defined in that section, an amount equal to
- (a) the benefit that the person received as a result of the contravention, and
 - (b) the benefit that all persons received as a result of the contravention.

Due diligence defence for insider trading

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

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

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

Action by commission on behalf of issuer

137 (1) On application by

- (a) the commission, or
 - (b) any person who
 - (i) was, at the time of a transaction referred to in section 136, or
 - (ii) is, at the time of the application,
- a security holder of the issuer,

the Supreme Court may, if satisfied that

- (c) the applicant has reasonable grounds for believing that the issuer has a cause of action under section 136.1 (1), and
- (d) the issuer has
 - (i) refused or failed to commence an action under section 136.1 (1) within 60 days after receipt of a written request from the applicant to do so, or
 - (ii) failed to prosecute diligently an action commenced by it under section 136.1 (1),

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

(2) On application by

- (a) the commission, or
- (b) any person who

- (i) was, at the time of a transaction referred to in section 136.1 (2), or
 - (ii) is, at the time of the application,
a security holder of the investor,
the Supreme Court may, if satisfied that
- (c) the applicant has reasonable grounds for believing that the investor has a cause of action under section 136.1 (2), and
- (d) the investor has
 - (i) refused or failed to commence an action under section 136.1 (2) within 60 days after receipt of a written request from the applicant to do so, or
 - (ii) failed to prosecute diligently an action commenced by it under section 136.1 (2),

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

- (3) If an action under section 136.1 (1) or (2) is commenced or continued by the directors of the issuer, the Supreme Court may order the issuer to pay all costs properly incurred by the directors in commencing or continuing the action, as the case may be, if it is satisfied that the action is in the best interests of the issuer and its security holders.
- (4) If an action under section 136.1 (1) or (2) is commenced or continued by a person who is a security holder of the issuer, the Supreme Court may order the issuer to pay all costs properly incurred by the security holder in commencing or continuing the action, as the case may be, if it is satisfied that
 - (a) the 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 issuer and its security holders.
- (5) If an action under section 136.1 (1) or (2) is commenced or continued by the commission, the Supreme Court must order the issuer to pay all costs properly incurred by the commission in commencing or continuing the action, as the case may be.
- (6) In determining whether an action or its continuance is in the best interests of an issuer and its security holders, the court must consider the relationship between the potential benefit to be derived from the action by the issuer and its security holders and the cost involved in the prosecution of the action.
- (7) Notice of every application under subsection (1) or (2) must be sent to the commission and the issuer, or the investor, as the case may be, and each of them may appear and be heard.

- (8) An order made under subsection (1) or (2) requiring or authorizing the commission to commence or continue an action must provide that the issuer or investor, as the case may be,
- (a) cooperate fully with the commission in the commencement or continuation of the action, and
 - (b) make available to the commission all records and other material or information relevant to the action and known to, or reasonably ascertainable by, the issuer or investor.

Rescission of contract

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

(2) If a registered dealer

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

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

- (3) In an action for rescission to which this section applies, the onus of proving compliance with section 51 or the regulations is on the registered dealer.
- (4) An action for rescission must not be commenced under this section after the end of 90 days from the date of sending the notice under subsection (1) or (2).

Rescission of purchase of security under prescribed disclosure document

138.1 A purchaser of a security may rescind the purchase if

- (a) the security is acquired under an exemption from section 34 or 61,
- (b) the exemption requires the delivery of a prescribed disclosure document, and
- (c) the purchaser delivers a notice to the issuer not later than midnight on the second business day after the purchaser signs the agreement to purchase the securities.

Rescission of purchase of mutual fund security

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

- (a) in the case of a lump sum purchase, within 48 hours after receipt of the confirmation, or
 - (b) in the case of a contractual plan, within 60 days after receipt of the confirmation of the initial payment.
- (2) Subject to subsection (4), the amount a purchaser may recover on exercise of a right to rescind under subsection (1) must not exceed the net asset value, at the time the right is exercised, of the securities purchased.
- (3) The right to rescind a purchase made under a contractual plan may be exercised only with respect to payments scheduled to be made within the time specified in subsection (1) for rescinding a purchase made under a contractual plan.
- (4) Every registered dealer from whom the purchase of a security of a mutual fund was made must reimburse the purchaser who has exercised the purchaser's right of rescission in accordance with this section for the amount of sales charges and fees relevant to the investment of the purchaser in the mutual fund in respect of the securities for which the written notice of rescission was given.

Limitation period

- 140** Unless otherwise provided in this Act or in the regulations, an action to enforce a civil remedy created by this Part or by the regulations must not be commenced
- (a) in the case of an action for rescission, more than 180 days after the date of the transaction that gave rise to the cause of action, or
 - (b) in the case of an action other than for rescission, more than the earlier of
 - (i) 180 days after the plaintiff first had knowledge of the facts giving rise to the cause of action, or
 - (ii) 3 years after the date of the transaction that gave rise to the cause of action.

Part 16.1 — Civil Liability for Secondary Market Disclosure

Division 1 — Interpretation and Application

Definitions

140.1 In this Part:

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

granted during the same period, valued as of the date that the compensation is awarded;

"core document" means

- (a) a prospectus, a take over bid circular, an issuer bid circular, a directors' circular, a notice of change or variation in respect of a take over bid circular, issuer bid circular or directors' circular, a rights offering circular, management's discussion and analysis, an annual information form, an information circular, annual financial statements and an interim financial report of the responsible issuer, where used in relation to
 - (i) a director of a responsible issuer who is not also an officer of the responsible issuer,
 - (ii) an influential person, other than an officer of the responsible issuer or an investment fund manager where the responsible issuer is an investment fund, or
 - (iii) a director or officer of an influential person who is not also an officer of the responsible issuer, other than an officer of an investment fund manager,
- (b) a prospectus, a take over bid circular, an issuer bid circular, a directors' circular, a notice of change or variation in respect of a take over bid circular, issuer bid circular or directors' circular, a rights offering circular, management's discussion and analysis, an annual information form, an information circular, annual financial statements, an interim financial report and disclosure required under section 85 (b) of the responsible issuer, where used in relation to
 - (i) a responsible issuer or an officer of the responsible issuer,
 - (ii) an investment fund manager, where the responsible issuer is an investment fund, or
 - (iii) an officer of an investment fund manager, where the responsible issuer is an investment fund, or
- (c) any other document that is within a class of documents prescribed for the purpose of this definition;

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

- (a) that is required to be filed with the commission, or
- (b) that is not required to be filed with the commission and
 - (i) that is filed with the commission,
 - (ii) that is filed or required to be filed with a government or an agency of a government under applicable securities or corporate law or with an exchange or quotation and trade reporting system under its bylaws, rules or regulations, or

- (iii) that is any other communication the content of which would reasonably be expected to affect the market price or value of a security of the responsible issuer;

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

"failure to make timely disclosure" means a failure to disclose a material change in the manner and at the time required under this Act;

"influential person" means, in respect of a responsible issuer,

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

"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, 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, 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 paragraph (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 financial performance of a responsible issuer as required under this Act;

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

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

"responsible issuer" means

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

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

Application

140.2 This Part does not apply to

- (a) the purchase of a security offered by a prospectus during the period of distribution,

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

Division 2 — Liability

Liability for secondary market disclosure

- 140.3** (1) Where a responsible issuer or a person with actual, implied or apparent authority to act on behalf of a responsible issuer releases a document that contains a misrepresentation, a person who acquires or disposes of the issuer's security during the period between the time when the document was released and the time when the misrepresentation contained in the document was publicly corrected has, without regard to whether the person relied on the misrepresentation, a right of action for damages against
- (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 where
 - (i) the misrepresentation is also contained in a report, statement or opinion made by the expert,
 - (ii) the document includes, summarizes or quotes from the report, statement or opinion of the expert, and
 - (iii) if the document was released by a person other than the expert, 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 where
 - (i) the misrepresentation is also contained in a report, statement or opinion made by the expert,
 - (ii) the person making the public oral statement includes, summarizes or quotes from the report, statement or opinion of the expert, and
 - (iii) if the public oral statement was made by a person other than the expert, the expert consented in writing to the use of the report, statement or opinion in the public oral statement.
- (3) If an influential person or a person with actual, implied or apparent authority to act or speak on behalf of the influential person releases a document or makes a public oral statement that relates to a responsible issuer and that contains a misrepresentation, a person who acquires or disposes of the 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 if a director or officer of the responsible issuer, or where the responsible issuer is an investment fund, the investment fund manager, authorized, permitted or acquiesced in the release of the document or the making of the public oral statement,
 - (b) the person who made the public oral statement,
 - (c) each director and officer of the responsible issuer who authorized, permitted or acquiesced in the release of the document or the making of the public oral statement,
 - (d) the influential person,

- (e) each director and officer of the influential person who authorized, permitted or acquiesced in the release of the document or the making of the public oral statement, and
- (f) each expert where
 - (i) the misrepresentation is also contained in a report, statement or opinion made by the expert,
 - (ii) the document or public oral statement includes, summarizes or quotes from the report, statement or opinion of the expert, and
 - (iii) if the document was released or the public oral statement was made by a person other than the expert, the expert consented in writing to the use of the report, statement or opinion in the document or public oral statement.
- (4) Where a responsible issuer fails to make a 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 this Act and the subsequent disclosure of the material change has, without regard to whether the person relied on the responsible issuer having complied with its disclosure requirements, a right of action for damages against
 - (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 (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

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

- (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 140.3 in relation to an expert.

(3) In an action under section 140.3 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 a matter set out in subsection (3) in an action under section 140.3 in relation to

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

(5) A person is not liable in an action under section 140.3 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 140.3 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 140.3 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 commission under section 85 (b),
 - (b) the responsible issuer had a reasonable basis for making the disclosure on a confidential basis,
 - (c) in the case where the information contained in the report filed on a confidential basis remains material, disclosure of the material change was made public promptly when the basis for confidentiality ceased to exist,
 - (d) the person or responsible issuer did not release a document or make a public oral statement that, due to the undisclosed material change, contained a misrepresentation, and
 - (e) where the material change became publicly known in a manner other than the manner required under this Act, the responsible issuer promptly disclosed the material change in the manner required under this Act.
- (9) A person is not liable in an action under section 140.3 for a misrepresentation in forward-looking information if the person proves that
- (a) the document or public oral statement containing the forward-looking information contained, proximate to that information,
 - (i) reasonable cautionary language identifying the forward-looking information as such, and identifying material factors that could cause actual results to differ materially from a conclusion, forecast or projection in the forward-looking information, and
 - (ii) a statement of the material factors or assumptions that were applied in drawing a conclusion or making a forecast or projection set out in the forward-looking information, and
 - (b) the person had a reasonable basis for drawing the conclusions or making the forecasts and projections set out in the forward-looking information.

- (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 purposes of subsection (10) (c), a document filed or otherwise generally disclosed is deemed to be readily available.
- (12) Subsection (9) does not relieve a person of liability respecting forward-looking information in a financial statement required to be filed or forward-looking information in a document released in connection with an initial public offering.
- (13) A person, other than an expert, is not liable in an action under section 140.3 with respect to any part of a document or public oral statement that includes, summarizes or quotes from a report, statement or opinion made by the expert in respect of which the responsible issuer obtained the written consent of the expert to the use of the report, statement or opinion, if the consent had not been withdrawn in writing before the document was released or the public oral statement was made, if the person proves that
- (a) the person did not know and had no reasonable grounds to believe that there had been a misrepresentation in the part of the document or public oral statement made on the authority of the expert, and
 - (b) the part of the document or oral public statement fairly represented the report, statement or opinion made by the expert.
- (14) An expert is not liable in an action under section 140.3 with respect to any part of a document or public oral statement that includes, summarizes or quotes from a report, statement or opinion made by the expert, if the expert proves

that the written consent previously provided was withdrawn in writing before the document was released or the public oral statement was made.

