

CHAPTER 418 OF THE REVISED STATUTES, 1989
amended 1990, c. 15, ss. 19-80; 1996, c. 32; 2001, c. 18;
2001, c. 41, ss. 24-27; 2002, c. 39

An Act to Revise the Securities Act

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(The table of contents is not part of the statute)

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Short title

1 This Act may be cited as the *Securities Act*. R.S., c. 418, s. 1.

Purpose of Act

1A (1) The purpose of this Act is to provide invest-ors with protection from practices and activities that tend to undermine investor confidence in the fairness and efficiency of capital markets and, where it would not be inconsistent with an adequate level of investor protection, to foster the process of capital formation.

(2) In pursuing the purpose of this Act, the Commission shall have regard to such factors as may be viewed by the Commission as appropriate in the circum-stances, including any principles enunciated in the regula-tions. 1996, c. 32, s. 1.

Interpretation

2 (1) In this Act,

(a) "adviser" means a person or company engaging in or holding himself or itself out as engaging in the business of advising others as to the investing in or the buying or selling of secur-ities;

(b) "associate", where used to indicate a relationship with any person or company means

(i) any issuer of which such person or company beneficially owns, directly or indirectly, voting securities carrying more than ten per cent of the voting rights attached to all voting securities of the issuer for the time being outstanding,

(ii) any partner of that person or company,

(iii) any trust or estate in which such person or company has a substantial beneficial interest or as to which such person or company serves as trustee or in a similar capacity,

(iv) any relative of that person who has the same home as that person,

(v) any member of the opposite sex who has the same home as that person and to whom he or she is married or with whom he or she is living in a conjugal relationship outside marriage, or

(vi) any relative of the spouse of such person or the person mentioned in subclause (v) where the relative has the same home as such person;

(ba) "bank" means a bank to which the *Bank Act* (Canada) applies except to the extent that the regulations provide otherwise;

(c) "board of directors" where used in relation to an issuer that is not a company includes persons acting in a capacity similar to that of a board of directors of a company;

(d) "Chairman" means the Chairman of the Commission;

(e) "Commission" means the Nova Scotia Securities Commission established pursuant to this Act;

(f) "company" means any corporation, incorporated association, incorporated syndicate or other incorporated organization;

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

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

(ha) "co-operative" means an association within the meaning of the *Co-operative Associations Act*;

(i) "dealer" means a person or company who trades in securities in the capacity of principal or agent;

(j) "decision" means a direction, decision, order, ruling or other requirement made under a power or right conferred by this Act or the regulations;

(ja) "Director" means the Director of Securities or any deputy director;

(k) "director", where used in relation to a person, includes a person acting in a capacity similar to that of a director of a company;

(l) "distribution", where used in relation to trading in securities, means

(i) a trade in securities of an issuer that have not been previously issued,

(ii) a trade by or on behalf of an issuer in previously issued securities of that issuer that have been redeemed or purchased by or donated to that issuer,

(iii) a trade in previously issued securities of an issuer from the holdings of any person, company or combination of persons or companies holding a sufficient number of any securities of that issuer to affect materially the control of that issuer, but any holding of any person, company or combination of persons or companies holding more than twenty per cent of the outstanding voting securities of an issuer shall, in the absence of evidence to the contrary, be deemed to affect materially the control of that issuer,

(iv) a trade by or on behalf of an underwriter in securities which were acquired by that underwriter, acting as underwriter, prior to the coming into force of this Act if those securities continue on the day this Act comes into force to be owned by or for that underwriter, so acting,

(v) a first trade made in securities by a vendor who acquired them pursuant to a trade that was in contravention of Section 58 or 67,

(vi) a trade specified to be a distribution by the regulations,

(vii) a trade specified in a decision of the Commission to be a distribution,

and includes a distribution referred to in subsections (5), (6), (7), (7A), (7B), and (10) of Section 77, and also includes any transaction or series of transactions involving a purchase and sale or a repurchase and resale in the course of or incidental to a distribution;

(m) "distribution company" means a person or company distributing securities under a distribution contract;

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

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

(p) "government incentive security" means a security of a type designated by the Commission for the purposes of clause (ac) of subsection (1) of Section 41 or clause (w) of subsection (1) of Section 77 and designed to enable the holder thereof to receive a grant or other monetary benefit, such as a right to a credit against taxes or a deduction in the determination of income for tax purposes, pursuant to provisions of a statute or a regulation of the Province or Canada or another province of Canada;

(pa) "group insurance" has the same meaning as in the *Insurance Act*;

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

(r) "insider" or "insider of a reporting issuer" means

(i) every director or senior officer of a reporting issuer,

(ii) every director or senior officer of a company that is itself an insider or subsidiary of a reporting issuer,

(iii) any person or company who beneficially owns, directly or indirectly, voting securities of a reporting issuer or who exercises control or direction over voting securities of a reporting issuer or a combination of both carrying more than ten per cent of the voting rights attached to all voting securities of the reporting issuer for the time being outstanding other than voting securities held by the person or company as underwriter in the course of a distribution,

(iv) a reporting issuer where it has purchased, redeemed or otherwise acquired any of its securities, for so long as it holds any of its securities, and

(v) any person or company who would be an insider within the meaning of subclause (i), (ii), (iii) or (iv) if an issuer were a reporting issuer where, pursuant to the regulations, the issuer is required to comply with all or any of the provisions of this Act which apply to reporting issuers;

(ra) "insurance company" means a company defined as such in the regulations for the purpose of this Act;

(s) "issuer" means a person or company who has outstanding, issues or proposes to issue, a security;

(sa) "loan company" means a company defined as such in the regulations for the purpose of this Act;

(t) "management company" means a person or company who provides investment advice, under a management contract;

(u) "management contract" means a contract under which a mutual fund is provided with investment advice, along or together with administrative or management services, for valuable consideration;

(v) "material change" where used in relation to the affairs of an issuer means a change in the business, operations or capital of the issuer that would reasonably be expected to have a significant effect on the market price or value of any of the securities of the issuer and includes a decision to implement such a change made by the board of directors of the issuer or by senior management of the issuer who believe that confirmation of the decision by the board of directors is probable;

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

(x) "Minister" means the Attorney General or such other member of the Executive Council charged with the administration of this Act;

(y) "misrepresentation" means

(i) an untrue statement of material fact, or

(ii) an omission to state a material fact that is required to be stated or that is necessary to make a statement not misleading in the light of the circumstances in which it was made;

(z) "mutual fund" includes an issuer of securities that entitle the holder to receive on demand, or within a specified period after demand, an amount computed by reference to the value of a proportionate interest in the whole or in a part of the net assets, including a separate fund or trust account, of the issuer of the securities;

(aa) "mutual fund in the Province" means a mutual fund that is a reporting issuer or that is organized under the laws of the Province, but does not include a private mutual fund;

(ab) "offering memorandum" means a document purporting to set forth information concerning the business and affairs of an issuer that has been prepared primarily for delivery to and review by prospective purchasers so as to assist those purchasers to make an investment decision in respect of securities being sold in a distribution to which Section 58 or 67 would apply but for the availability of one or more of the exemptions contained in Section 77 or 78 or in a decision of the Commission or in the regulations but does not include

(i) a document setting out current information about an issuer for the benefit of prospective purchasers familiar with the issuer through prior

investment or business contracts except where an exemption under clause (d), (p), (w) or (ag) of subsection (1) of Section 77 is being relied upon,

(ii) an annual report, interim report, information circular, take-over bid circular, issuer bid circular, prospectus or other such document, the content of which is prescribed by statute or regulation unless the Commission has specified otherwise, or

(iii) a document or type of document specified by the Commission;

(ac) "officer" means the chairman, any vice-chairman of the board of directors, the president, any vice-president, the secretary, the assistant secretary, the treasurer, the assistant treasurer and the general manager of a company, and any other person designated an officer of a company by by-law or similar authority, or any individual acting in a similar capacity on behalf of an issuer or registrant;

(aca) "patronage dividend" means an amount that a co-operative allocates among and credits or pays to members of the co-operative based on the business done by each member with or through the co-operative, at a rate in relation to the quantity, quality or value of the goods or services acquired, marketed, handled, dealt in or sold by the co-operative on behalf of the member, allocated in the form of cash, shares or other forms of equity including member loans and debentures of the co-operative;

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

(ae) "portfolio manager" means an adviser who manages the investment portfolio of a client through discretionary authority granted by the client;

(af) "portfolio securities", where used in relation to a mutual fund, means securities held or proposed to be purchased by the mutual fund;

(afa) "prescribed day" means the day prescribed by the Commission for the purpose of clauses (ag) and (aha);

(afb) "prescribed securities" means securities prescribed by the Commission from time to time for the purpose of clauses (ag) and (aha);

(afc) "price check-off" means the allocation by a co-operative of a percentage or portion of the price paid to members of the co-operative for goods or services sold through or to the co-operative, to the purchase of shares or other forms of member equity including member loans and debentures of the co-operative;

(ag) "private company" means a company, other than a mutual fund,

(i) all of the issued and outstanding prescribed securities of which are subject to restrictions on transfer contained in a general or special Act, letters patent, supplementary letters patent, memorandum of association, articles of incorporation, articles of association, by-laws or one or more agreements to which the company and all owners of issued and outstanding prescribed securities are parties,

(ii) that is not a reporting issuer,

(iii) the issued and outstanding prescribed securities of which are owned by not more than fifty holders exclusive of persons who are in its employment or the employment of an affiliate and exclusive of persons who, having been formerly in its employment or the employment of an affiliate, were, while in that employment, and have continued after termination of that employment to own at least one prescribed security, two or more persons or companies who are the joint registered owners of one or more prescribed securities being counted as one holder, and

(iv) that has not distributed any of its prescribed securities or securities convertible into or exchangeable for prescribed securities to the public after a prescribed day;

(aga) "private issuer" means a private company or a private partnership;

(ah) "private mutual fund" means a mutual fund that is operated as an investment club, where

(i) its shares or units are held by not more than fifty persons and its indebtedness has never been offered to the public,

(ii) it does not pay or give any remuneration for investment advice or in respect of trades in securities, except normal brokerage fees, and

(iii) all of its members are required to make contributions in proportion to the shares or units each holds for the purpose of financing its operations;

(aha) "private partnership" means a partnership,

(i) all of the issued and outstanding prescribed securities of which are subject to restrictions on transfer contained in the partnership agreement, by-laws or the instrument containing the terms and conditions attaching to the prescribed securities,

(ii) that is not a reporting issuer,

(iii) the issued and outstanding prescribed securities of which are owned by not more than fifty holders exclusive of persons who are actively engaged in the business of the partnership and exclusive of persons who, having been formerly actively engaged in the business of the partnership, were, while so actively engaged, and have continued after ceasing to be actively engaged to own at least one prescribed security, two or more persons or companies who are the joint registered owners of one or more prescribed securities being counted as one holder, and

(iv) that has not distributed any of its prescribed securities or securities convertible into or exchangeable for prescribed securities to the public after a prescribed day;

(ahb) "producer co-operative" means a co-operative that collectively markets or sells the goods of its producer members;

(ahc) "producer members" means the members of a co-operative who produce, harvest or manufacture goods for the co-operative;

(ai) "promoter" means

(i) a person or company who, acting alone or in conjunction with one or more other persons, companies or a combination thereof, directly or indirectly, takes the initiative in founding, organizing or substantially reorganizing the business of an issuer, or

(ii) a person or company who, in connection with the founding, organizing or substantial reorganizing of the business of an issuer, directly or indirectly, receives in consideration of services or property, or both services and property, ten per cent or more of any class of securities of the issuer or ten per cent or more of the proceeds from the sale of any class of securities of a particular issue, but a person or company who receives such securities or proceeds either solely as underwriting commissions or solely in consideration of property shall not be a promoter within the meaning of this definition if such person or company does not otherwise take part in founding, organizing, or substantially reorganizing the business;

(aj) "proxy" means a completed and executed form of proxy by means of which a security holder has appointed a person or company as his nominee to attend and act for him and on his behalf at a meeting of security holders;

(ak) "register" means register under this Act;

(al) "registrant" means a person or company registered or required to be registered;

(am) *repealed 1990, c. 15, s. 19.*

(an) "regulations" means the regulations made pursuant to this Act and, except in Sections 150, 150A and 150B, includes the rules;

(ao) "reporting issuer" means an issuer

(i) that has filed a prospectus and obtained a receipt therefor pursuant to this Act or that has filed a securities exchange take-over bid circular pursuant to this Act or has filed a disclosure document with the Director pursuant to the regulations where the regulations provided that this Act shall be construed as if the disclosure document were a securities exchange take-over bid circular,

(ii) that is the company whose existence continues following the exchange of securities of a company by or for the account of such company with another company or the holders of a securities of that other company in connection with

(A) a statutory amalgamation or arrangement, or

(B) a statutory procedure under which one company takes title to the assets of the other company that in turn loses its existence by operation of law, or under which the existing companies merge into a new company,

where one of the amalgamating or merged companies or the continuing company has been a reporting issuer for at least twelve months,

(iii) that has filed a statement of material facts with the Director pursuant to clause (b) of subsection (1) of Section 78 which was accepted for filing by the Director,

(iv) that is declared to be a reporting issuer in an order which the Commission may make pursuant to subsection (2) of Section 80,

(v) that is deemed to be a reporting issuer pursuant to subsection (4) of Section 80, or

(vi) that is a reporting issuer as defined or specified in the regulations;

(aoa) "rules" means, unless the context otherwise requires, the rules of the Commission made pursuant to this Act;

(ap) "salesman" means an individual who is employed by a dealer for the purpose of making trades in securities on behalf of the dealer;

(aq) "security" includes

(i) any document, instrument or writing commonly known as a security,

(ii) any document constituting evidence of title to or interest in the capital, assets, property, profits, earnings or royalties of any person or company,

(iii) any document constituting evidence of an interest in an association of legatees or heirs,

(iv) any document constituting evidence of an option, subscription or other interest in or to a security,

(v) any bond, debenture, note or other evidence of indebtedness, share, stock, unit, unit certificate, participation certificate, certificate of share or interest, pre-organization certificate or subscription other than a contract of insurance issued by an insurance company or an evidence of deposit issued by a bank, a loan company or a trust company,

(vi) any agreement under which the interest of the purchaser is valued for purposes of conversion or surrender by reference to the value of a proportionate interest in a specified portfolio of assets, except a contract issued by an insurance company which provides for payment at maturity of an amount not less than three quarters of the premiums paid by the purchaser for a benefit payable at maturity,

(vii) any agreement providing that money received will be repaid or treated as a subscription to shares, stock, units or interests at the option of the recipient or of any person or company,

(viii) any certificate of share or interest in a trust, estate or association,

(ix) any profit-sharing agreement or certificate,

(x) any certificate of interest in an oil, natural gas or mining lease, claim or royalty voting trust certificate,

(xi) any oil or natural gas royalties or leases or fractional or other interest therein,

(xii) any collateral trust certificate,

(xiii) any income or annuity contract not issued by an insurance company,

(xiv) any investment contract,

(xv) any document constituting evidence of an interest in a scholarship or educational plan or trust, and

(xvi) any commodity futures contract or any commodity futures option,

whether any of the foregoing relate to an issuer or proposed issuer;

(aqa) "self-regulatory organization" means a person or company that has been recognized by the Commission pursuant to Section 30;

(ar) "senior officer" means

(i) the chairman or a vice-chairman of the board of directors, the president, a vice-president, the secretary, the treasurer or the general manager of a company or any other individual who performs functions for an issuer similar to those normally performed by an individual occupying any such office, and

(ii) each of the five highest paid employees of an issuer, including any individual referred to in subclause (i);

(as) "trade" or "trading" includes

(i) any sale or disposition of a security for valuable consideration, whether the terms of payment be on margin, instalment or otherwise, but does not include a purchase of a security or, except as provided in subclause (iv), a transfer, pledge or encumbrance of securities for the purpose of giving collateral for a *bona fide* debt,

(ii) any participation as a floor trader in any transaction in a security upon the floor of any stock exchange,

(iii) any receipt by a registrant of an order to buy or sell a security,

(iv) any transfer, pledge or encumbrance of securities of an issuer from the holdings of any person or company or combination of persons or companies described in subclause (iii) of clause (1) for the purpose of giving collateral for a *bona fide* debt, and

(v) any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of any of the foregoing;

(asa) "trust company" means a company defined as such in the regulations for the purpose of this Act;

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

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

(ii) a mutual fund that, under the laws of the jurisdiction to which it is subject, accepts its shares or units for surrender and resells them,

(iii) a company that, under the laws of the jurisdiction to which it is subject, purchases its shares and resells them, or

(iv) a bank with respect to the securities described in clause (a) of subsection (2) of Section 41 and to such banking transactions as are designated by the regulations;

(ata) "variable insurance contract" means a contract of life insurance within the meaning of the *Insurance Act* under which the interest of the purchaser is valued for purposes of conversion or surrender by reference to the value of a proportionate interest in a specified portfolio of assets;

(au) "voting security" means any security other than a debt security of an issuer carrying a voting right either under all circumstances or under some circumstances that have occurred and are continuing.

(2) An issuer shall be deemed to be an affiliate of another issuer if one of them is the subsidiary of the other or if both are subsidiaries of the same issuer or if each of them is controlled by the same person or company.

(3) An issuer shall be deemed to be controlled by a person or company or by two or more persons or companies if

(a) voting securities of the issuer carrying more than fifty per cent of the votes for the election of directors are held, otherwise than by way of security only, by or for the benefit of the person or company or by or for the benefit of the persons or companies; and

(b) the votes carried by such securities are entitled, if exercised, to elect a majority of the board of directors of the issuer.

(4) An issuer shall be deemed to be a subsidiary of another issuer if

(a) it is controlled by,

(i) that other, or

(ii) that other and one or more issuers each of which is controlled by that other, or

(iii) two or more issuers each of which is controlled by that other; or

(b) it is a subsidiary of an issuer that is that other's subsidiary.

(5) A person shall be deemed to own beneficially securities beneficially owned by an issuer controlled by him or by an affiliate of such issuer.

(6) A company shall be deemed to own beneficially securities beneficially owned by its affiliates.