- (15) A person is not liable in an action under section 140.3 in respect of a misrepresentation in a document, other than a document required to be filed, if the person proves that, at the time of release of the document, the person did not know and had no reasonable grounds to believe that the document would be released.
- (16) A person is not liable in an action under section 140.3 for a misrepresentation in a document or a public oral statement, if the person proves that
- (a) the misrepresentation was also contained in a document filed by or on behalf of another person, other than the responsible issuer, with the commission or any other securities regulatory authority or an exchange and was not corrected in another document filed by or on behalf of that other person with the commission or that other securities regulatory authority or exchange before the release of the document or the public oral statement made by or on behalf of the responsible issuer,
 - (b) the document or public oral statement contained a reference identifying the document that was the source of the misrepresentation, and
 - (c) when the document was released or the public oral statement was made, the person did not know and had no reasonable grounds to believe that the document or public oral statement contained a misrepresentation.
- (17) A person, other than the responsible issuer, is not liable in an action under section 140.3 if the misrepresentation or failure to make timely disclosure was made without the knowledge or consent of the person and if, after the person became aware of the misrepresentation before it was corrected, or the failure to make timely disclosure before it was disclosed in the manner required under this Act,
- (a) the person promptly notified the board of directors of the responsible issuer or other persons acting in a similar capacity of the misrepresentation or the failure to make timely disclosure, and
 - (b) 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 2 business days after the notification under paragraph (a), the person, unless prohibited by law or by professional confidentiality rules, promptly and in writing notified the commission of the misrepresentation or failure to make timely disclosure.

Division 3 — Damages

Assessment of damages

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

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

for the 10 trading days following the public correction of the misrepresentation or the disclosure of the material change in the manner required under this Act, or

(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 was 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 10th trading day after the public correction of the misrepresentation or the disclosure of the material change in the manner required under this Act, assessed damages must equal the difference between the average price received upon the disposition of those securities (deducting any commissions paid in respect of the disposition) and the price paid for those securities (without including any commissions paid in respect thereof), calculated taking into account the results of hedging or other risk limitation transactions;
- (b) in respect of any of the securities of the responsible issuer that the person subsequently acquired after the 10th trading day after the public correction of the misrepresentation or the disclosure of the material change in the manner required under this Act, assessed damages must equal the lesser of
 - (i) an amount equal to the difference between the average price received upon the disposition of those securities (deducting any commissions paid in respect of the disposition) and the price paid for those securities (without including any commissions paid in respect thereof), calculated taking into account the result of hedging or other risk limitation transactions, and
 - (ii) an amount equal to the number of securities that the person disposed of, multiplied by the difference between the average price per security received upon the disposition of those securities (deducting any commissions paid in respect of the disposition determined on a per security basis) and,
 - (A) if the issuer's securities trade on a published market, the trading price of the issuer's securities on the principal market (as those terms are defined in the regulations) for the 10 trading days following the public correction of the misrepresentation or the disclosure of the material change in the manner required under this Act, or
 - (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 upon the disposition of those securities (deducting any commissions paid in respect of the disposition determined on a per security basis) and,

- (i) if the issuer's securities trade on a published market, the trading price of the issuer's securities on the principal market 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.
- (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

- 140.6** (1) In an action under section 140.3, the court must determine, in respect of each defendant found liable in the action, the defendant's responsibility for the damages assessed in favour of all plaintiffs in the action, and each such defendant must be liable, subject to the limits set out in section 140.7 (1), to the plaintiffs for only that portion of the aggregate amount of damages assessed in favour of the plaintiffs that corresponds to that defendant's responsibility for the damages.
- (2) Despite subsection (1), where, in an action under section 140.3 in respect of a misrepresentation or a failure to make timely disclosure, a court determines that a particular defendant, other than the responsible issuer, authorized, permitted or acquiesced in the making of the misrepresentation or the failure to make timely disclosure while knowing it to be a misrepresentation or a failure to make timely disclosure, the whole amount of the damages assessed in the action may be recovered from that defendant.
- (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

- 140.7** (1) Despite section 140.5, the damages payable by a person in an action under section 140.3 is the lesser of
- (a) the aggregate damages assessed against the person in the action, and

- (b) the liability limit for the person less the aggregate of all damages assessed after appeals, if any, against the person in all other actions brought under section 140.3, and under comparable legislation in other provinces in respect of that misrepresentation or failure to make timely disclosure, and less any amount paid in settlement of any such actions.
- (2) Subsection (1) does not apply to a person, other than the responsible issuer, if the plaintiff proves that the person authorized, permitted or acquiesced in the making of the misrepresentation or the failure to make timely disclosure while knowing that it was a misrepresentation or a failure to make timely disclosure, or influenced the making of the misrepresentation or the failure to make timely disclosure while knowing that it was a misrepresentation or a failure to make timely disclosure.

Division 4 — Procedural Matters

Leave to proceed

- 140.8** (1) No action may be commenced under section 140.3 without leave of the court granted upon motion with notice to each defendant.
- (2) The court may grant leave only where it is satisfied that
- (a) the action is being brought in good faith, and
 - (b) there is a reasonable possibility that the action will be resolved at trial in favour of the plaintiff.
- (3) Upon an application under this section, the plaintiff and each defendant must serve and file with the court one or more affidavits setting forth the material facts upon which each intends to rely.
- (4) If an affidavit is filed with the court, a person who made the affidavit may be examined on it in accordance with the Supreme Court Civil Rules.
- (5) A copy of the application for leave to proceed and any affidavits filed with the court must be sent to the commission when filed.

Notice

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

Restriction on discontinuation, etc., of action

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

Power of the commission

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

No derogation from other rights

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

Limitation period

140.94 No action may be commenced under section 140.3,

- (a) in the case of a misrepresentation in a document, later than the earlier of
 - (i) 3 years after the date on which the document containing the misrepresentation was first released, and
 - (ii) 6 months after the issuance of a news release disclosing that leave has been granted to commence an action under section 140.3 or under comparable legislation in the other provinces in respect of the same misrepresentation,
- (b) in the case of a misrepresentation in a public oral statement, later than the earlier of
 - (i) 3 years after the date on which the public oral statement containing the misrepresentation was made, and
 - (ii) 6 months after the issuance of a news release disclosing that leave has been granted to commence an action under section 140.3 or under comparable legislation in other provinces in respect of the same misrepresentation, and
- (c) in the case of a failure to make timely disclosure, later than the earlier of
 - (i) 3 years after the date on which the requisite disclosure was required to be made, and
 - (ii) 6 months after the issuance of a news release disclosing that leave has been granted to commence an action under section

140.3 or under comparable legislation in another province in respect of the same failure to make timely disclosure.

Part 17 — Investigations and Audits

Provision of information to executive director

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

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

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

- (a) [Repealed 2011-29-128.]
- (b) a registrant;
- (c) a person exempted from the requirement to be registered under section 34;
- (d) a reporting issuer;
- (e) a custodian of assets, shares or units of an investment fund;
- (f) a general partner of a person referred to in paragraph (b), (c), (d), (g), (j) or (k);
- (g) a person purporting to distribute securities in reliance on an exemption
 - (i) from section 61, or
 - (ii) in an order issued under section 76;
- (h) a transfer agent or registrar for securities of a reporting issuer;
- (i) a director or officer of a reporting issuer;
- (j) a promoter or control person of a reporting issuer;
- (k) a person engaged in investor relations activities on behalf of a reporting issuer or security holder of a reporting issuer;
- (l) the Canadian Investor Protection Fund;
- (m) a person providing record keeping services to a registrant;

- (n) a person recognized under section 24;
 - (o) a credit rating organization.
- (3) The executive director may require verification by affidavit of information provided or records or classes of records produced pursuant to an order under subsection (2).
- (4) The executive director may require that the information that is provided or the records that are produced under an order made under subsection (2) be delivered in an electronic form or in any other form that facilitates the electronic storage of the information or records.

Compliance review for SRO or exchange

- 141.1** (1) The executive director may appoint in writing a person to review the business and conduct of a self regulatory body, an exchange, a quotation and trade reporting system, a clearing agency or a credit rating organization for the purpose of determining if the person under review is
- (a) complying, or has complied, with
 - (i) this Act and the regulations,
 - (ii) any decision, or
 - (iii) the charter, as defined in section 1 of the *Financial Institutions Act*, of the person under review, or
 - (b) enforcing or administering its bylaws, rules, other regulatory instruments or policies.
- (2) On production of the appointment, a person conducting a review under this section may
- (a) enter any business premises of a person under review during business hours,
 - (b) examine the records referred to in section 26 (2) (b),
 - (c) examine property, assets or things of a person under review,
 - (d) make copies of the records referred to in section 26 (2) (b), and
 - (e) make inquiries of a person under review or its employees and agents concerning business or conduct that reasonably relates to the review.
- (3) In exercising the power to make copies under subsection (2) (d), the person conducting the review under this section may
- (a) carry out the copying at the business premises of the person under review, or
 - (b) on giving an appropriate receipt, remove records for the purpose of copying them at other premises specified in the receipt.
- (4) Records removed under subsection (3) (b) for copying must be promptly returned to the person from which they were received.

- (5) The executive director may require a person that is the subject of a review under this section to pay prescribed fees or prescribed charges for the costs of the review.

Compliance review of registrant or custodian

- 141.2** (1) The executive director may appoint in writing a person to review the business and conduct of a registrant or custodian of assets of an investment fund, for the purpose of determining if the person under review is complying, or has complied, with
- (a) this Act and the regulations,
 - (b) any decision, or
 - (c) the bylaws, rules, other regulatory instruments or policies of the self regulatory body, exchange, quotation and trade reporting system, or clearing agency, if any, of which or in which the person under review is a member or participant.
- (2) On production of the appointment, a person conducting a review under this section may
- (a) enter any business premises of a person under review during business hours,
 - (b) examine the records of a person under review that are required to be kept under this Act,
 - (c) examine property, assets or things of a person under review,
 - (d) make copies of the records referred to in paragraph (b), and
 - (e) make inquiries of a person under review or its employees and agents concerning business or conduct that reasonably relates to the review.
- (3) In exercising the power to make copies under subsection (2) (d), the person conducting the review under this section may
- (a) carry out the copying at the business premises of the person under review, or
 - (b) on giving an appropriate receipt, remove records for the purpose of copying them at other premises specified in the receipt.
- (4) Records removed under subsection (3) (b) for copying must be promptly returned to the person from which they were received.
- (5) The executive director may require a person that is the subject of a review under this section to pay prescribed fees or prescribed charges for the costs of the review.

Compliance review of reporting issuer

- 141.3** (1) The executive director may review the business and conduct of a reporting issuer for the purpose of determining if the reporting issuer is complying, or has complied, with

- (a) this Act and the regulations,
 - (b) any decision, or
 - (c) the bylaws, rules, other regulatory instruments or policies of the exchange or quotation and trade reporting system, if any, on which the person under review is listed or quoted.
- (2) If the executive director conducts a review under this section, the executive director may
 - (a) require a reporting issuer to provide information or produce records or classes of records, and
 - (b) make inquiries of the reporting issuer or its employees and agents concerning business or conduct that reasonably relates to the review.
- (3) The executive director may require a reporting issuer that is the subject of a review under this section to pay prescribed fees or prescribed charges for the costs of the review.

Compliance review of other market participants

- 141.4** (1) The executive director may appoint in writing a person to review the business and conduct of a person referred to in section 141 (2) (c), (f), (g), (h), (i), (j), (k), (l) or (m) for the purpose of determining if the person under review is complying, or has complied, with
- (a) this Act and the regulations, or
 - (b) any decision.
- (2) On production of the appointment, a person conducting a review under this section may
- (a) enter any business premises of a person under review during business hours,
 - (b) examine the records required to be kept under this Act,
 - (c) make copies of the records referred to in paragraph (b), and
 - (d) make inquiries of a person under review or its employees and agents concerning business or conduct that reasonably relates to the review.
- (3) In exercising the power to make copies under subsection (2) (c), the person conducting the review under this section may
- (a) carry out the copying at the business premises of the person under review, or
 - (b) on giving an appropriate receipt, remove records for the purpose of copying them at other premises specified in the receipt.
- (4) Records removed under subsection (3) (b) for copying must be promptly returned to the person from which they were received.

- (5) The executive director may require a person that is the subject of a review under this section to pay prescribed fees or prescribed charges for the costs of the review.

Warrant for private residence

- 141.5** (1) Despite section 141.1 (2) (a), 141.2 (2) (a) or 141.4 (2) (a), if the business premises is a residence, the person conducting the review may enter the residence only with the consent of the occupant or under the authority granted under subsection (2).
- (2) On application by the commission, the Supreme Court may make an order authorizing a person named in the order to enter into a residence at any reasonable time, for the purpose of carrying out a review under section 141.1, 141.2 or 141.4, if the Court is satisfied by information on oath that
- (a) there are reasonable and probable grounds to believe that records that reasonably relate to a review are present in the residence,
 - (b) entry into the residence is necessary for the purpose of verifying compliance with this Act, the regulations or a decision, and
 - (c) entry was refused by the occupant or there are reasonable grounds to believe that
 - (i) entry will be refused, or
 - (ii) consent to entry cannot be obtained from the occupant.
- (3) An application for an order under subsection (2) must be made in the prescribed manner and, unless the Supreme Court otherwise directs, may be
- (a) made without notice, and
 - (b) heard in the absence of the public.

Investigation order by commission

- 142** (1) The commission may, by order, appoint a person to make an investigation the commission considers expedient
- (a) for the administration of this Act,
 - (b) to assist in the administration of the securities or exchange contracts laws of another jurisdiction,
 - (c) in respect of matters relating to trading in securities or exchange contracts in British Columbia, or
 - (d) in respect of matters in British Columbia relating to trading in securities or exchange contracts in another jurisdiction.
- (2) In its order, the commission must specify the scope of an investigation to be carried out under subsection (1).

Power of investigator

- 143** (1) An investigator appointed under section 142 or 147 may, with respect to the person who is the subject of the investigation, investigate, inquire into, inspect and examine
- (a) the affairs of that person,
 - (b) any records, negotiations, transactions, investigations, investments, loans, borrowings and payments to, by, on behalf of, in relation to or connected with that person,
 - (c) any property, assets or things owned, acquired or disposed of in whole or in part by that person or by a person acting on behalf of or as agent for that person,
 - (d) the assets at any time held by, the liabilities, debts, undertakings and obligations at any time existing and the financial or other conditions at any time prevailing in respect of that person, and
 - (e) the relationship that may at any time exist or have existed between that person and any other person by reason of
 - (i) investments made,
 - (ii) commissions promised, secured or paid,
 - (iii) interests held or acquired,
 - (iv) the lending or borrowing of money, securities or other property,
 - (v) the transfer, negotiation or holding of securities or exchange contracts,
 - (vi) interlocking directorates,
 - (vii) common control,
 - (viii) undue influence or control, or
 - (ix) any other relationship.
- (2) On being satisfied that it is necessary and in the public interest, the commission may, by order, authorize an investigator appointed under section 142
- (a) to enter the business premises of
 - (i) a registrant specified in the order,
 - (ii) a self regulatory body recognized under section 24 (a), or
 - (iii) an exchange recognized under section 24 (b),during business hours for the purpose of carrying out an inspection, examination or analysis of records, property, assets or things that are used in the business of that person and that may reasonably relate to the order made under section 142,
 - (b) to require the production of the records, property, assets or things referred to in paragraph (a) and to inspect, examine or analyze them, and

- (c) on giving a receipt, to remove the records, property, assets or things inspected, examined or analyzed under paragraph (a) or (b) for the purpose of further inspection, examination or analysis.
- (3) On application by the commission and on being satisfied by information on oath that there are reasonable and probable grounds to believe that there may be anything that may reasonably relate to an order made under section 142,
 - (a) in a business premise, or
 - (b) in a building, receptacle or place, other than a room or place actually being used as a residence,the Supreme Court may make an order authorizing a person named in the order
 - (c) to enter into that business premise, building or receptacle at any reasonable time, for the purpose of carrying out an inspection, examination or analysis of records, property, assets or things that may reasonably relate to the order made under section 142,
 - (d) to require the production of the records, property, assets or things referred to in paragraph (c) and to inspect, examine or analyze them, and
 - (e) on giving a receipt, to remove the records, property, assets or things referred to in paragraph (c) for the purpose of further inspection, examination or analysis.
- (4) An application for an order under subsection (3) must be made in the prescribed manner and, unless the Supreme Court otherwise directs, may be
 - (a) made without notice, and
 - (b) heard in the absence of the public.
- (5) Inspection, examination or analysis under this section must be completed as soon as practical and the records, property, assets or things must be returned promptly to the person who produced them.
- (6) On an inspection, examination or analysis under this section, an investigator appointed under section 142 and authorized under subsection (2) of this section, a person named in an order under subsection (3) of this section or a person acting under the direction of either of them may
 - (a) mark the records, property, assets or things for identification, or
 - (b) use or alter the records, property, assets or things to the extent reasonably necessary to facilitate the inspection, examination or analysis,and does not incur any liability because of doing so.

- (7) [Repealed 2007-37-22.]

Investigator's power to compel evidence

- 144** (1) An investigator appointed under section 142 or 147 has the same power
- (a) to summon and enforce the attendance of witnesses,
 - (b) to compel witnesses to give evidence on oath or in any other manner, and
 - (c) to compel witnesses to produce records and things and classes of records and things
- as the Supreme Court has for the trial of civil actions.
- (2) The failure or refusal of a witness
- (a) to attend,
 - (b) to take an oath,
 - (c) to answer questions, or
 - (d) to produce the records and things or classes of records and things in the custody, possession or control of the witness
- makes the witness, on application to the Supreme Court, liable to be committed for contempt as if in breach of an order or judgment of the Supreme Court.
- (3) Section 34 of the *Evidence Act* does not exempt any financial institution, as defined in that section of that Act, or any officer or employee of the institution from the operation of this section.
- (4) A witness giving evidence at an investigation conducted under section 142 or 147 may be represented by counsel.

Appointment of expert

- 145** If an investigation is ordered under section 142, the commission may appoint an expert to examine the affairs, records and properties of the person being investigated.

Report to commission

- 146** A person appointed under section 142 or 145 must provide, at the request of the commission or a member of the commission involved in making the appointment, a complete report of the investigation, examination or analysis made, including any transcript of evidence and material in the person's possession relating to the investigation or examination.

Investigation order by minister

- 147** (1) The minister may, by order, appoint a person to make an investigation the minister considers expedient
- (a) for the administration of this Act,
 - (b) to assist in the administration of the securities or exchange contracts laws of another jurisdiction,

- (c) in respect of matters relating to trading in securities or exchange contracts in British Columbia, or
 - (d) in respect of matters in British Columbia relating to trading in securities or exchange contracts in another jurisdiction.
- (2) In the order, the minister must specify the scope of an investigation to be carried out under subsection (1).

Evidence not to be disclosed

- 148** (1) For the purpose of protecting the integrity of an investigation authorized under section 142, the commission may make an order, that applies for the duration of the investigation, prohibiting a person from disclosing to any person the existence of the investigation, the inquiries made by persons appointed under section 142, or the name of any witness examined or sought to be examined in the course of the investigation.
- (1.1) An order made under subsection (1) does not apply to the disclosure of information between a person and the person's lawyer.
- (2) An order made under subsection (1) applies despite any provision of the *Freedom of Information and Protection of Privacy Act* other than section 44 (1) (b), (2), (2.1) and (3) of that Act.
- (3) [Repealed 2010-4-61.]

Report to minister

- 149** (1) If an investigation has been made under section 142 or 147, then, if requested to do so by the minister, the commission or the investigator, as the case may be, must make a complete report to the minister including, if so requested, the evidence, findings, comments, recommendations and any material in the possession of the commission or investigator relating to the investigation.
- (2) The minister may publish all or part of a report under subsection (1) in any way the minister considers proper.

Costs payable by person investigated

- 150** The commission may require a person whose affairs are investigated under this Part to pay prescribed fees or charges for the costs of the investigation.

Order to freeze property

- 151** (1) The commission may make a direction under subsection (2) if
- (a) it proposes to order an investigation in respect of a person under section 142 or during or after an investigation in respect of a person under section 142 or 147,
 - (b) it or the executive director proposes to make or has made an order under section 161 in respect of a person,

- (c) criminal proceedings or proceedings in respect of a contravention of this Act or the regulations are about to be or have been instituted against a person and the commission considers the proceedings to be connected with or to arise out of a security or exchange contract or a matter relating to trading in securities or exchange contracts, or out of any business conducted by the person,
 - (d) a person fails or neglects to comply with financial conditions applicable to the person under this Act, or
 - (e) it proposes to apply or has applied to the Supreme Court for an order under section 157, or the Supreme Court has made an order under section 157.
- (2) In the circumstances described in subsection (1), the commission may direct, in writing,
 - (a) a person having on deposit, under control or for safekeeping any funds, securities, exchange contracts or other property of the person referred to in subsection (1), to hold those funds, securities, exchange contracts or other property, and
 - (b) a person referred to in subsection (1)
 - (i) to refrain from withdrawing any funds, securities, exchange contracts or other property from any person having them on deposit, under control or for safekeeping, or
 - (ii) to hold all funds, securities, exchange contracts or other property of clients or others in the person's possession or control in trust for an interim receiver, custodian, trustee, receiver manager, receiver or liquidator appointed under the *Bankruptcy Act* (Canada), the *Company Act*, the *Business Corporations Act*, the *Law and Equity Act*, the *Personal Property Security Act*, the *Winding-up Act* (Canada), the *Supreme Court Act* or this Act.
- (3) In the case of a savings institution, a direction of the commission under subsection (2) applies only to the offices, branches or agencies of the savings institution that are named in the direction.
- (4) A direction of the commission under subsection (2) does not apply to funds, securities, exchange contracts or other property in a clearing agency or to securities in process of transfer by a transfer agent unless the direction expressly so states.
- (5) In any of the circumstances referred to in subsection (1), the commission may, in writing, notify a land title office or gold commissioner that proceedings are being or are about to be taken that may affect land or mining claims belonging to the affected person.
- (6) The commission may, in writing, revoke or modify a notice given under subsection (5) and, if a notice is revoked or modified, the commission must

send a copy of the written revocation or modification to the land title office or gold commissioner, as the case may be.

- (7) A notice sent under subsection (5) or a copy of a written revocation or modification under subsection (6) must be registered or recorded against the lands or claims mentioned in it and has the same effect as the registration or recording of a certificate of pending litigation or a caveat.

Appointment of receiver, receiver manager or trustee

- 152** (1) If any of the circumstances referred to in section 151 (1) exist, the commission may apply to the Supreme Court for the appointment of a receiver, receiver manager or a trustee of all or any part of the property of the person.
- (2) On an application under subsection (1), the court may, by order, appoint a receiver, receiver manager or a trustee of all or any part of the property of the person, if the court is satisfied that the appointment is in the best interests of
- (a) that person's creditors,
 - (b) persons, any of whose property is in the possession or under the control of that person, or
 - (c) the security holders of or subscribers to that person.
- (3) The commission may make an application under this section without notice to any other person and, in that event, the court may make a temporary order under subsection (2) appointing a receiver, receiver manager or a trustee for a period not longer than 15 days.
- (4) A receiver, receiver manager or trustee appointed under this section
- (a) is the receiver, receiver manager or trustee of all or any part of the property belonging to the person or held by the person on behalf of or in trust for any other person, and
 - (b) may, if authorized by the court, wind up or manage the business and affairs of the person and may exercise powers necessary or incidental to the winding up or management.
- (5) On an application under this section, the court may admit as evidence
- (a) any hearsay evidence that the court considers reliable, or
 - (b) any oral or written statement, record or report the court considers relevant.

Examination of financial affairs

- 153** (1) Despite sections 31 and 32, if the commission considers it to be in the public interest, the commission may appoint in writing a person to
- (a) conduct an examination or inspection of the financial affairs and records of

- (i) a self regulatory body or an exchange, as the case may be, which has been recognized by the commission under section 24,
 - (ii) a clearing agency or a quotation and trade reporting system,
 - (iii) a registrant,
 - (iv) a reporting issuer,
 - (v) a custodian of assets of an investment fund,
 - (vi) a custodian of securities issued by an investment fund and held under a custodial agreement or other arrangement with a person engaged in the distribution of those securities, or
 - (vii) a credit rating organization, and
- (b) prepare financial or other statements and reports required by the commission.
- (2) A person appointed under subsection (1) may inquire into, examine or inspect all trades, securities, exchange contracts, cash and records of every description of the person whose financial affairs are being examined or inspected.
- (3) [Repealed 2007-37-26.]
- (4) The commission may require the person whose affairs are examined or inspected under this section to pay prescribed fees or charges for the examination or inspection.