(7) Every management company and every distribution company of a mutual fund that is a reporting issuer and every insider of such management company or distribution company shall be deemed to be an insider of the mutual fund.

(8) Where an issuer becomes an insider of a reporting issuer, every director or senior officer of the issuer shall be deemed to have been an insider of the reporting issuer for the previous six months or for such shorter period that he was a director or senior officer of the issuer.

(9) Where a reporting issuer becomes an insider of any other reporting issuer, every director or senior officer of the second-mentioned reporting issuer shall be deemed to have been an insider of the first-mentioned reporting issuer for the previous six months or for such shorter period that he was a director or senior officer of the second-mentioned reporting issuer.

(10) Where a person or company would be in a special relationship with a reporting issuer for the purpose of any Section of this Act if any issuer were a reporting issuer and, pursuant to the regulations, the issuer is required to comply with all or any of the provisions of this Act which apply to reporting issuers then, for the purpose of this Section, the person or company shall be deemed to be in a special relationship with the issuer and the issuer shall be deemed to be a reporting issuer. R.S., c. 418, s. 2; 1990, c. 15, s. 19; 1996, c. 32, s. 2; 2001, c. 41, s. 24; 2002, c. 39, s. 1.

Experts

3 (1) The Commission may appoint one or more experts to assist the Commission in such a manner as the Commission may consider expedient.

(2) The Commission may submit any agreement, prospectus, financial statement, report or other document to one or more experts appointed pursuant to subsection (1) for examination, and the Commission has the like power to summon and enforce the attendance of witnesses before the expert and to compel them to produce documents, records and things as is vested in the Commission, and subsections (2) and (3) of Section 27 apply *mutatis mutandis*.

(3) An expert appointed pursuant to subsection (1) shall be paid such amounts for services and expenses as are determined by the Governor in Council. 1990, c. 15, s. 20.

Nova Scotia Securities Commission

4 (1) The Governor in Council may appoint not more than six persons who shall constitute the Nova Scotia Securities Commission.

(2) The Governor in Council shall designate one of the members of the Commission to be the Chairman, and another member to be the Vice-chairman.

(3) The members before entering office shall take an oath or affirmation as prescribed by the regulations. R.S., c. 418, s. 4.

Duties, powers and functions of Commission

5 (1) The Commission shall perform such duties as are vested in or imposed upon the Commission by this Act or the regulations, the Governor in Council or the Minister.

(2) The Commission is authorized and empowered to hold hearings relating to the exercise of its powers and the discharge of its duties and functions assigned to it by this Act or the regulations, the Governor in Council or the Minister.

(3) For the purpose of any hearing pursuant to this Act, the Commission and each member of the Commission shall have and may exercise all the powers, privileges and immunities of a commissioner appointed pursuant to the *Public Inquiries Act*. R.S., c. 418, s. 5.

Review of decision of or reference by Chairman, member or Director

6 (1) Any person or company directly affected by a decision of the Chairman, another member of the Commission or the Director may, by notice in writing sent by registered mail to the Commission within thirty days after the date of the mailing of a notice of a decision, request and be entitled to a hearing and review of that decision by the Commission.

(2) On a hearing and review, the Commission may by order, confirm, quash or vary the decision under review or make any other decision that the Commission considers proper.

(3) Where the Chairman, another member of the Commission or the Director is in doubt as to what disposition should be made of any matter that that person is empowered by this Act or the regulations to decide, the Chairman, another member of the Commission or the Director, as the case may be, may refer the matter to the Commission, and the Commission shall hold a hearing and make any decision that it considers proper.

(4) At any hearing and review of a decision of the Chairman or other member of the Commission pursuant to subsection (1), the Chairman or other member whose decision is the subject of the review shall not sit on the hearing and review by the Commission. R.S., c. 418, s. 6; 1990, c. 15, ss. 21, 80.

Chief executive officer and duties and remuneration of members

7 (1) The Chairman is the chief executive officer of the Commission.

(2) The members of the Commission shall devote as much time as may be necessary for the due performance of their duties as members of the Commission.

(3) The members of the Commission shall be paid such remuneration and expenses as the Governor in Council determines. R.S., c. 418, s. 7; 1990, c. 15, s. 22.

Unfinished matter upon resignation or retirement

8 (1) Where a member of the Commission resigns office, retires or is appointed to another position in the public service, the member shall, during such period of time as the Governor in Council designates, in respect of any application, appeal, proceedings, matter or thing heard before the member or commenced by the member as a member of the Commission, have and exercise the jurisdiction of a member including the power to complete any unfinished matter and give a decision therein as if the member had not so resigned, retired or been appointed.

(2) A designation by the Governor in Council pursuant to subsection (1) may be made before or after such resignation, retirement or appointment, and may be retro-active in effect. R.S., c. 418, s. 8.

Conflict or disability

9 (1) If any member of the Commission is so interested in any matter before the Commission that the member or the Chairman considers that the member cannot act, or if any member shall be unable to act by reason of illness, absence or other cause, the Governor in Council, on the request of the Chairman, may appoint

some disinterested person to act as a member in his stead in and about such matter or until such disability comes to an end.

(2) Any person so appointed may complete any unfinished business in which he has taken part, even if the member that is replaced has returned or becomes able to act.

(3) No determination of the Commission made in good faith shall be set aside solely by reason of the interest in the matter of a member of the Commission that was not known to any member of the Commission at the time the determination was made.

(4) In determining whether a member of the Commission is interested in a matter for the purpose of this Act, the rules or policies made pursuant to Section 19 respecting conflict of interest apply. R.S., c. 418, s. 9; 1990, c. 15, s. 23.

Acting member

10 The Governor in Council on the recommendation of the Chairman of the Commission may, from time to time, appoint as an acting member of the Commission a person who, in the opinion of the Commission, is specially qualified to assist the Commission with respect to any particular proceeding or matter, and the person so appointed has all the powers of a member of the Commission with respect to the proceeding or matter and is entitled to such remuneration as the Governor in Council authorizes. R.S., c. 418, s. 10.

Secretary, employees and specialists

11 (1) The Commission shall appoint a Secretary, who shall keep a record of the proceedings of the Commission, have the custody and care of all records and documents belonging to or pertaining to the Commission, and serve such notices and perform such duties as the Commission may require.

(2) The Commission may employ, in accordance with the *Civil Service Act*, such deputy directors, clerks, stenographers or other persons as it may deem advisable to carry out the business of the Commission and their compensation shall be paid by the Commission.

(3) The Commission may, from time to time, engage persons having technical or special knowledge of matters or subjects within the jurisdiction of the Commission or in question before the Commission to assist the Commission in an advisory or other capacity. R.S., c. 418, s. 11; 1990, c. 15, s. 24.

Public Service Superannuation Act

12 (1) For the purposes of the *Public Service Superannuation Act*, every person employed by the Commission otherwise than temporarily shall be deemed to be a person employed in the public service of the Province and service in the employment of the Commission shall be deemed to be public service.

(2) The Commission shall deduct monthly from the salary of every employee thereof such amount as is directed by the Governor in Council to be deducted from the salary of every employee in the public service of the Province and shall pay over the same to the Minister of Finance, which amounts when so received shall be paid into and form part of the Superannuation Fund pursuant to the *Public Service Superannuation Act*.

(3) Where by the *Public Service Superannuation Act* any payment is directed to be made into the Superannuation Fund by the Government or the Minister of Finance or where by such Act any superannuation allowance or other sum is directed to be paid out of the Consolidated Fund of the Province, then in respect of any employee of the Commission such payment, superannuation allowance or other sum shall be defrayed by the Commission and shall form part of the annual expenses of the Commission.

(4) In this Section, "person employed by the Commission" does not include a member of the Commission unless that person is an employee of the Commission. R.S., c. 418, s. 12; 1990, c. 15, s. 25.

Use of public servants

13 For the purposes of carrying out the duties of the Commission, the Commission may avail itself of the services of any officer or other employee of any board, commission or department of the Province subject to the approval of the Minister or other person in charge of the administration of the service in which the officer or employee is employed. R.S., c. 418, s. 13.

Appropriations

14 The Legislature may appropriate money in such amount as it deems fit to enable the Commission and its members to carry out their duties, powers and authorities. R.S., c. 418, s. 14.

Duties and powers of Chairman

15 (1) The Chairman shall from time to time assign the members of the Commission to its various sittings and may change any such assignment at any time.

(2) The Chairman may from time to time direct any officer or member of the staff of the Commission to attend any of the sittings of the Commission and may pre-scribe that member's duties.

(3) The Chairman shall prescribe the number of members to attend the hearing of an application, appeal or other matter before the Commission, and shall prescribe the quorum with respect to such application, appeal or other matter.

(4) The Chairman shall be responsible for ensuring the efficient and expeditious handling of the business of the Commission.

(5) The Chairman, when present, shall preside at all sittings of the Commission, and in the Chairman's absence the Vice-chairman shall preside and, if both the Chairman and the Vice-chairman are absent, the member designated by the Chairman to preside shall preside. R.S., c. 418, s. 15.