Repealed

154 [Repealed 2002-32-30.]

Part 18 — Enforcement

Offences generally

155 (1) A person who does any of the following commits an offence:

- (a) fails to file, provide, deliver or send a record that
 - (i) is required to be filed, provided, delivered or sent under this Act, or
 - (ii) is required to be filed, provided, delivered or sent under this Act within the time required under this Act;
- (b) contravenes any of section 34, 49 to 57, 57.2, 57.3, 57.5, 57.6, 58, 59, 61, 85 (b), 87, 121, 122, 124, 125, 148 or 168.1 (1) of this Act;
- (c) fails to comply with a decision made under this Act;
- (d) contravenes any of the provisions of the regulations that are specified by regulation for the purpose of this paragraph;
- (e) contravenes any of the provisions of the commission rules that are specified by regulation for the purpose of this paragraph.

- (2) A person that commits an offence under this Act is liable to a fine of not more than \$3 million, or to imprisonment for not more than 3 years, or both.
- (3) [Repealed 1999-20-27.]
- (4) If a person, other than an individual, commits an offence under subsection (1), an employee, officer, director or agent of that person who authorizes, permits or acquiesces in the offence commits the same offence whether or not that person is convicted of the offence.
- (4.1) If an investment fund commits an offence under subsection (1), the investment fund manager commits the same offence whether or not the investment fund is convicted of the offence.
- (5) Despite subsection (2), if a person has contravened section 57, 57.2 or 57.3, the fine to which the person is liable is
 - (a) not less than any profit made by all persons because of the contravention of section 57, 57.2 or 57.3, and
 - (b) not more than the greater of
 - (i) \$3 million, and
 - (ii) an amount equal to triple any profit made by all persons because of the contravention of section 57, 57.2 or 57.3.
- (6) and (7) [Repealed 2007-37-29.]

Additional remedies

- 155.1** If the court finds that a person has committed an offence under section 155, the court may make an order that
- (a) the person compensate or make restitution to another person, or
 - (b) the person pay to the commission any amount obtained, or payment or loss avoided, directly or indirectly, as a result of the offence.

Enforcement of court orders

- 155.2** (1) A person to whom the court awards compensation or restitution under section 155.1 (a) may file the order with the Supreme Court.
- (2) The commission may file an order made under section 155.1 (a) or (b) with the Supreme Court.
- (3) An order filed with the Supreme Court under subsection (1) or (2) has the same force and effect, and all proceedings may be taken on it, as if it were a judgment of that court.

Execution of warrant issued in another province

- 156** (1) If a court of another province issues a warrant for the arrest of a person on a charge of contravening the provisions of an Act or regulations of that province that are similar to the provisions of this Act or the regulations, a British Columbia court within whose territorial jurisdiction that person is or is

suspected to be, may, on satisfactory proof of the handwriting of the person who issued the warrant, make an endorsement on the warrant in the required form.

(2) A warrant endorsed under subsection (1) is sufficient authority to

- (a) the person bringing the warrant,
- (b) all other persons to whom it was originally directed, and
- (c) all peace officers within the territorial jurisdiction of the British Columbia court endorsing the warrant,

to execute the warrant within that jurisdiction, to take the person arrested under the warrant out of, or anywhere in, British Columbia and to re-arrest that person anywhere in British Columbia.

(3) A peace officer

- (a) of British Columbia, or
- (b) of any other province who is passing through British Columbia,

having in the peace officer's custody a person arrested in another province under a warrant endorsed under subsection (1), is entitled to hold, take and re-arrest the person anywhere in British Columbia under the warrant without proof of the warrant or the endorsement.

Order for compliance

157 (1) In addition to any other powers it may have, if the commission considers that a person has contravened or is contravening a provision of this Act or of the regulations, or has failed to comply or is not complying with a decision, and the commission considers it in the public interest to do so, the commission may apply to the Supreme Court for one or more of the following:

- (a) an order that
 - (i) the person comply with or cease contravening the provision or decision, and
 - (ii) the directors and officers of the person cause the person to comply with or to cease contravening the provision or decision;
- (b) an order that the person pay to the commission any amount obtained, or payment or loss avoided, directly or indirectly, as a result of the failure to comply or the contravention;
- (c) an order setting aside a transaction relating to trading in securities or exchange contracts;
- (d) an order that a security or exchange contract be issued or cancelled;
- (e) an order that a security or exchange contract be purchased, disposed of or exchanged;
- (f) an order prohibiting the voting of a security or the exercise of a right attaching to a security or exchange contract;

- (g) an order appointing a director of the person that is the subject of the application;
 - (h) an order that the person repay a holder of a security or an exchange contract money paid by the holder for the security or exchange contract;
 - (i) an order that the person compensate or make restitution to any other person;
 - (j) an order that the person pay general or punitive damages to any other person;
 - (k) an order that the person correct a record;
 - (l) an order that the person rectify any contravention of this Act, or the regulations, to the extent that rectification is possible.
- (2) On an application under subsection (1), the Supreme Court may make the order applied for and any other order the court considers appropriate.
- (3) An order may be made under this section even though a penalty has already been imposed on that person in respect of the same non-compliance or contravention.

Section 5 of the *Offence Act*

158 Section 5 of the *Offence Act* does not apply to this Act or the regulations.

Limitation period

159 Proceedings under this Act, other than an action referred to in section 140, must not be commenced more than 6 years after the date of the events that give rise to the proceedings.

Costs of investigation

- 160** (1) A person convicted of an offence against this Act or the regulations is liable, after the review and filing of a certificate under this section, for the costs of the investigation of the offence.
- (2) The executive director may prepare a certificate setting out the costs of the investigation of an offence including the cost of the time spent by the executive director and the staff of the executive director and any fees paid to an expert, investigator or witness.
- (3) The executive director may apply to a master or registrar of a court to review the certificate under the Supreme Court Civil Rules as if the certificate were a bill of costs, and on the review the master or registrar must review the costs and may vary them if the master or registrar considers that they are unreasonable or not related to the investigation.
- (4) The tariff of costs in the Supreme Court Civil Rules does not apply to a certificate reviewed under this section.

- (5) On the review, the master or registrar must take into account any fees already paid by the defendant under sections 13 (3) and 150 in respect of the same investigation.
- (6) After review the certificate may be filed in the court in which the proceedings were heard and may be enforced against the person convicted as if it were an order of the court.

Enforcement orders

161 (1) If the commission or the executive director considers it to be in the public interest, the commission or the executive director, after a hearing, may order one or more of the following:

- (a) that a person comply with or cease contravening, and that the directors and officers of the person cause the person to comply with or cease contravening,
 - (i) a provision of this Act or the regulations,
 - (ii) a decision, whether or not the decision has been filed under section 163, or
 - (iii) a bylaw, rule, or other regulatory instrument or policy or a direction, decision, order or ruling made under a bylaw, rule or other regulatory instrument or policy of a self regulatory body, exchange or quotation and trade reporting system, as the case may be, that has been recognized by the commission under section 24;
- (b) that
 - (i) all persons,
 - (ii) the person or persons named in the order, or
 - (iii) one or more classes of personscease trading in, or be prohibited from purchasing, any securities or exchange contracts, a specified security or exchange contract or a specified class of securities or class of exchange contracts;
- (c) that any or all of the exemptions set out in this Act, the regulations or a decision do not apply to a person;
- (d) that a person
 - (i) resign any position that the person holds as a director or officer of an issuer or registrant,
 - (ii) is prohibited from becoming or acting as a director or officer of any issuer or registrant,
 - (iii) is prohibited from becoming or acting as a registrant or promoter,
 - (iv) is prohibited from acting in a management or consultative capacity in connection with activities in the securities market, or
 - (v) is prohibited from engaging in investor relations activities;

- (e) that a registrant, issuer or person engaged in investor relations activities
 - (i) is prohibited from disseminating to the public, or authorizing the dissemination to the public, of any information or record of any kind that is described in the order,
 - (ii) is required to disseminate to the public, by the method described in the order, any information or record relating to the affairs of the registrant or issuer that the commission or the executive director considers must be disseminated, or
 - (iii) is required to amend, in the manner specified in the order, any information or record of any kind described in the order before disseminating the information or record to the public or authorizing its dissemination to the public;
 - (f) that a registration or recognition be suspended, cancelled or restricted or that conditions, restrictions or requirements be imposed on a registration or recognition;
 - (g) if a person has not complied with this Act, the regulations or a decision of the commission or the executive director, that the person pay to the commission any amount obtained, or payment or loss avoided, directly or indirectly, as a result of the failure to comply or the contravention;
 - (h) that a person referred to in subsection (7) submit to a review of its practices and procedures;
 - (i) that a person referred to in subsection (7) make changes to its practices and procedures;
 - (j) that a person be reprimanded.
- (2) If the commission or the executive director considers that the length of time required to hold a hearing under subsection (1), other than under subsection (1) (e) (ii) or (iii), could be prejudicial to the public interest, the commission or the executive director may make a temporary order, without providing an opportunity to be heard, to have effect for not longer than 15 days after the date the temporary order is made.
- (3) If the commission or the executive director considers it necessary and in the public interest, the commission or the executive director may, without providing an opportunity to be heard, make an order extending a temporary order until a hearing is held and a decision is rendered.
- (4) The commission or the executive director, as the case may be, must send written notice of every order made under this section to any person that is directly affected by the order.
- (5) If notice of a temporary order is sent under subsection (4), the notice must be accompanied by a notice of hearing.

- (6) The commission or the executive director may, after providing an opportunity to be heard, make an order under subsection (1) in respect of a person if the person
- (a) has been convicted in Canada or elsewhere of an offence
 - (i) arising from a transaction, business or course of conduct related to securities or exchange contracts, or
 - (ii) under the laws of the jurisdiction respecting trading in securities or exchange contracts,
 - (b) has been found by a court in Canada or elsewhere to have contravened the laws of the jurisdiction respecting trading in securities or exchange contracts,
 - (c) is subject to an order made by a securities regulatory authority, a self regulatory body or an exchange, in Canada or elsewhere, imposing sanctions, conditions, restrictions or requirements on the person, or
 - (d) has agreed with a securities regulatory authority, a self regulatory body or an exchange, in Canada or elsewhere, to be subject to sanctions, conditions, restrictions or requirements.
- (7) An order under subsection (1) (h) or (i) may be made against
- (a) an exchange or a quotation and trade reporting system,
 - (b) a self regulatory body,
 - (c) a clearing agency,
 - (c.1) a credit rating organization,
 - (d) a registrant,
 - (e) a partner, director, officer, insider or control person of a registrant,
 - (f) a person providing record keeping services to a registrant,
 - (g) a person that manages a compensation, contingency or similar fund formed to compensate clients of dealers or advisers,
 - (h) an issuer,
 - (i) a custodian of assets or securities of an investment fund,
 - (j) a transfer agent or registrar for securities of an issuer,
 - (k) a director, officer, insider or control person of an issuer,
 - (l) a general partner of a person referred to in this subsection, or
 - (m) a person that the commission has ordered is exempt from a provision of this Act or the regulations.

Administrative penalty

162 If the commission, after a hearing,

- (a) determines that a person has contravened

- (i) a provision of this Act or of the regulations, or
 - (ii) a decision of the commission, the executive director or a designated organization, whether or not the decision has been filed under section 163, and
- (b) considers it to be in the public interest to make the order,
- the commission may order the person to pay the commission an administrative penalty of not more than \$1 million for each contravention.

Demand on third party

- 162.1** (1) If a person owes money to the commission under section 160, 162 or 174 and the commission receives information that a third party is, or is about to become, indebted to the person, the commission may demand of the third party that the money be paid to the commission on account of the person's liability to the commission.
- (2) The third party must pay the money demanded under subsection (1) to the commission as soon as practicable after the later of
- (a) the receipt of the demand, and
 - (b) the date the money is due to be paid to the person named in the demand.
- (3) Money paid to the commission under this section discharges the indebtedness of the third party to the person named in the demand to the extent of the amount of money paid to the commission.
- (4) If, after receipt of a demand under this section, a third party
- (a) fails to pay the money to the commission as required under subsection (2), or
 - (b) makes a payment to the person named in the demand,
- the third party is liable to the commission for the lesser of
- (c) the third party's indebtedness to the person plus the amount of the indebtedness paid by the third party to the person, and
 - (d) the amount owed to the commission by the person, including any interest and penalty.
- (5) If a demand is made on a third party under this section, the commission must, in the same manner and at the same time, notify the person of the demand and give the person the particulars of it.

Settlements

- 162.2** The commission may proceed to make an order under section 161 or 162, without holding a hearing, if the person that is the subject of the order has agreed to waive the right to a hearing.

Enforcement of commission orders

- 163** (1) If the commission has made a decision after a hearing, the commission may file the decision at any time in a Supreme Court registry by filing a copy of the decision certified by the chair of the commission.
- (1.1) Subject to subsection (1.3) and the regulations, if a prescribed self regulatory body has made a decision after a hearing, the self regulatory body may file the decision at any time in a Supreme Court registry by filing a certified copy of the decision.
- (1.2) If, after a hearing and review under section 28, the commission has made a decision in respect of a decision of a self regulatory body referred to in subsection (1.1) of this section, the self regulatory body may file the commission's decision at any time in a Supreme Court registry by filing a certified copy of the decision.
- (1.3) A self regulatory body referred to in subsection (1.1) must not file a decision under that subsection if
- (a) the 30-day period referred to in section 165 (3) has not expired, or
 - (b) the executive director or a person directly affected by the decision has applied to the commission under section 28 (1) for a hearing and review of the decision and the application has not been withdrawn.
- (2) On being filed under subsection (1), (1.1) or (1.2), the decision has the same force and effect, and all proceedings may be taken on it, as if it were a judgment of the Supreme Court.

Failure to comply with filing requirements

- 164** (1) For the reasons set out in subsection (2), the commission or the executive director, without providing an opportunity to be heard, may order that all persons, the person or persons named in the order or one or more specified persons or classes of persons cease trading in a specified security or exchange contract or in a class of security or class of exchange contract.
- (2) The commission or the executive director may make an order under subsection (1) if the issuer of the security, the exchange on which the exchange contract is traded or the person in respect of which the order is made
- (a) fails to file a record required to be filed under this Act, provided that the order is revoked as soon as practicable after the record referred to in the order, completed in accordance with this Act and the regulations, is filed, or
 - (b) files a record required to be filed under this Act which record has not been completed in accordance with this Act or the regulations, provided that the order is revoked as soon as practicable after the record referred to in the order, completed in accordance with this Act and the regulations, is filed.
- (3) The commission or the executive director, as the case may be, must send to any person directly affected by an order made under subsection (1)

- (a) written notice of the order, and
- (b) written notice of a revocation of the order, if any.

Part 19 — Reviews and Appeals

Review of decision of executive director

165 (1) [Repealed 2007-37-37.]

- (2) The commission may review any decision of the executive director and, if it intends to do so, must, within 30 days of the date of the decision, notify the executive director and any person directly affected by the executive director's decision of its intention.
- (3) Except if otherwise expressly provided, any person directly affected by a decision of the executive director may, by a notice in writing sent to the commission within 30 days after the date on which the executive director sent the notice of the decision to the person, request and be entitled to a hearing and a review of the decision of the executive director.
- (4) On a hearing and review, the commission may confirm or vary the decision under review or make another decision it considers proper.
- (5) The commission may grant a stay of the decision under review until disposition of the hearing and review.
- (6) The executive director is a party to a hearing and review under this section of any decision.
- (7) A designated organization is a party to a hearing and review under this section of its decision.
- (8) A self regulatory body, an exchange, a quotation and trade reporting system or a clearing agency is a party to a hearing and review under this section of its decision.

Review of decision of person acting under delegated authority

166 (1) Section 165 applies to a decision of a designated organization or a person acting under authority delegated to the person by the commission under section 7.

- (2) A person acting under authority delegated to the person by the commission under section 7 must not sit on a hearing and review by the commission of the person's decision.
- (3) The executive director may request and is entitled to a hearing and a review of a decision of a designated organization and section 165 (2) to (5) applies to that decision.

Appeal of commission decision

167 (1) A person directly affected by a decision of the commission, other than

- (a) a decision under section 48 or 76,
 - (b) a decision under section 165 in connection with the review of a decision of the executive director under section 48 or 76, or
 - (c) a decision by a person acting under authority delegated by the commission under section 7,
- may appeal to the Court of Appeal with leave of a justice of that court.
- (2) The commission or the Court of Appeal may grant a stay of the decision appealed from until the disposition of the appeal.
 - (3) If an appeal is taken under this section, the Court of Appeal may direct the commission to make a decision or to perform an act that the commission is authorized and empowered to do.
 - (4) Despite an order of the Court of Appeal in a particular matter, the commission may make a further decision on new material or if there is a significant change in the circumstances, and that decision is also subject to this section.
 - (5) The commission is a respondent to an appeal under this section.

Part 19.1 — Interjurisdictional Cooperation

Definitions

167.1 (1) In this Part:

"British Columbia authority" means a power or duty referred to in section 167.2 (1) (a) or (b);

"extraprovincial authority" means a power or duty of an extraprovincial securities commission under the extraprovincial securities laws under which the extraprovincial securities commission operates;

"extraprovincial securities commission" means a securities regulatory authority of a province other than British Columbia;

"extraprovincial securities laws" means the laws of a province other than British Columbia respecting trading in securities or exchange contracts.

- (2) A reference to an extraprovincial securities commission includes, unless otherwise provided,
 - (a) its delegate, and
 - (b) any person who in respect of that extraprovincial securities commission exercises a power or performs a duty that is substantially similar to a power or duty exercised or performed by the executive director under this Act.

Delegation and acceptance of authority

167.2 (1) If authorized to do so by regulation, the commission

- (a) may delegate a power or duty under this Act to an extraprovincial securities commission,
 - (b) may authorize an extraprovincial securities commission to exercise any power, or perform any duty, of the executive director under this Act, including, but not limited to, a power referred to in section 184 (2) (e), and
 - (c) may accept a delegation of, an authorization to exercise or perform, or any other form of transfer of, an extraprovincial authority.
- (2) Subsection (1) does not apply to a power or duty under Part 2 or 3, this Part or section 184 or 187.

Subdelegation

- 167.3** (1) Subject to a restriction or condition imposed by an extraprovincial securities commission with respect to a delegation, authorization or transfer referred to in section 167.2 (1) (c), the commission may delegate or subdelegate an extraprovincial authority in the manner and to the extent that the commission or the executive director may, under this Act, delegate or subdelegate, or authorize another person to exercise, a British Columbia authority.
- (2) Subject to a restriction or condition imposed by the commission with respect to a delegation or an authorization under section 167.2 (1) (a) or (b), nothing in this Part prevents the extraprovincial securities commission from delegating or sub-delegating the British Columbia authority in the manner and to the extent that the extraprovincial securities commission may delegate or subdelegate, or authorize another person to exercise, an authority under the extraprovincial securities laws under which it operates.

Revocation

- 167.4** (1) If an extraprovincial securities commission is exercising or intends to exercise a power provided to it under section 167.2 (1) (a) or (b) to make a decision, the commission may withdraw from the extraprovincial securities commission any matter that is before the extraprovincial securities commission for its decision.
- (2) The commission or the executive director, as the case may be, may decide a matter that the commission has withdrawn under subsection (1).

Adoption or incorporation of extraprovincial securities laws

- 167.5** (1) Subject to the regulations, the commission may, by order, adopt or incorporate by reference all or any provisions of any extraprovincial securities laws to be applied to
- (a) a person or class of persons whose primary jurisdiction is the extraprovincial jurisdiction, or
 - (b) a trade, intended trade, security or exchange contract involving a person or class of persons referred to in paragraph (a).

- (2) An order made under subsection (1) may adopt or incorporate the extraprovincial securities laws as they are amended from time to time, before or after the making of the order.

Exercise of discretion, interprovincial reliance

- 167.6** (1) Subject to the regulations, if the commission, the executive director or a designated organization is empowered under this Act to make a decision regarding a trade, intended trade, security, exchange contract or person, the commission, executive director or designated organization may make the decision on the basis that the commission, executive director or designated organization, as the case may be, considers that an extraprovincial securities commission has made the same or a substantially similar determination regarding the trade, intended trade, security, exchange contract or person.
- (2) Subject to the regulations, despite any provision of this Act, the commission, executive director or designated organization may make a decision referred to in subsection (1) without giving a person affected by the decision an opportunity to be heard.

Review of extraprovincial decision

- 167.7** If an extraprovincial commission delegates or subdelegates a British Columbia authority, section 165 (3) to (6) applies to a decision made under that authority as if the decision were a decision of the executive director under this Act.

Appeal of decision of an extraprovincial securities commission

- 167.8** (1) Except as provided in section 167.7, section 167 applies to a decision of an extraprovincial securities commission made under a British Columbia authority.
- (2) The extraprovincial securities commission is a respondent to an appeal under this section.

Appeal of determination of the commission

- 167.9** (1) In this section, "**delegated authority**" means any extraprovincial authority that the commission accepts under section 167.2 (1) (c).
- (2) A person directly affected by a determination of the commission under a delegated authority has the same rights under section 167 as if the determination were a decision under this Act.
- (3) Subsection (2) does not apply to a determination
- (a) refusing to exempt a person or class of persons from a requirement of extraprovincial securities laws, or
 - (b) made by a person to whom the commission has delegated or subdelegated the extraprovincial authority under which the determination is made.
- (4) A person that has a right to appeal a determination under this section may, subject to any direction of the Court of Appeal, exercise that right of appeal

whether or not that person may have a right to appeal that determination to a court in another jurisdiction.

- (5) If a determination referred to in subsection (2) is being appealed to a court in another jurisdiction, the Court of Appeal may stay an appeal under this section until the determination of the appeal in the other jurisdiction.

Part 20 — General Provisions

Admissibility in evidence of certified statements

168 A statement concerning

- (a) the registration or non-registration of a person under this Act,
- (b) the filing or non-filing of a record or material required or permitted to be filed under this Act,
- (c) any other matter or information arising out of the registration or non-registration of a person or the filing or non-filing of a record or material, whichever is the case, or
- (d) the date on which the facts on which any proceedings are to be based first came to the knowledge of the commission,

purporting to be certified by the commission, a member of it or the executive director is, without proof of the office or signature of the person certifying, admissible in evidence, so far as it is relevant, for all purposes in any action, proceeding or prosecution.

False or misleading statements prohibited

168.1 (1) A person must not

- (a) make a statement in evidence or submit or give information under this Act to the commission, the executive director or any person appointed under this Act that, in a material respect and at the time and in light of circumstances under which it is made, is false or misleading, or omit facts from the statement or information necessary to make that statement or information not false or misleading, or
- (b) make a statement or provide information in any record required to be filed, provided, delivered or sent under this Act that, in a material respect and at the time and in light of circumstances under which it is made, is false or misleading, or omit facts from the statement or information necessary to make that statement or information not false or misleading.

- (2) A person does not contravene subsection (1) if the person

- (a) did not know, and
- (b) in the exercise of reasonable diligence, could not have known

that the statement or information was false or misleading.

Contraventions attributable to employees, officers, directors and agents

- 168.2** (1) If a person, other than an individual, contravenes a provision of this Act or of the regulations, or fails to comply with a decision, an employee, officer, director or agent of the person who authorizes, permits or acquiesces in the contravention or non-compliance also contravenes the provision or fails to comply with the decision, as the case may be.
- (2) If an investment fund contravenes a provision of this Act or of the regulations, or fails to comply with a decision, the investment fund manager also contravenes the provision or fails to comply with the decision, as the case may be.

Filing and inspection of records

- 169** (1) Unless otherwise indicated, records required by this Act or by the regulations to be filed must be filed by depositing them with the commission.
- (2) Subject to the regulations, records required by this Act or by the regulations to be filed may be filed electronically in any form specified by the executive director.
- (3) Subject to subsection (4), all records filed under this Act must be made available for public inspection during normal business hours.
- (4) The commission may hold in confidence all or part of a record required to be filed under this Act if the commission considers that
- (a) a person whose information appears in the record would be unduly prejudiced by disclosure of the information, and
 - (b) the person's privacy interest outweighs the public's interest in having the information disclosed.