Absence of Chairman

16 In case of the absence of the Chairman or the Chairman's inability to act, the Vice-chairman shall exercise the powers of the Chairman, and in such case all regulations, orders and other documents signed by the Vice-chairman shall have the same force and effect as if signed by the Chairman. R.S., c. 418, s. 16.

Concurrent sittings and effect of vacancy

17 (1) The members may sit separately at the same time to hear and determine matters before the Commission if there is a quorum in each case.

(2) A vacancy in the Commission does not impair the right of the remaining members to act. R.S., c. 418, s. 17.

Inquiry by member

18 (1) The Chairman may authorize any member of the Commission to inquire into and report to the Commission upon any matter within the jurisdiction of the Commission or pending before the Commission, and when so authorized that member shall, for the purpose of taking evidence or obtaining information for such report, have all the powers of the Commission.

(2) Any member who has made any inquiry into a matter pursuant to subsection (1) shall not sit on any hearing of the Commission in connection with the matter. 1990, c. 15, s. 26.

Power to publish and delegate

19 (1) The Commission may

(a) issue and publish, in such manner as the Commission deems appropriate, policy statements and interpretation notes;

(b) assign or delegate any of the powers or duties of the Commission to the Director;

(c) publish decisions of the Commission and the Director and publish rulings, orders, motions and other information which the Commission considers ought to be published.

(2) Policy statements and interpretation notes issued pursuant to clause (a) of subsection (1) are not regulations within the meaning of the *Regulations Act* and do not constitute a predetermined exercise of discretion pursuant to this Act. 1996, c. 32, s. 3.

Orders

20 In any matter before it, the Commission shall grant an order, either as specified in the application or notice of appeal or as the Commission decides, and may by order dismiss the application or appeal. R.S., c. 418, s. 20.

Face of order

21 It shall not be necessary that any order of the Commission shall show upon its face that any proceeding or notice was had or given, or any circumstances existed necessary to give it jurisdiction to make such order. R.S., c. 418, s. 21.

Enforcement of order

22 (1) Any decision or order made by the Commission may be made a rule or order of the Supreme Court of Nova Scotia, and shall be enforced in like manner as any rule, order, decree or judgment of that Court.

(2) To make a decision or order of the Commission a rule or order of the Supreme Court, the Secretary may make a certified copy of the decision or order upon which shall be endorsed:

Make the within a rule or order of the Supreme Court of Nova Scotia.

Dated this day of, 19. . . .

.....

Chairman, Nova Scotia
Securities Commission

(3) The endorsement shall be signed by the Chairman.

(4) The Secretary shall forward the certified copy so endorsed to a prothonotary of the Supreme Court, who shall upon receipt thereof enter the same as of record, and it shall thereupon become and be an order of the Supreme Court and enforceable as any rule, order, decree or judgment thereof.

(5) Where a decision or order of the Commission has been made a rule or order of the Supreme Court, any decision or order of the Commission rescinding or varying the same shall be deemed to rescind or vary the rule or order, and may in like manner be made a rule or order of the Supreme Court. R.S., c. 418, s. 22.

Director of Securities

23 (1) The Governor in Council may appoint a person to be Director of Securities who shall be the chief administrative officer of the Commission and who shall be paid such salary as the Governor in Council determines.

(2) The Director shall perform such duties as are vested in or imposed upon the Director by this Act or the regulations, the Governor in Council, the Minister or the Commission. R.S., c. 418, s. 23; 1990, c. 15, s. 28.

Refunds

24 Where

- (a) an application for registration or renewal of registration is abandoned; or
- (b) a preliminary prospectus or prospectus is withdrawn,

the Director may, upon the application of the person or company who made the application or filed the preliminary prospectus or prospectus, recommend to the Minister of Finance that a refund of the fee paid on the making of the application or the filing of the preliminary prospectus or prospectus or such part thereof as he considers fair and reasonable be made, and the Minister of Finance may make such refund from the Consolidated Fund of the Province. R.S., c. 418, s. 24; 1990, c. 15, s. 80.

Notification of decision of Director and its review

25 (1) The Director shall forthwith notify the Commission of every decision refusing registration under Section 32 or refusing to issue a receipt for a prospectus under Section 66 and the Commission may within thirty days of the decision notify the Director and any person or company directly affected of its intention to convene a hearing to review the decision.

(2) Any person or company directly affected by a decision of the Director may, by notice in writing sent by registered mail to the Commission within thirty days after the mailing of the notice of the decision, request and be entitled to a hearing and review thereof by the Commission.

(3) Upon a hearing and review, the Commission may by order confirm the decision under review or make such other decision as the Commission considers proper.

(4) Notwithstanding that a person or company requests a hearing and review pursuant to subsection (2), the decision under review takes effect immediately, but the Commission may grant a stay until disposition of the hearing and review. R.S., c. 418, s. 25; 1990, c. 15, s. 80.

Appeal

26 (1) Any person or company directly affected by a decision of the Commission other than a decision made pursuant to Section 27, subsection (5) of Section 67, Section 79, 80, 86 or 89, subsection (2) of Section 94, subsection (2) of Section 110, Section 121, subsection (2) of Section 123, subsection (2) of Section 125, subsection (3) of Section 126, subsection (2) of Section 128 or subsection (1) of Section 151A or other than an order made pursuant to Section 151 revoking or varying any decision of the Commission where the decision which is revoked or varied was a decision made pursuant to one of the said Sections or subsections, may appeal to the Trial Division of the Supreme Court.

(2) Notwithstanding that an appeal is taken under this Section, the decision appealed from takes effect immediately, but the Commission or a judge of the Trial Division of the Supreme Court may grant a stay until disposition of the appeal.

(3) The Secretary of the Commission shall certify to the prothonotary of the Supreme Court

- (a) the decision that has been reviewed by the Commission;
- (b) the decision of the Commission together with any statement of reasons therefor;
- (c) the record of the proceedings before the Commission; and
- (d) all written submissions to the Commission or other material that is relevant to the appeal.

(4) The Minister and the Commission are entitled to be heard by counsel or otherwise upon the argument of an appeal pursuant to this Section.

(5) Where an appeal is taken under this Section, the Court may by its order direct the Commission to make such decision or to do such other act as the Commission is authorized and empowered to do under this Act or the regulations and as the Court considers proper, having regard to the material and submissions before it and to this Act and the regulations, and the Commission shall make such decision or do such act accordingly.

(6) Notwithstanding an order of the Court on an appeal, the Commission may make any further decision upon new material or where there is a significant change in the circumstances, and every such decision is subject to this Section. R.S., c. 418, s. 26; 1990, c. 15, s. 29; 1996, c. 32, s. 4.

Investigation

27 (1) The Commission may, by order, appoint one or more persons to make any investigation the Commission considers expedient

- (a) for the administration of this Act;
- (b) to assist in the administration of the securities laws of another jurisdiction;
- (c) in respect of matters relating to trading in securities in the Province;
- (d) in respect of matters in the Province relating to trading in securities in another jurisdiction; or
- (e) in respect of any person or company.

(2) For the purpose of an investigation ordered pursuant to this Section, any person appointed to make the investigation may investigate, inquire into and examine

(a) the affairs of the person or company in respect of whom the investigation is being made and any books, papers, documents, correspondence, communications, negotiations, transactions, investigations, loans, borrowings and payments to, by, on behalf of or in relation to or connected with the person or company and any property, assets or things owned, acquired or alienated in whole or in part by the person or company or by any person or company acting on behalf of or as agent for the person or company; and

(b) the assets at any time held by, the liabilities, debts, undertakings and obligations at any time existing by, the financial or other conditions at any time prevailing in or in relation to or in connection with the person or company and the relationship that may at any time exist or have existed between the person or company and any other person or company by reason of investments, commissions promised, secured or paid, interests held or acquired, the loaning or borrowing of money, stock or other property, the transfer, negotiation or holding of stock, interlocking directorates, common control, undue influence or control or any other relationship.

(3) Any person making an investigation pursuant to this Section has the same power to summon and enforce the attendance of witnesses and compel them to give evidence on oath or otherwise, and to produce documents, records and things, as is vested in the Trial Division of the Supreme Court in civil actions, and the failure or refusal of a person or company to attend, to answer questions or to produce such documents, records or things as are in the person's or company's custody, control or possession makes the person or company liable to be committed for contempt by a judge of the Trial Division of the Supreme Court as if in breach of an order or judgment of that Court, provided that no provision of the *Evidence Act* exempts any bank or any officer or employee thereof from the operation of this Section.

(4) A person giving evidence at an investigation pursuant to this Section may be represented by counsel.

(5) A person authorized by the Commission may apply to a judge of the Trial Division of the Supreme Court for a warrant authorizing any person named therein to enter and search any building, receptacle or place for any documents, records, securities, contracts or things that may afford evidence as to the contravention

of the provisions of this Act or the regulations or the securities laws of another jurisdiction or the commission of an offence under the *Criminal Code* (Canada) in connection with a trade in securities and to seize and take possession of the documents, records, securities, contracts or things.

(6) An application pursuant to subsection (5) shall be supported by information on oath establishing the facts on which the application is based.