Information collection and sharing

- 169.1** (1) For the purposes of administering this Act or assisting in the administration of the securities laws of another jurisdiction, the commission may, directly or indirectly, collect information from, and use information collected from,
- (a) an exchange, quotation and trade reporting system or clearing agency,
 - (a.1) a credit rating organization,
 - (b) a self regulatory body,
 - (c) a registrant or issuer, or
 - (d) a law enforcement agency, government, governmental authority, securities regulatory authority or financial regulatory authority,
- in British Columbia or elsewhere.
- (2) For the purposes of administering this Act or assisting in the administration of the securities laws of another jurisdiction, the commission may disclose information to, or share information with,

- (a) a person recognized under section 24,
 - (b) a law enforcement agency, government, governmental authority, securities regulatory authority or financial regulatory authority, or
 - (c) a person with whom the commission has entered into an arrangement or agreement that relates to or includes the sharing of information, in British Columbia or elsewhere.
- (3) For the purposes of administering its bylaws, rules or other regulatory instruments or policies, assisting in the administration of the bylaws, rules or other regulatory instruments or policies of another exchange, quotation and trade reporting system, clearing agency or self regulatory body, or assisting in the administration of this Act or the securities laws of another jurisdiction, a person recognized under section 24 may, directly or indirectly, collect information from, and use information collected from,
 - (a) an exchange, quotation and trade reporting system or clearing agency,
 - (b) a self regulatory body,
 - (c) a registrant or issuer, or
 - (d) a law enforcement agency, government, governmental authority, securities regulatory authority or financial regulatory authority, in British Columbia or elsewhere.
- (4) For the purposes of administering its bylaws, rules or other regulatory instruments or policies, assisting in the administration of the bylaws, rules or other regulatory instruments or policies of another exchange, quotation and trade reporting system, clearing agency or self regulatory body, or assisting in the administration of this Act or the securities laws of another jurisdiction, a person recognized under section 24 may disclose information to, or share information with,
 - (a) an exchange, quotation and trade reporting system or clearing agency,
 - (b) a self regulatory body, or
 - (c) a law enforcement agency, government, governmental authority, securities regulatory authority or financial regulatory authority, in British Columbia or elsewhere.
- (5) For the purposes of this section, "**securities laws**" means laws of a jurisdiction respecting the trading of securities or exchange contracts.

Immunity of commission and others

- 170** (1) No action or other proceeding for damages lies and no application for judicial review under the *Judicial Review Procedure Act* may be instituted against the commission, a member of the commission, an officer, servant or agent of the

commission, a designated organization, a director, officer, servant or agent of a designated organization, an auditor oversight body, a director, officer, servant or agent of an auditor oversight body, an employee appointed to administer this Act or any person proceeding under

- (a) an order, a written or oral direction or the consent of the commission,
- (b) an order of the minister made under this Act, or
- (b.1) a delegation or authorization referred to in section 167.2 (1) (a) or (b),

for any act done in good faith in the

- (c) performance or intended performance of any duty, or
- (d) exercise or the intended exercise of any power,

under this Act, including a duty or power referred to in section 167.2 (1) (c), or for any neglect or default in the performance or exercise in good faith of that duty or power.

- (2) No person has any remedies and no proceedings lie or may be brought against any person for any act done or omission made as a result of compliance with this Act, the regulations or any decision rendered under this Act.

Discretion to revoke or vary decision

- 171** If the commission, the executive director or a designated organization considers that to do so would not be prejudicial to the public interest, the commission, executive director or designated organization, as the case may be, may make an order revoking in whole or in part or varying a decision the commission, the executive director or the designated organization, as the case may be, has made under this Act, another enactment or a former enactment, whether or not the decision has been filed under section 163.

Conditions on decisions

- 172** The commission or the executive director may impose any conditions, restrictions or requirements the commission or executive director considers necessary in respect of any decision made by the commission or executive director.

Authority of persons presiding at hearings

- 173** The person presiding at a hearing required or permitted under this Act
- (a) has the same power that an investigator appointed under section 142 or 147 has under section 144,
 - (b) must receive all relevant evidence submitted by a person to whom notice has been given and may receive relevant evidence submitted by any person, and
 - (c) is not bound by the rules of evidence.

Hearing fees and charges

174 The person presiding at a hearing required or permitted under this Act may order a person whose affairs are the subject of the hearing to pay prescribed fees or charges for the costs of or related to the hearing that are incurred by or on behalf of the commission or the executive director including, without limiting this,

- (a) costs of matters preliminary to the hearing,
- (b) costs for time spent by the commission or the executive director or the staff of either of them,
- (c) fees paid to an expert or witness, and
- (d) costs of legal services.

Extrajurisdictional evidence

175 (1) On an application made by the commission, if it appears to the Supreme Court that a person outside British Columbia may have evidence that may be relevant to

- (a) an investigation ordered by the commission under section 142, or
- (b) a hearing required or permitted under this Act,

the Supreme Court may issue a letter of request directed to the judicial authority of the jurisdiction in which the person to be examined is believed to be located.

(2) The letter of request referred to in subsection (1) must

- (a) be signed by the judge hearing the application or another judge of the Supreme Court, and
- (b) be provided to the commission for disposition under subsection (5).

(3) A letter of request issued under subsection (1) may request the judicial authority to which it is directed to

- (a) order the person referred to in the letter of request to be examined under oath in the manner, at the place and by the date referred to in the letter of request,
- (b) order, in the case of an examination for the purposes of a hearing referred to in subsection (1) (b), that a person who is a party to the hearing is entitled to
 - (i) be present or represented by counsel during the examination, and
 - (ii) examine the person referred to in paragraph (a),
- (c) appoint a person as the examiner to conduct the examination,
- (d) order the person to be examined to produce at the examination the records and things or classes of records and things specified in the letter of request,
- (e) direct that the evidence obtained by the examination be recorded and certified in the manner specified by the letter of request, and

- (f) take any further or other action that the Supreme Court considers appropriate.
- (4) The failure of the person entitled under subsection (3) (b) to be present or represented by counsel during the examination or to examine the person referred to in subsection (3) (a) does not prevent the commission from reading in the evidence at the hearing if the examination has otherwise been conducted in accordance with the order made under that subsection.
- (5) The commission must send the letter of request,
 - (a) if the examination is to be held in Canada, to the Deputy Attorney General for the Province of British Columbia, or
 - (b) if the examination is to be held outside Canada, to the Under Secretary of State for External Affairs of Canada.
- (6) The letter of request must have attached to it
 - (a) any interrogatories to be put to the person to be examined,
 - (b) if known, a list of the names, addresses and telephone numbers of
 - (i) the solicitors or agents of the commission,
 - (ii) the person to be examined, and
 - (iii) if applicable, the person entitled under subsection (3) (b) to be present or represented by counsel during the examination and to examine the person referred to in subsection (3) (a),
 - both in British Columbia and in the other jurisdiction, and
 - (c) a translation of the letter of request and any interrogatories into the appropriate official language of the jurisdiction where the examination is to take place, along with a certificate of the translator, bearing the full name and address of the translator, that the translation is a true and complete translation.
- (7) The commission must file with the Under Secretary of State for External Affairs of Canada or with the Deputy Attorney General for the Province of British Columbia, as the case may be, an undertaking to be responsible for all of the charges and expenses incurred by the Under Secretary or the Deputy Attorney General, as the case may be, in respect of the letter of request and to pay them on receiving notification of the amount.
- (8) This section does not limit any power the commission may have to obtain evidence outside British Columbia by any other means.
- (9) The making of an order by a judicial authority referred to in subsection (1) pursuant to a letter of request issued under that subsection does not determine whether evidence obtained under the order is admissible in evidence in a hearing before the commission.
- (10) Except if otherwise provided by this section, the practice and procedure in connection with appointing a person, conducting an examination and certifying and returning the appointment under this section, as far as possible, are the

same as those that govern similar matters in civil proceedings in the Supreme Court.

Extrajurisdictional request for evidence

176 (1) In this section, "**qualifying letter of request**" means a letter of request that

- (a) is issued by a court or tribunal of competent jurisdiction in a jurisdiction other than British Columbia,
- (b) is issued on behalf of the body that is, in the jurisdiction from which the letter is issued, empowered by the laws of that jurisdiction to administer or regulate the trading of securities or exchange contracts in that jurisdiction,
- (c) is issued in relation to
 - (i) a matter under investigation by the body referred to in paragraph (b), or
 - (ii) a matter that is the subject of a hearing before the body referred to in paragraph (b), and
- (d) requests that evidence in relation to a matter referred to in paragraph (c) be obtained from a person believed to be located in British Columbia.

(2) On receipt of a qualifying letter of request, the Supreme Court may make the order it considers appropriate and may, without limitation,

- (a) order that the person referred to in subsection (1) (d) be examined under oath in the manner, at the place and by the date requested by the foreign court or tribunal,
- (b) order, in the case of an examination for the purposes of a hearing referred to in subsection (1) (c) (ii), that a person who is a party to the hearing is entitled to
 - (i) be present or represented by counsel during the examination, and
 - (ii) examine the person referred to in paragraph (a),
- (c) appoint a person as the examiner to conduct the examination,
- (d) order that the person referred to in subsection (1) (d) produce at the examination any records and things or classes of records and things specified in the request,
- (e) direct that the evidence obtained by the examination be recorded and certified in the manner requested, and
- (f) make any further or other order that the Supreme Court considers appropriate.

(3) An order under subsection (2) may be enforced in the same manner as if the order were made in or in respect of a proceeding brought in the Supreme Court and, if the person referred to in subsection (1) (d) fails without lawful

excuse to comply with the order, the person is in contempt of the Supreme Court and is subject to the penalty that the Supreme Court imposes.

- (4) A person ordered to give evidence under subsection (2) has the same rights
- (a) to receive conduct money or any other money that the person would have had if the examination were held in relation to a proceeding in the Supreme Court, and
 - (b) to refuse to answer questions and produce records and things or classes of records and things that the person would have in a proceeding in the Supreme Court.
- (5) The person appointed by the Supreme Court as the examiner has the authority to administer an oath or affirmation to the person to be examined.
- (6) Except if otherwise provided by this section, the practice and procedure in connection with appointing a person, conducting an examination and certifying and returning the appointment under this section, as far as possible, are the same as those that govern similar matters in civil proceedings in the Supreme Court.

Committal for contempt

- 177** On application by the commission to the Supreme Court, a person is liable to be committed for contempt as if the person were in breach of an order or judgment of the Supreme Court, if the person's conduct in, or in relation to, a hearing required or permitted under this Act would be a contempt of the Supreme Court if done in, or in relation to, a hearing of that court.

Executive director may refund fee

178 If

- (a) an application for registration or renewal or reinstatement of registration is abandoned, or
- (b) a prospectus or similar record is withdrawn,

the executive director may, on application of an affected person, refund the fee or part of the fee paid.

Review of fees and charges

- 179** (1) If a person is ordered to pay prescribed fees or prescribed charges for the costs of, or related to,
- (a) an examination or investigation by a person appointed under section 13,
 - (b) [Repealed 2007-37-39.]
 - (c) a review, investigation, examination or inspection under Part 17, or
 - (d) a hearing required or permitted under this Act,

the person ordered to pay the fees or charges may apply within 30 days after the date of the order to a master or registrar of the Supreme Court to review the order.

- (2) On a review under this section, the master or registrar may vary the total amount of the fees and charges, within the limits, if any, set out in the regulations, after considering all of the circumstances, including
 - (a) the complexity, difficulty or novelty of the issues involved,
 - (b) the skill, specialized knowledge and responsibility required of the person or persons who conducted the examination, review, investigation, inspection or hearing referred to in subsection (1) (a) to (d),
 - (c) the total amount of the fees and charges set out in the order referred to in subsection (1), and
 - (d) the time reasonably expended.
- (3) On application for a review under this section of an order to pay prescribed fees or prescribed charges, the applicant must give notice of the application to the maker of the order that is to be reviewed.
- (4) The Supreme Court Civil Rules relating to taxation of costs apply to a review of the total amount of fees and charges made under this section.