(7) A judge of the Trial Division of the Supreme Court may issue the warrant referred to in subsection (5) where the judge is satisfied that there are reasonable grounds to believe that

(a) there has been a contravention of this Act or the regulations or the securities laws of another jurisdiction or the commission of an offence under the *Criminal Code* (Canada);

(b) a document, record, security, contract or thing that may afford evidence of such a contravention or commission of such an offence is likely to be found; and

(c) the building, receptacle or place specified in the application is likely to contain such a document, record, security, contract or thing,

and not otherwise.

(8) A warrant issued pursuant to subsection (7) shall refer to the contravention or offence for which it is issued, identify the building, receptacle or place to be searched and the person alleged to have committed the contravention or offence and it shall be reasonably specific as to any document, record, security, contract or thing to be searched for and seized.

(9) Any person who executes a warrant pursuant to this Section may seize, in addition to the document, record, security, contract or thing referred to in the warrant, any other document, record, security, contract or thing that the person believes on reasonable grounds affords evidence of a contravention of any of the provisions of this Act or the regulations or the securities laws of another jurisdiction or the commission of an offence under the *Criminal Code* (Canada) in connection with a trade in securities and shall, as soon as practicable, bring such other document, record, security, contract or thing before the judge who issued the warrant or, where the judge is unable to act, another judge of the Trial Division of the Supreme Court to be dealt with by the judge in accordance with subsection (16) or (17).

(10) Documents, records, securities, contracts or things seized pursuant to this Section shall be delivered to the person conducting an investigation pursuant to subsection (1) or, if there is no investigation, to the Director, as soon as practical and shall, at a time and place mutually convenient to the person or company from whom they were seized and the person conducting the investigation or the Director, as the case may be, be made available for inspection and copying by that person or company if a request for an opportunity to inspect or copy is made by that person or company to the person conducting the investigation or the Director, as the case may be.

(11) Where

(a) documents, records, securities, contracts or things are seized pursuant to this Section; and

(b) the matter for which the documents, records, securities, contracts or things were seized is concluded,

the Commission, or the Minister if the Minister is in possession thereof, shall return the documents, records, securities, contracts or things to the person or company from whom they were seized within sixty days from the day the matter is concluded.

(12) If

(a) documents, records, securities, contracts or things are seized pursuant to this Section; and

(b) the person or company from whom the documents, records, securities, contracts or things are seized alleges that the documents, records, securities, contracts or things are not relevant in respect of the matter for which they were seized,

that person may apply to a judge of the Trial Division of the Supreme Court for the return of the documents, records, securities, contracts or things.

(13) On hearing an application pursuant to sub-section (12), a judge of the Trial Division of the Supreme Court shall order the return of any documents, records, securities, contracts or things that the judge determines are not relevant to the matter for which they were seized.

(14) Where an investigation is ordered pursuant to this Section, the Commission may appoint an accountant or other expert to examine documents, records, properties and matters of the person or company whose affairs are being investigated.

(15) Every person appointed pursuant to subsection (1) or (14) shall provide the Commission with a full and complete report of the investigation, including any transcript of evidence and material in that person's possession relating to the investigation.

(16) Where a document, record, security, contract or thing is brought before a judge pursuant to subsection (9), the judge may, of his own motion or on summary application by a person or company with an interest in the document, record, security, contract or thing, on three clear days notice of application to the person authorized by the Commission pursuant to subsection (5), order that the document, record, security, contract or thing be returned to the person or company from whom it was seized or the person or company who is otherwise legally entitled thereto, if the judge is satisfied that the document, record, security, contract or thing was not seized in accordance with the warrant or this Section.

(17) Where a judge has not made an order pursuant to subsection (16) within ten days following a document, record, security, contract or thing being brought before the judge, the judge shall, unless the judge orders otherwise, order the return thereof to the person conducting the investigation or, if there is no investigation, to the Director, and the person or company from whom it was seized shall have the rights contained in subsection (10). 1990, c. 15, s. 30; 1996, c. 32, s. 5.

Report to Minister

28 Where, upon the report of any investigation made pursuant to Section 27, it appears to the Commission that any person or company may have

- (a) contravened any of the provisions of this Act or the regulations; or
- (b) committed an offence under the *Criminal Code* (Canada) in connection with a transaction relating to securities,

the Commission shall send a full and complete report of the investigation, including the report made to it, any transcript of evidence and any material in the possession of the Commission relating thereto to the Minister. 1990, c. 15, s. 30.

Appointment of investigator by Minister

29 The Minister may, by order, appoint any person to make an investigation into any matter referred to in sub-section (1) of Section 27 and the provisions of Section 27 apply *mutatis mutandis* to the person and the investigation. 1990, c. 15, s. 30.

Confidentiality

29A No person or company, without the consent of the Commission, shall disclose, except to that person's counsel, any information or evidence obtained or the name of any witness examined or sought to be examined pursuant to Section 27 or Section 29. 1990, c. 15, s. 30.

Report to Minister

29B Where an investigation has been made pursuant to Section 27, the Commission may, and, where an investigation has been made pursuant to Section 29, the person making the investigation shall, report the result thereof, including the evidence, findings, comments and recommendations, to the Minister and the Minister may cause the report to be published, in whole or in part, in such manner as the Minister considers proper. 1990, c. 15, s. 30.

Order to retain funds

29C (1) The Commission may

(a) where it is about to order an investigation in respect of a person or company pursuant to Section 27 or during or after an investigation in respect of a person or company pursuant to Section 27 or Section 29;

(b) where it is about to make or has made an order pursuant to Section 134;

(c) where it is about to make or has made a decision suspending or cancelling the registration of any person or company or affecting the right of any person or company to trade in securities; or

(d) where criminal proceedings or proceedings in respect of a contravention of this Act or the regulations are about to be or have been instituted against any person or company that, in the opinion of the Commission, are connected or arise out of any security or any trade therein or out of any business conducted by the person or company,

in writing or by telephone, direct any person or company having on deposit or under control or for safekeeping any funds or securities of the person or company referred to in clause (a), (b), (c) or (d) to hold such funds or securities or direct the person or company referred to in clause (a), (b), (c) or (d) to refrain from withdrawing any such funds or securities from any other person or company having any of them on deposit, under control or for safekeeping or to hold all funds or securities of clients or others in his possession or control in trust for any ~~interim~~ [interim] receiver, custodian, trustee, receiver or liquidator appointed pursuant to the *Bankruptcy Act* (Canada), the *Civil Procedure Rules*, the *Companies Winding Up Act*, the *Winding-up Act* (Canada) or Section 29D, or until the Commission, in writing, revokes the direction or consents to release any particular funds or security from the direction, provided that no such direction applies to funds or securities in a stock exchange clearing house or to securities in process of transfer by a transfer agent unless the direction expressly so states, and in the case of a bank, loan company or trust company, the direction applies only to the offices, branches or agencies thereof named in the direction.

(2) Any person or company named in a direction issued pursuant to subsection (1) may, if in doubt as to the application of the direction to particular funds or securities, apply to the Commission for an order of clarification.

(3) Upon the application of a person or company directly affected by a direction issued pursuant to subsection (1), the Commission may make an order on such terms and conditions as it may impose revoking the direction or consenting to the release of any funds or security.

(4) In any of the circumstances mentioned in clause (a), (b) or (c) of subsection (1) the Commission may, in writing or by telephone, notify any registrar of deeds or the Minister of Mines and Energy that proceedings are being or about to be taken which may affect land or mining claims belonging to the person or company referred to in the said notice, which notice shall be registered against the land or claims mentioned therein, and while such notice remains so registered, no person shall acquire such land or claims or any part thereof or any estate, right, title or interest therein, except pursuant to the provisions of the *Bankruptcy Act* (Canada) or the *Companies Winding Up Act*, but the Commission may, in writing, revoke or modify such notice. 1990, c. 15, s. 30.

Appointment of receiver

29D (1) The Commission may

(a) where it is about to order an investigation in respect of a person or company pursuant to Section 27 or during or after an investigation in respect of a person or company pursuant to Section 27 or Section 29;

(b) where it is about to make or has made an order pursuant to Section 134 that trading in securities of an issuer shall cease;

(c) where it is about to make or has made a decision suspending or cancelling the registration of any person or company or affecting the right of any person or company to trade in securities;

(d) where criminal proceedings or proceedings in respect of a contravention of this Act or the regulations are about to be or have been instituted against any person or company that, in the opinion of the Commission, are connected with or arise out of any security or any trade therein, or out of any business conducted by the person or company; or

(e) where a person or company fails or neglects to comply with the minimum net asset requirements, investment restrictions, ownership restrictions or capital requirements prescribed by the regulations for the person or company,

apply to a judge of the Trial Division of the Supreme Court for the appointment of a receiver, receiver and manager, trustee or liquidator of the property of the person or company.

(2) Upon an application pursuant to subsection (1), the judge may, where the judge is satisfied that the appointment of a receiver, receiver and manager, trustee or liquidator of all or any part of the property of any person or company is in the best interests of the creditors of the person or company or of persons or companies any of whose property is in the possession or under the control of the person or company, or, in a proper case, of the security holders of or subscribers to the person or company, appoint a receiver, receiver and manager, trustee or liquidator of the property of the person or company.

(3) Upon an *ex parte* application made by the Commission pursuant to this Section, a judge may make an order pursuant to subsection (2) appointing a receiver, receiver and manager, trustee or liquidator for a period not exceeding fifteen days.

(4) A receiver, receiver and manager, trustee or liquidator of the property of any person or company appointed pursuant to this Section shall be the receiver, receiver and manager, trustee or liquidator of all or any part of the property belonging to the person or company or held by the person or company on behalf of or in trust for any other person or company, and the receiver, receiver and manager, trustee or liquidator shall have authority, if so directed by the judge, to wind up or manage the business and affairs of the person or company and all powers necessary or incidental thereto.

(5) An order made pursuant to this Section may be enforced in the same manner as any order or judgment of the Trial Division of the Supreme Court and may be varied or discharged upon an application made by notice.

(6) Upon an application made pursuant to this Section, the *Civil Procedure Rules* apply.

1990, c. 15, s. 30.

Appointment of examiner

29E (1) The Commission may, in writing, appoint any person to examine at any time

(a) the financial affairs of a recognized clearing agency, registrant or reporting issuer; and

(b) the books and records of a custodian of assets of a mutual fund or of a custodian of shares or units of a mutual fund under a custodial agreement or other agreement with a person or company engaged in the distribution of shares or units of the mutual fund,

and prepare such financial or other statements and reports that may be required by the Commission.

(2) The person making an examination pursuant to this Section may inquire into and examine all books of account, securities, cash, documents, bank accounts, vouchers, correspondence and records of every description of the person or company whose financial affairs are being examined, and no person or company shall withhold, destroy, conceal or refuse to give any information or thing reasonably required for the purpose of the examination.

(3) The Commission may charge such fees as may be prescribed by the regulations for any examination made pursuant to this Section. 1990, c. 15, s. 30.

Solicitor-client privilege

29F (1) Nothing in Sections 27, 28, 29, 29A, 29B, 29C, 29D, 29E or this Section shall be interpreted so as to affect the privilege that exists between a solicitor and the solicitor's client.

(2) If a person is about to examine or seize, pursuant to this Act, any documents, records, securities, contracts or things in the possession of a solicitor and the solicitor with respect to those documents, records, securities, contracts or things claims that a privilege might exist between the solicitor and the solicitor's client, the person who was about to examine or seize the documents, records, securities, contracts or things shall, without examining or copying them,

- (a) seize the documents, records, securities, contracts or things;
- (b) seal the documents, records, securities, contracts or things in a marked package so that the package can be identified; and
- (c) place the package in the custody of
 - (i) the Prothonotary of the Supreme Court, or
 - (ii) a person that the parties agree upon.

(3) On an application being brought by the solicitor, client or the person seizing the documents, records, securities, contracts or things, a judge of the Trial Division of the Supreme Court shall hear the matter *in camera* and determine whether the claim of the privilege is proper.

- (4) If the judge of the Trial Division of the Supreme Court determines
- (a) that the claim of privilege is proper, the judge shall order that the documents, records, securities, contracts or things seized be delivered to the solicitor; or
 - (b) that the claim is not proper, the judge shall order that the documents, records, securities, contracts or things be delivered to the person who seized them.

(5) The notice of the application referred to in subsection (3) and the supporting documents shall be served on the Commission, the person having custody of the package and the parties to the application other than the one making the application not less than three days before the application is to be heard.

(6) On being served with the notice of the application and the supporting documents, the person having custody of the package shall promptly deliver the package to the custody of the Prothonotary of the Supreme Court.

(7) In determining the matter before it, the judge of the Trial Division of the Supreme Court may open the package and inspect its contents.

(8) Following the inspection of the package and its contents pursuant to subsection (7), a judge of the Trial Division of the Supreme Court shall reseal the contents in the package. 1990, c. 15, s. 30; 2002, c. 39, s. 2.

Self-regulatory organization

30 (1) The Commission may, on the application of a person or company which represents registrants and regulates the standards of practice and business conduct of its members, recognize the person or company as a self-regulatory organization.

(2) The Commission may revoke the recognition of any person or company as a self-regulatory organization.

(3) Any member of a self-regulatory organization who trades in securities within the Province shall comply with the by-laws, rules, regulations and policies of the self-regulatory organization except to the extent that such by-laws, rules or regulations are inconsistent with this Act, the regulations or the policies of the Commission.

(4) The Commission may delegate, on such terms and conditions as the Commission may determine, to a self-regulatory organization any powers or duties of the Director or the Commission pursuant to this Act or the regulations respecting the registration of persons or companies that are members of the self-regulatory organization, the conduct of audits of those persons and companies and the responsibility for ensuring compliance with the requirements of this Act and the regulations.

(5) Any person or company which is a registrant and directly affected by a decision, order or ruling of a self-regulatory organization is entitled to a hearing and review of the decision, order or ruling by the Commission to the same extent as if the decision, order or ruling had been a decision of the Director.

(6) A self-regulatory organization shall provide to the Commission or to the Director, at the request of the Commission or the Director, any information or record in its possession relating to

- (a) a registrant or a client of a registrant;
- (b) an issuer; or
- (c) trading in securities.

(7) A person or company which represents its members for the purpose of this Section includes a stock exchange. 1990, c. 15, s. 31.

Registration required

31 (1) No person or company shall

- (a) trade in a security unless the person or company is registered as a dealer, or is registered as a salesman or as a partner or as an officer of a registered dealer and is acting on behalf of the dealer;
- (b) act as an underwriter unless the person or company is registered as an underwriter; or
- (c) act as an adviser unless the person or company is registered as an adviser, or is registered as a partner or as an officer of a registered adviser and is acting on behalf of the adviser,

and the registration has been made in accordance with this Act and the regulations and the person or company has received written notice of the registration from the Director and where the registration is subject to terms and conditions, the person or company complies with such terms and conditions.

(2) The termination of the employment of a salesman with a registered dealer shall operate as a suspension of the registration of the salesman until notice in writing has been received by the Director from another registered dealer of the employment of the salesman by the other registered dealer and the reinstatement of the registration has been approved by the Director.

(3) The Director may designate as non-trading any employee or class of employees of a registered dealer that does not usually sell securities, but the designation may be cancelled as to any employee or

class of employees where the Director is satisfied that any such employee or any member of such class of employees should be required to apply for registration as a salesman. R.S., c. 418, s. 31; 1990, c. 15, s. 80.

Grant of registration

32 (1) The Director shall grant registration, renewal of registration, reinstatement of registration or amendment to registration to an applicant where, in the opinion of the Director, the applicant is suitable for registration and the proposed registration or amendment to registration is not objectionable.

(2) The Director may in his discretion restrict a registration by imposing terms and conditions thereon and, without limiting the generality of the foregoing, may restrict the duration of a registration and may restrict the registration to trade in certain securities or a certain class of securities.

(3) The Director shall not refuse to grant, renew, reinstate or amend registration or impose terms and conditions thereon without giving the applicant an opportunity to be heard. R.S., c. 418, s. 32; 1990, c. 15, s. 80.

Suspension, cancellation, restriction or surrender of registration

33 (1) The Commission after giving a registrant an opportunity to be heard, may suspend, cancel, restrict or impose terms and conditions upon the registration or reprimand the registrant where in its opinion such action is in the public interest.

(2) Where the delay necessary for a hearing under subsection (1) would, in the opinion of the Commission, be prejudicial to the public interest, the Commission may suspend the registration without giving the registrant an opportunity to be heard, in which case it shall forthwith notify the registrant of the suspension and of a hearing and review to be held before the Commission within fifteen days of the date of the suspension, which hearing and review shall be deemed to be a hearing and review pursuant to Section 25.

(3) Notwithstanding subsection (1), the Commission may, upon an application by a registrant, accept, subject to such terms and conditions as it may impose, the voluntary surrender of the registration of the registrant where it is satisfied the financial obligations of the registrant to its clients have been discharged and the surrender of the registration would not be prejudicial to the public interest.

(4) Where a person or company is registered and the registration of such person or company is not renewed when it would otherwise lapse or expire, the registration of the person or company shall be deemed to be suspended until

- (a) the Director, on application, reinstates the registration; or
- (b) the Commission cancels the registration. R.S., c. 418, s. 33; 1990,

c. 15, s. 32.

Further application

34 A further application for registration may be made upon new or other material or where it is clear that material circumstances have changed. R.S., c. 418, s. 34.

Form of application

35 An application for registration shall be made in writing upon a form prescribed by the regulations and provided by the Director and shall be accompanied by such fee as may be prescribed by the regulations. R.S., c. 418, s. 35; 1990, c. 15, s. 80.

Address for service

36 Every applicant shall state in the application an address for service in the Province and, except as otherwise provided in this Act, all notices under this Act or the regulations are sufficiently served for all purposes if delivered or sent by prepaid mail to the latest address for service so stated. R.S., c. 418, s. 36.

Further information

37 The Director may require any further information or material to be submitted by an applicant or a registrant within a specified time and may require verification by affidavit or otherwise of any information or material then or previously submitted or may require the applicant or the registrant or any partner, officer, director, governor or trustee of, or any person performing a like function for, or any employee of, the applicant or of the registrant to submit to examination under oath by a person designated by the Director. R.S., c. 418, s. 37; 1990, c. 15, s. 80.