Notices generally

180 (1) Unless otherwise provided by this Act, prescribed by the regulations, or ordered by the commission or executive director, a record that under this Act is sent or is required to be sent must be

- (a) personally delivered,
- (b) mailed, or
- (c) transmitted by electronic means

to the person that under this Act is the intended recipient of the record.

- (2) A record sent to a person by means referred to in subsection (1) (b) or (c) must be sent to that person
 - (a) at the latest address known for that person by the sender of the record,
 - (b) at the address for service in British Columbia filed by that person with the commission, or
 - (c) at the address of the person's solicitor if the person, or the solicitor, has advised that the solicitor is acting for the person.
- (3) A record is deemed to have been personally delivered to the commission if the record is deposited at the office of the commission during normal business hours.
- (4) A record is deemed to have been received by the person to whom it was sent

- (a) if mailed by ordinary mail, on the seventh day after mailing, or
 - (b) if mailed by registered mail, on the earlier of the seventh day after mailing or the day its receipt was acknowledged in writing by the person to whom it was sent or by a person accepting it on that person's behalf.
- (5) If, on 2 consecutive occasions, the records sent by an issuer to a security holder in accordance with subsection (2) are returned, the issuer is not required to send any further records to the security holder until the security holder informs the issuer in writing of the security holder's new address.

Reference to record includes amendment

- 181** Unless the context indicates otherwise, a reference to a specific record includes a reference to any amendment, variation or modification of it that is permitted or required under this Act.

Required records

- 182** (1) Subject to the further requirements of this Act or the regulations, if this Act or the regulations provide that a record is to be prepared, filed, provided or sent in a required form, the executive director may specify the form, content and other particulars relating to the record including specifying
- (a) the principles to be applied in its preparation, and
 - (b) accompanying records to be filed with it.
- (2) If this Act or the regulations provide that a record is to be prepared, filed, provided or sent in a required form, the executive director may, for different classes of a particular kind of record, specify a different form, content and other particulars relating to the record including specifying
- (a) the principles to be applied in its preparation, and
 - (b) accompanying records to be filed with it.

Lieutenant Governor in Council regulations

- 183** The Lieutenant Governor in Council may make regulations for the purpose of regulating trading in securities or exchange contracts, or regulating the securities industry or exchange contracts industry, including regulations as follows:
- (1) regulating the listing and trading of securities, and the trading of exchange contracts, on an exchange recognized by the commission under section 24 (b);
 - (2) regulating the trading of securities and exchange contracts other than on an exchange recognized by the commission under section 24 (b);
 - (3) governing conflict of interest for members of the commission, its employees, the executive director, employees in the office of the executive director and persons engaged by the commission or the

executive director to act as advisers or to perform duties under this Act;

- (4) requiring the commission to publish a periodical containing specified information filed with the commission;
 - (5) providing for the referral of a question of policy or interpretation to the commission for a hearing and determination;
 - (5.1) respecting applications and payments under section 15.1, including
 - (i) matters that must be considered by the commission before making a payment under section 15.1 (3), if any, including matters that affect the amount or timing of a payment,
 - (ii) respecting circumstances when no payment of compensation may be made to an applicant or a category of applicants, and
 - (iii) respecting the process for adjudication of an application for compensation;
 - (6) respecting registration under this Act including, but not limited to, prescribing
 - (i) categories for persons for purposes of registration and otherwise,
 - (ii) the duration of registration, and permitting the commission to determine the duration of registration and to determine different periods of duration of registration for different categories of registrants,
 - (iii) the manner of allocating persons to categories, and permitting the executive director to make these allocations,
 - (iv) conditions to be met by persons in the categories, including a condition relating to, or requiring membership in, one or more self regulatory organizations specified in the regulation,
 - (v) standards of conduct to be met by registrants and practices to be carried out by registrants,
 - (vi) requirements that are necessary or advisable for the prevention or regulation of conflicts of interest,
 - (vii) different or additional requirements for different classes of registrants within a registration category, and
 - (viii) circumstances in which
 - (A) a person or class of persons is not required to be registered under section 34, or
 - (B) a person or class of persons is deemed to be registered for the purposes of this Act,
- including the circumstance in which a person or class of persons is registered under the laws of another jurisdiction respecting trading in securities or exchange contracts;

- (7) authorizing the executive director to require an applicant for registration or a registrant to be bonded;
- (8) respecting the suspension, surrender or cancellation of a registration under this Act;
- (9) governing trust arrangements for the holding of securities and funds of a client by a registrant;
- (9.1) respecting any matter necessary or advisable to regulate credit rating organizations, including, but not limited to, rules that refer to a credit rating organization, or a class of credit rating organizations, designated by the commission;
- (10) [Repealed 2006-32-63.]
- (11) respecting the transfer and pledging of securities or the transfer of exchange contracts;
- (12) respecting any matter necessary or advisable to carry out effectively the intent and purpose of Part 9, including, but not limited to,
 - (i) prescribing disclosure requirements in respect of distributions, including the use of particular forms or of particular types of documents,
 - (ii) prescribing procedures for distributions of securities on an expedited basis including modifying or varying the application of this Act as may be necessary for the purpose of permitting expedited distributions to occur,
 - (iii) prescribing circumstances in which a record may be, or is deemed to be, incorporated by reference into any other record,
 - (iv) prescribing procedures respecting the issuance of receipts,
 - (iv.1) prescribing circumstances in which
 - (A) section 61 does not apply to a person or class of persons, or
 - (B) a receipt is deemed to have been issued for the purposes of this Act,including the circumstance in which a receipt has been issued for a preliminary prospectus or prospectus under the laws of another jurisdiction respecting trading in securities or exchange contracts;
 - (v) prescribing periods in which receipts, or classes of receipts, are effective and circumstances in which receipts, or a class of receipts, may be revoked,
 - (vi) prescribing circumstances in which a distribution of securities may occur on a continuous or delayed basis,
 - (vii) prescribing additional requirements that must be satisfied before a receipt may be issued or before a distribution may occur, and

- (viii) establishing, for the purposes of section 162, that a contravention of an undertaking given by an issuer constitutes a contravention of the regulation requiring the undertaking;
- (ix) [Repealed 2006-32-64.]
- (12.1) prescribing circumstances in which a person that purchases a security under a distribution may cancel the purchase, including
 - (i) prescribing the period in which the purchaser may cancel the purchase,
 - (ii) prescribing the principles for determining the amount of the refund if the purchaser cancels the purchase,
 - (iii) specifying the persons responsible for making and administering the payment of the refund and prescribing the period in which the refund must be paid, and
 - (iv) prescribing different circumstances, periods, principles or persons for different classes of securities, issuers or purchasers;
- (13) in relation to disclosure documents,
 - (i) respecting their use in connection with any distribution under an exemption from section 61,
 - (ii) governing their form and content including, without limiting this power, requiring content that has the effect of conferring on each purchaser under the distribution a contractual right of action, a contractual right of withdrawal from an agreement of purchase and sale, or both, and
 - (iii) regulating or prohibiting the use of a class of disclosure documents during a distribution;
- (14) prescribing the circumstances under which a class or classes of trades of securities, acquired under an exemption from section 61 granted under this Act, are deemed to be a distribution;
- (15) respecting the lapse date of a prospectus and the continuation of a distribution under a new prospectus including, without limiting this,
 - (i) prescribing the terms and conditions under which a distribution may be continued after the lapse date,
 - (ii) prescribing the circumstances in which cancellation rights are available to certain purchasers after the lapse date,
 - (iii) authorizing the executive director to order an extension of the prescribed period of time within which a distribution may be continued after the lapse date, and
 - (iv) prescribing the terms and conditions under which a new prospectus may be receipted;
- (16) prescribing terms that must be contained in an escrow or pooling agreement with respect to securities issued for consideration other than cash;

- (17) respecting any matter necessary or advisable to regulate exchange issuers;
- (17.1) respecting any matter necessary or advisable to regulate auditors of reporting issuers;
- (18) prescribing the information required or permitted to be distributed under section 78 (2);
- (19) respecting any matter necessary or advisable to carry out effectively the intent and purpose of Part 12, including, but not limited to,
 - (i) requiring any person or class of persons to comply with Part 12 or any provision of it,
 - (ii) prescribing how a security or class of securities of a reporting issuer, or a related financial instrument or class of related financial instruments of a security of a reporting issuer, must be reported in an insider report filed under section 87,
 - (iii) prescribing standards for determining when a material fact or material change has been generally disclosed;
 - (iv) prescribing procedures for the integration of the disclosure required under Part 9 with that required under Part 12 including modifying or varying the application of this Act as may be necessary for the purpose of permitting integrated disclosure, and
 - (v) prescribing different classes of requirements for different classes of persons;
- (19.1) respecting the governance of an issuer or a class of issuers, including, but not limited to,
 - (i) prescribing the powers, duties and functions of a person responsible for governance, and
 - (ii) specifying transactions, investments or arrangements of an issuer that a person responsible for governance must review or approve;
- (20) respecting any matter necessary or advisable to carry out effectively the intent and purpose of section 136, including, but not limited to,
 - (i) exempting any class of persons, trades, securities or exchange contracts from liability under section 136,
 - (ii) prescribing circumstances and conditions for the purpose of an exemption under subparagraph (i),
 - (iii) prescribing standards for determining when a material fact or material change has been generally disclosed, and
 - (iv) prescribing a method for determining the amount under section 136 (3) (b);
- (21) in relation to any matter necessary or advisable for regulating offers to acquire securities, acquisitions or redemptions of securities,

business combinations or related party transactions, including, but not limited to,

- (i) prescribing requirements or prohibitions relating to the conduct or management of the affairs of an issuer and its directors and officers before, during or after an offer to acquire, acquisition, redemption, business combination or related party transaction,
 - (ii) prohibiting a person from purchasing or trading a security before, during or after an offer to acquire, acquisition, redemption, business combination or related party transaction,
 - (iii) prescribing records required to be filed or delivered to a person, and
 - (iv) prescribing different requirements or prohibitions for different classes of persons;
- (22) respecting any matter necessary or advisable to carry out effectively the intent and purpose of Part 14, including, but not limited to,
- (i) prescribing requirements for the solicitation and voting of proxies, and
 - (ii) prescribing requirements relating to communication with registered holders or beneficial owners of securities and relating to other persons, including depositories and registrants, that hold securities on behalf of beneficial owners;
- (23) respecting any matter necessary or advisable to regulate mutual funds or non-redeemable investment funds and the distribution and trading of the securities of the funds, including, but not limited to,
- (i) prescribing disclosure requirements in respect of funds, including the use of particular forms or of particular types of documents,
 - (ii) prescribing permitted investment policy and investment practices for the funds and prohibiting or restricting certain types of investments or investment practices for the funds,
 - (iii) prescribing requirements governing the custodianship of assets for funds,
 - (iv) prescribing matters requiring approval of the security holders of the funds, the commission or the executive director, and defining for specified types of matters what constitutes approval by the security holders,
 - (v) respecting fees, commissions or compensation payable by a fund, a purchaser of securities of a fund or a holder of securities of a fund relating to
 - (A) sales charges, commissions or sales incentives, and
 - (B) investment advice or administrative or management services provided to the fund,
 - (vi) prescribing procedures relating to

- (A) sales and redemptions of fund securities, and
- (B) payments for sales and redemptions, and
- (vii) designating a mutual fund or a class of mutual funds as a private mutual fund or class of private mutual funds, as the case may be;
- (24) prescribing the principles for determining the market value, market price or closing price of a security or exchange contract, or the net asset value of a security, and authorizing the commission to make that determination;
- (24.1) in relation to any matter necessary or advisable for carrying out effectively the intent and purpose of Part 16.1, including, but not limited to,
 - (i) exempting any class of persons, trades or securities from liability under Part 16.1, and
 - (ii) prescribing or limiting the type of damages payable under Part 16.1;
- (25) prescribing standards in relation to the suitability for certain investors of certain securities and exchange contracts;
- (26) prescribing the practice and procedure for investigations, examinations or inspections under Part 17;
- (27) establishing fees and charges, or limits on fees and charges, for the purpose of Part 17 or of section 13 or 174;
- (27.1) prescribing the principles for determining a person's profit under section 155 (5), including prescribing different principles for different contraventions referred to in that section;
- (28) prescribing classes of decisions made under the regulations or the commission rules that are to be subject to an appeal under Part 19;
- (28.1) for the purpose of section 163 (1.1), prescribing
 - (i) classes of decisions that must not be filed under that subsection, and
 - (ii) conditions, restrictions or requirements in relation to decisions that are permitted to be filed under that subsection;
- (29) prescribing the rules and procedure to be followed in any hearing required or permitted by this Act;
- (30) providing for the collection by a designated organization of fees payable to the commission or executive director and for their remission to the commission or executive director;
- (31) determining what constitutes approval of a person's records for which approval is required under this Act;
- (32) incorporating by reference and adopting laws, codes, standards, bylaws, rules and other regulatory instruments as they are amended

from time to time before or after the making of the regulations;

- (33) governing the providing or distribution of information or records by a person, including the commission and the executive director, or class of persons to any person, including the commission and the executive director, the payment of fees for providing that information or records and including authorizing the executive director to regulate and control the use of advertising and sales literature for securities or exchange contracts;
- (34) respecting the keeping and providing of accounts and records, and the preparation, filing and providing or distributing of financial statements, annual reports and other records by any person or class of persons;
- (35) prescribing the fees payable in connection with the administration of this Act, the regulations or the commission rules or the activities carried out by the commission or the executive director under another enactment or a policy statement;
- (35.1) imposing restrictions or requirements on a registrant, or suspending a registrant, if the registrant does not pay a fee required under this Act;
- (36) recognizing or designating an exchange or a quotation and trade reporting system for any purpose under this Act;
- (36.1) designating one or more persons to perform a function relating to market integration, market transparency or the clearing and settlement of trades;
- (37) authorizing the commission or the executive director to vary the provisions of the regulations, excluding regulations made under paragraph (3), as they apply to any person, trade, security or exchange contract or class of persons, trades, securities or exchange contracts;
- (38) providing that any or all of the exemptions in this Act, the regulations or the commission rules do not apply to a class of persons, trades, securities or exchange contracts, and prescribing circumstances in which or conditions on which the exemption is or the exemptions are disapplied under this paragraph, including, with respect to an exemption in a regulation or a commission rule, a condition that the executive director's consent be obtained before the exemption applies;
- (39) authorizing the commission or the executive director to order that any or all of the exemptions in this Act or the regulations do not apply to a particular person, trade, security or exchange contract or class of persons, trades, securities or exchange contracts;
- (40) exempting a class of persons, trades, securities or exchange contracts from one or more of the provisions of Parts 4, 5, 7, 8, 9, 11, 12, 13,

14 and 15, of the regulations relating to any of those Parts or of the commission rules relating to any of those Parts;

- (41) prescribing circumstances and conditions for the purpose of an exemption under paragraph (40) or otherwise, including circumstances and conditions
 - (i) relating to the laws of another jurisdiction or relating to an exemption from those laws granted by a securities regulatory authority in that jurisdiction, or
 - (ii) that refer to a person or a class of persons designated by the commission;
- (41.1) prescribing circumstances in which a person or a class of persons is prohibited from trading or purchasing securities or exchange contracts, or a particular security or exchange contract, including the circumstance in which a securities regulatory authority in a jurisdiction other than British Columbia has ordered that
 - (i) a person is prohibited from trading or purchasing securities or exchange contracts, or a particular security or exchange contract, or
 - (ii) trades or purchases of a particular security or exchange contract cease;
- (42) authorizing the commission or the executive director to order that any or all of the provisions of this Act or the regulations, excluding regulations made under paragraph (3), do not apply to a particular person, trade, security or exchange contract or class of persons, trades, securities or exchange contracts;
- (43) respecting those matters for which this Act provides that regulations or commission rules be made or requirements prescribed;
- (44) respecting the filing of records under this Act;
- (44.1) requiring a person to certify the content of a record required under this Act, including requiring different certificates for different classes of persons;
- (45) respecting
 - (i) the amendment or modification of a record and the effect of that amendment or modification,
 - (ii) the use of codes and symbols for the identification of persons on records,
 - (iii) the use of records, prepared in accordance with similar laws of another jurisdiction, to satisfy the requirements of this Act, the regulations or the commission rules, and
 - (iv) [Repealed 2006-32-63.]
 - (v) the filing of records by electronic means;

- (45.1) authorizing the commission or executive director to disclose personal information in a manner, or to a person, government or governmental authority, or a class of any of those, in British Columbia or elsewhere, not otherwise contemplated by sections 169 (3) and 169.1;
- (45.2) authorizing the commission or executive director to collect personal information indirectly from a person, or a class of persons, in British Columbia or elsewhere, not otherwise contemplated by section 169.1;
- (45.3) authorizing the commission or executive director to enter into an arrangement or agreement with a person, or a class of persons, in British Columbia or elsewhere, regarding or involving the collection, sharing or disclosure of personal information, not otherwise contemplated by section 169.1;
- (45.4) prescribing classes of documents or records to which the commission or executive director must not have access when exercising a power under Part 4 or 17 in relation to an auditor oversight body;
- (46) defining words and expressions used but not defined in this Act, including, without limitation, words and expressions used in Part 16 or 16.1;
- (47) to meet any difficulties that may arise by reason of the repeal of the *Securities Act*, R.S.B.C. 1979, c. 380, and the substitution of this Act;
- (48) for the purpose of section 155 (1) (d), specifying provisions of the regulations, the contravention of any of which constitutes an offence under section 155 (1) (d);
- (49) for the purpose of section 155 (1) (e), specifying provisions of the commission rules, the contravention of any of which constitutes an offence under section 155 (1) (e);
- (50) governing the procedures that are to be followed by the commission in making and repealing commission rules including, but not limited to, prescribing requirements with which the commission must comply before depositing a commission rule with the registrar of regulations;
- (51) prescribing a regulation made by the Lieutenant Governor in Council under this Act to be a commission rule;
- (52) amending or repealing any commission rule.

Commission rules

- 184** (1) Subject to subsections (4) to (7), the commission may make rules for the purpose of regulating trading in securities or exchange contracts, or regulating the securities industry or exchange contracts industry.
- (2) Without limiting subsection (1) but subject to subsections (4) to (7), the commission may make rules as follows:
- (a) respecting those matters for which this Act provides that commission rules be made;

- (b) respecting those matters for which this Act provides that requirements be prescribed, except those matters referred to in sections 143 (4) and 183 (28.1), (50) and (51) and subsections (5) to (8) of this section;
- (b.1) respecting those matters for which regulations may be made under sections 26, 34, 51 (3), 56 (2), 63 (2), 65 (2), 81, 85, 87 (2), 98, 99, 118 (3), 130.1, and 169 (2);
- (c) with respect to the same matters with respect to which the Lieutenant Governor in Council may make regulations under section 183 (1), (2), (6) to (25), (27), (27.1), (30), (31), (33), (34), (35), (35.1), (36), (36.1), (38), (40), (41), (41.1), (44), (44.1), (45) and (46) and to the same extent;
- (d) incorporating by reference and adopting laws, codes, standards, bylaws, rules and other regulatory instruments as they are amended from time to time before or after the making of the rules;
- (e) authorizing one or more organizations, on specified terms and conditions, to exercise any of the executive director's powers under Part 5 or to perform any of the executive director's duties under Part 5, including, but not limited to, the power
 - (i) to grant, renew or reinstate registration, to refuse to grant, renew or reinstate registration or to attach terms, conditions or restrictions to any grant, renewal or reinstatement of registration,
 - (ii) to suspend or cancel registration,
 - (iii) to satisfy itself of any matter that is a condition precedent to the exercise of a power it is authorized under this paragraph to exercise,
 - (iv) to require an applicant or registrant to submit to examination under oath, and
 - (v) to require delivery of a bond;
- (f) establishing criteria to be applied and procedures to be followed by a designated organization in making a direction, decision, order or ruling it is authorized under paragraph (e) to make;
- (g) requiring
 - (i) applications for registration or for renewal or reinstatement of registration to be made to a designated organization, or
 - (ii) a record or a notice that is required to be filed or submitted under this Act to be delivered to a designated organization;
- (h) requiring a designated organization
 - (i) to provide the executive director with reports and information respecting any matter that is before the designated organization

- or any decision made by it under an authority given to it under paragraph (e),
- (ii) to notify applicants, registrants or other persons of registrations granted or decisions made by the designated organization under an authority given to it under paragraph (e), and
 - (iii) to keep records, including records of decisions made by the designated organization under an authority given to it under paragraph (e) and to permit public inspection of classes of records specified by the commission;
 - (i) empowering a designated organization to delegate any power or duty conferred on it under paragraph (e) to a committee of the designated organization, and deeming the decisions of the committee to be the decisions of the designated organization;
 - (j) respecting the custody and use of the executive director's seal of office and of any device for affixing a facsimile of the executive director's signature.
- (3) If a designated organization is exercising or intends to exercise a power provided to it under subsection (2) (e) to make a decision, the commission may withdraw from the designated organization any matter that is before the designated organization for its decision, and the executive director may decide the matter.
- (4) Unless the power to do so is expressly provided to the commission under this section, the commission must not make rules under this section with respect to the matters with respect to which the Lieutenant Governor in Council may make regulations under section 183 (3) to (5), (26), (28), (28.1), (29), (32), (37), (39), (42), (43) and (47) to (52).
- (5) The commission must, before making or repealing a rule under this section, obtain the consent of the minister in accordance with the regulations and comply with any other prescribed procedures and requirements.
- (6) Without limiting subsection (5), the commission must not deposit with the registrar of regulations any rule made by the commission under this section unless the commission has complied with the prescribed procedures and requirements.
- (7) Despite subsections (5) and (6), the commission may deposit with the registrar of regulations a rule made by the commission under this section without complying with the prescribed procedures and requirements if
- (a) the commission considers it necessary and in the public interest to deposit the rule without delay, and
 - (b) the minister consents
 - (i) to the making of the rule, and
 - (ii) to the rule being deposited without the commission's compliance with the prescribed procedures and requirements.

- (8) Unless earlier revoked, a rule made under subsection (7) is revoked on the day that is the prescribed number of days following the day on which the rule is deposited with the registrar of regulations.
- (9) The Lieutenant Governor in Council may, by regulation, designate a regulation made under section 183, whether made before or after the coming into force of this section, to be a rule of the commission and the designated regulation is deemed for all purposes to be a rule of the commission made under this section.
- (10) The Lieutenant Governor in Council may, by regulation, repeal or amend any of the rules made by the commission under this section.

Regulations Act applies to commission rules

185 The *Regulations Act* applies to a commission rule.

Regulation prevails over commission rule

186 If a commission rule conflicts with a regulation made by the Lieutenant Governor in Council under section 183, the regulation prevails.

Administrative powers respecting commission rules

187 (1) The commission may

- (a) vary the provisions of the commission rules as they apply to any person, trade, security or exchange contract or class of persons, trades, securities or exchange contracts,
 - (b) order that any or all of the exemptions in the commission rules do not apply to a person, trade, security or exchange contract or class of persons, trades, securities or exchange contracts,
 - (c) order that any or all of the provisions of the commission rules do not apply to a person, trade, security or exchange contract or class of persons, trades, securities or exchange contracts, and
 - (d) authorize the executive director to exercise a power given to the commission under paragraphs (a) to (c).
- (2) For the purposes of subsection (1) (a) and (c), the commission may include conditions, restrictions or requirements in the order, including conditions, restrictions or requirements relating to
- (a) the laws of another jurisdiction respecting trading in securities or exchange contracts, or
 - (b) an exemption from a requirement under the laws referred to in paragraph (a) granted by a securities regulatory authority in that jurisdiction.

Policy statements

- 188** (1) The commission may issue policy statements, and other instruments the commission considers advisable, to facilitate the exercise of its powers and the performance of its duties under this Act and to interpret this Act, the regulations and the commission rules.
- (2) A policy statement or other instrument referred to in subsection (1) is not a commission rule or a regulation within the meaning of the *Regulations Act*.

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