Residence

38 (1) The Director may refuse registration to an individual if he has not been a resident of Canada for at least one year immediately prior to the date of application for registration unless at the time of the application the individual is registered in a capacity corresponding to that of a dealer, adviser, underwriter, partner, officer or salesman under the securities laws of the jurisdiction in which he last resided and has been so registered for a period of not less than one year immediately preceding the date of the application and is, in the opinion of the Director, otherwise suitable for registration.

(2) The Director may refuse registration to a person or company if any director or officer of the person or company has not been a resident of Canada for at least one year immediately prior to the date of application for registration unless at the time of the application he is registered in a capacity corresponding to that of a dealer, adviser, underwriter, partner, officer or salesman under the securities laws of the jurisdiction in which he last resided and has been so registered for a period of not less than one year immediately preceding the date of the application and is, in the opinion of the Director, otherwise suitable for registration. R.S., c. 418, s. 38; 1990, c. 15, ss. 33, 80.

Notice of changes

39 (1) Subject to the regulations, every registered dealer shall, within five business days of the event, notify the Director in the form prescribed by the regulations of

- (a) any change in address for service in the Province or any business address;
- (b) any change in
 - (i) the directors or officers of the registered dealer and in the case of resignation, dismissal, severance or termination of employment or office, the reason therefor, and
 - (ii) the holders of the voting securities of the registered dealer;
- (c) the commencement and termination of employment of every registered salesman and, in the case of termination of employment, the reason therefor;
- (d) the opening or closing of any branch office in the Province and, in the case of the opening of any branch office in the Province, the name and address of the person in charge thereof; and
- (e) any change in the name or address of the person in charge of any branch office in the Province.

(2) Subject to the regulations, every registered adviser and underwriter shall, within five business days of the event, notify the Director in the form prescribed by the regulations of

- (a) any change in address for service in the Province or any business address; and
- (b) any change in
 - (i) the directors or officers of the registered adviser or underwriter and in the case of resignation, dismissal, severance or termination of employment or office, the reason therefor, and

(ii) the holders of the voting securities of the registered adviser or underwriter.

(3) Every registered salesman shall, within five business days of the event, notify the Director in the form prescribed by the regulations of

- (a) any change in his address for service in the Province or in his business address; and
- (b) every commencement and termination of his employment by a registered dealer.

(4) The Director may, upon an application of a registrant that is a reporting issuer, exempt, subject to such terms and conditions as he may impose, the registrant from the requirement of subsections (1) and (2) that the Director be notified of any change in the holders of voting securities of the registrant where, in his opinion, it would not be prejudicial to the public interest to do so. R.S., c. 418, s. 39; 1990, c. 15, s. 80.

Exemption from registration as adviser

40 Registration as an adviser is not required to be obtained by

- (a) a bank, the Federal Business Development Bank incorporated under the *Federal Business Development Bank Act* (Canada), a trust company or an insurance company;
- (b) a barrister, accountant, engineer or teacher;
- (c) a registered dealer, or any partner, officer or employee thereof;
- (d) a publisher of or any writer for any *bona fide* newspaper, news magazine or business or financial publication of general and regular paid circulation distributed only to subscribers thereto for value or to purchasers thereof, who gives advice as an adviser only through such publication, has no interest either directly or indirectly in any of the securities upon which the advice is given and receives no commission or other consideration for giving the advice,

where the performance of the service as an adviser is solely incidental to the person's or company's principal business or occupation as described in clauses (a) to (d); or

- (e) such other persons or companies as are designated by the regulations. R.S., c. 418, s. 40; 1990, c. 15, s. 34; revision corrected 1991.

Exemption of certain trades or securities

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

- (a) a trade by an executor, administrator, guardian or committee or by an authorized trustee or assignee, an interim or official receiver or a custodian under the *Bankruptcy Act* (Canada), by a receiver under the *Judicature Act* or the *Civil Procedure Rules* or by a liquidator under the *Companies Winding Up Act*, the *Winding-up Act* (Canada) or the *Canada Business Corporations Act* (Canada) or by a sheriff under the *Civil Procedure Rules*, or at a judicial sale;
- (b) an isolated trade by or on behalf of an issuer in a specific security of its own issue, for the issuer's account, or by or on behalf of an owner in a specific security, for the owner's account, where the trade is not made in the course of continued and successive transactions of a like nature, and is not made by a person or company whose usual business is trading in securities, but this exemption shall only apply to a trade by or on behalf of an issuer for a consideration which consists, in whole or in part, of mining, oil or gas claims or properties if prior notice of the trade is given, in writing, to the Director and the seller of the claims or properties enters into those escrow or pooling agreements that the Director may consider necessary;
- (c) a trade where the party purchasing as principal, but not as underwriter, is

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

- (ii) a loan company or trust company,
 - (iii) an insurance company,
 - (iv) a subsidiary of any of the parties referred to in subclause (i), (ii) or (iii) where the bank, loan company, trust company or insurance company, as the case may be, owns beneficially all of the voting securities of such subsidiary,
 - (v) Her Majesty in right of Canada or any province of Canada, or
 - (vi) any municipal corporation or public board or commission in Canada;
- (d) a trade where the party purchasing as principal is a company or a person, other than an individual, and is recognized by the Commission as an exempt purchaser;
- (e) a trade where the purchaser purchases as principal, if the trade is in a security which has an aggregate acquisition cost to such purchaser, of not less than one hundred and fifty thousand dollars, but this exemption is not available where a trade is made through an advertisement of the securities [securities] in printed media of general and regular paid circulation, radio or television unless an offering memorandum which includes a description of the securities being offered for sale is sent by prepaid mail or delivered by the seller or a person or company acting on behalf of the seller to the purchaser before an agreement of purchase and sale is entered into with such purchaser;
- (f) a trade from the holdings of any person, company or combination of persons or companies described in subclause (iii) of clause (1) of subsection (1) of Section 2 for the purpose of giving collateral for a *bona fide* debt;
- (g) a trade by or for the account of a pledgee, mortgagee or other encumbrancer for the purpose of liquidating a *bona fide* debt by selling or offering for sale a security pledged, mortgaged or otherwise encumbered in good faith as collateral for the debt;
- (h) a trade in a security that may occasionally be transacted by employees of a registered dealer where the employees do not usually sell securities and have been designated by the Director as non-trading employees, either individually or as a class;
- (i) a trade between a person or company and an underwriter acting as purchaser or between or among underwriters;
- (j) a trade in a security by a person or company acting solely through an agent who is a registered dealer or by a person or company with a registered dealer who is acting as principal;
- (k) the execution of an unsolicited order to purchase or sell through a registered dealer by a trust company or a bank as agent for a person or company and the trade by such person or company in placing the unsolicited order with the bank or trust company;
- (l) a trade in a bond or debenture by way of an unsolicited order given to a trust company or a bank, if the bank or trust company is acting as principal and the bond or debenture is acquired by the bank or trust company for purposes of the trade from, or sold by the bank or trust company following the trade to, a registered dealer;
- (m) a trade by an issuer
- (i) in a security of its own issue that is distributed by it to holders of its securities as a stock dividend or other distribution out of earnings or surplus,
 - (ii) in a security whether of its own issue or not that is distributed by it to holders of its securities as incidental to a *bona fide* reorganization, dissolution or winding up of the issuer or distribution of its assets for the purpose of winding up its affairs pursuant to the laws of the jurisdiction in which the issuer was incorporated, organized or continued,

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

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

(n) a trade by an issuer in a security of a reporting issuer held by it that is distributed by it to holders of its securities as a dividend *in specie*;

(o) a trade by an issuer

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

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

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

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

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

(p) a trade in a security of a company that is exchanged by or for the account of the company with another company or the holders of the securities of that other company in connection with

(i) a statutory amalgamation or arrangement, or

(ii) a statutory procedure under which one company takes title to the assets of another company which in turn loses its existence by operation of law, or under which one company merges with one or more other companies;

(q) a trade in a security of an issuer that is exchanged by or for the account of the issuer with the security holders of another issuer in connection with a take-over bid as defined in Section 95;

(r) a trade in a security of an issuer to a person or company pursuant to a take-over bid or issuer bid as defined in Section 95 made by that person or company;

(s) a trade by an issuer in a security of its own issue as consideration for a portion or all of the assets of any person or company, if the fair value of the assets so purchased is not less than one hundred and fifty thousand dollars but this exemption shall only apply to a trade by or on behalf of an issuer for a consideration which consists, in whole or in part, of mining, oil or gas claims or properties if prior notice of the trade is given, in writing, to the Director and the seller of the claims or properties enters into those escrow or pooling agreements that the Director may consider necessary;

(t) a trade by an issuer in the securities of its own issue with its employees or the employees of an affiliate who are not induced to purchase by expectation of employment or continued employment;

(u) a trade by an issuer in securities of its own issue where the trade is reasonably necessary to facilitate the incorporation or organization of the issuer and the securities are traded for a nominal consideration to not more than five incorporators or organizers unless the statute under which the issuer is incorporated or organized requires the trade to be for a greater

consideration or to a larger number of incorporators or organizers, in which case the securities may be traded for that greater consideration or to that larger number of incorporators or organizers;

(v) a trade made by an issuer with a view to the sale of securities of its own issue if solicitations in all jurisdictions including the Province are made to not more than fifty prospective purchasers resulting in sales to not more than twenty-five purchasers in all jurisdictions including the Province and

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

(ii) each purchaser has access to substantially the same information concerning the issuer that a prospectus filed under this Act would provide and is

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

(B) a senior officer or director of the issuer or of an affiliate of the issuer or a spouse, parent, brother, sister or child of any such director or officer,

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

(iv) no promoter of the issuer, other than a registered dealer, has acted as a promoter of any other issuer which has traded in securities of its own issue pursuant to the exemption in this clause, clause (ac) or any other exemption specified in the regulations, whether such exemption is contained in this subsection or in the regulations, within the previous twelve months,

(v) an offering memorandum which includes a description of the securities being offered for sale is sent by prepaid mail or delivered by the issuer or a person or company acting on behalf of the issuer to the purchaser before an agreement of purchase and sale is entered into with such purchaser, and

(vi) no security of the issuer's own issue is being issued concurrently pursuant to the exemption in clause (ac) or any other exemption specified in the regulations, whether such exemption is contained in this subsection or in the regulations,

but an issuer may only rely upon this exemption once in any period of time designated, from time to time, by the Commission;

(w) a trade in a security of an issuer where each of the parties to the trade is a person or company who is, as regards such issuer, a person or company referred to in subclause (iii) of clause (l) of subsection (1) of Section 2;

(x) a trade by an issuer in securities of its own issue with a promoter of the issuer or by a promoter of the issuer in securities of the issuer with another promoter of the issuer;

(y) a trade in securities of an issuer previously disposed of by the issuer pursuant to the exemption in clause (v) or (ac) where each of the parties to the trade is one of the not more than twenty-five purchasers referred to in clause (v) or one of the not more than fifty purchasers referred to in clause (ac);

(z) a trade by an issuer of equity securities pursuant to a plan made available by that issuer to all holders of a class of publicly traded securities of the issuer the last address of whom as shown in the books of the issuer is in the Province, which plan permits the holder to direct that dividends or interest, paid in respect of securities of the issuer's own issue be applied to the purchase from the issuer of equity securities of the issuer's own issue of a class that is publicly traded or any other securities of the issuer which are redeemable at the option of the holder;

(za) a trade made by an issuer in consideration of a cash payment pursuant to the terms of a plan referred to in clause (z) which provides that holders of securities of the issuer who are permitted to direct that dividends or interest be applied in the manner referred to in that clause have the option to purchase for cash consideration additional securities of the same class as may be purchased with the application of dividends or interest, provided that the aggregate number of additional securities of any class which the issuer is permitted to issue pursuant to the exercise of such options in any financial year of the issuer does not exceed two per cent of the number of outstanding securities of the class at the commencement of the financial year;

(aa) a trade made through the facilities of a recognized stock exchange where,

(i) the trade is effected in whole or part by means of telephone or other telecommunications equipment linking the facilities of that stock exchange with the facilities of another recognized stock exchange,

(ii) the trade is made in a security of a class or type designated by the Commission as exempt for the purposes of this clause, and

(iii) each of the parties to the trade is registered as a dealer, or in a similar capacity, under the securities legislation of a province of Canada;

(ab) *repealed 1990, c. 15, s. 35.*

(ac) a trade made by a promoter of an issuer or by an issuer in a government incentive security of the issuer's own issue, if solicitations, in all jurisdictions including the Province, are made to not more than seventy-five prospective purchasers resulting in sales to not more than fifty purchasers in all jurisdictions including the Province and

(i) each purchaser to whom securities are sold in reliance on this exemption has been supplied with information identifying every officer and director of the issuer and every promoter thereof and giving the particulars of such of their professional qualifications and associations during the immediately preceding five years as are relevant to the undertaking being financed and indicating which of the directors will be devoting his full time to the affairs of the issuer,

(ii) each purchaser has access to substantially the same information concerning the issuer that a prospectus filed under this Act would provide and is,

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

(B) a senior officer or director of the issuer or of an affiliate of the issuer or a spouse, parent, brother, sister or child of any such director or officer,

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

(iv) no promoter of the issuer, other than a registered dealer, has acted as a promoter of any issuer which has traded in securities of its own issue pursuant to the exemption in this clause, clause (v) or any other exemption specified in the regulations, whether such exemption is contained in this subsection or in the regulations, within the previous twelve months,

(v) an offering memorandum which includes a description of the securities being offered for sale is sent by prepaid mail or delivered by the seller or a person or company acting on behalf of the seller to the purchaser before an agreement of purchase and sale is entered into with the purchaser, and

(vi) no security of the issuer's own issue is being issued concurrently pursuant to the exemption in clause (v) or any other exemption specified in the regulations, whether such exemption is contained in this subsection or in the regulations,

but an issuer may only rely upon this exemption once in any period of time designated, from time to time, by the Commission;

(ad) a trade in a security of an issuer to the issuer pursuant to the purchase or redemption of the security by the issuer;

(ae) a trade made by a person or company to a registered dealer in consideration of services performed by that registered dealer in connection with a distribution;

(af) a trade made through a licensed real estate broker or a licensed real estate salesman acting in the course of his employment in securities of a company where

(i) the licensed real estate broker has listed for sale real estate and incidental property owned by a company and the owner or owners of all of the issued and outstanding shares in the capital of the company are prepared to sell his or their shares as an alternative to the company selling the real estate and incidental property which has been so listed,

(ii) the securities which are the subject of the trade include all the issued and outstanding shares in the capital of the company,

(iii) any sale of the shares which results from or in connection with the listing is to a single purchaser or group of purchasers who have not been introduced to each other by the owner or owners of the shares, the company or anyone acting on their behalf,

(iv) all shares sold as a result of or in connection with the listing are sold contemporaneously,

(v) the trade is a distribution solely by virtue of subclause (iii) of clause (l) of subsection (1) of Section 2, and

(vi) each purchaser who purchases any of the shares obtains legal advice before entering into a binding agreement to purchase the shares;

(ag) a trade in an option, a commodity futures option or a commodity futures contract that is

(i) issued by a clearing house recognized by the Commission for this purpose, and

(ii) traded on an exchange recognized by the Commission for this purpose;

(ah) a trade in a security of an issuer previously

(i) issued by the issuer pursuant to the exemption contained in clause (v),

(ii) issued by the issuer or sold by a promoter of the issuer pursuant to the exemption contained in clause (ac), or

(iii) issued by the issuer pursuant to any other exemption specified in the regulations, whether such exemption is contained in this subsection or in the regulations,

where each of the parties to the trade is one of the purchasers from either the issuer of such security or promoter of the issuer of such security;

(ai) a trade made by a mutual fund to a holder of a share or unit in the fund where

(i) the trade is pursuant to provisions in the instrument legally constituting the fund permitting or requiring that dividends or distributions of income or ~~capital~~ [capital] gains attributable to the shares or units held by a holder be reinvested in additional shares or units of the fund of the same class or having the same attributes as the shares or units with respect to which the dividends or distributions of income or capital gains are attributable, and

(ii) no sales charge is payable with respect to the trade;

(aj) a trade in a share or unit of a mutual fund to a purchaser, other than the initial trade in a share or unit of the mutual fund to that purchaser, where

(i) the initial trade in the shares or units of the mutual fund to that purchaser was made in reliance on the exemption contained in clause (e), or

(ii) either the net asset value or the aggregate acquisition cost of the shares or units in the mutual fund held by the purchaser as at the date of the trade is not less than one hundred and fifty thousand dollars;

(ak) a trade that is the transfer of beneficial ownership of a security to a lender, pledgee, mortgagee or other encumbrancer pursuant to a realization of security;

(al) a trade made by an issuer in a security of its own issue to a trustee on behalf of an employee, senior officer or director of the issuer or an employee, senior officer or director of an affiliate of the issuer where the employee, senior officer or director is not induced to purchase by expectation of employment or continued employment;

(am) a trade made by an issuer or a promoter in the *bona fide* and reasonable belief that the exemption contained in clause (v) or (ac) or any other exemption specified in the regulations, whether such exemption is contained in this subsection or in the regulations, applies and such exemption does not apply if the reason it does not apply is the failure of one or more of the purchasers to purchase as principal, to have access to the required information, to be a purchaser whose net worth or investment experience permits him to purchase under the exemption, to consult with or receive the required advice, to receive an offering memorandum or to receive an offering memorandum in a timely manner provided that

(i) the vendor has exercised due diligence to ensure that such failure did not occur,

(ii) the vendor delivers the offering memorandum to any purchaser on request, and

(iii) the issuer or promoter gives written notice to the Director of his intention to rely on this exemption within ten days after becoming aware of the unavailability of the exemption on which he has intended to rely and provides the Director with such details of the trade as the Director may from time to time require;

(ama) a trade in a security made by a co-operative in the course of a distribution by the co-operative of the security to a member of the co-operative or to a purchaser who becomes a member of the co-operative by virtue of the trade unless

(i) the aggregate acquisition cost of the security to the member or the purchaser and of all other securities of the co-operative purchased by the

member or the purchaser in the preceding three hundred and sixty-five days exceeds one thousand dollars, or

(ii) the aggregate acquisition cost of the security to the member or the purchaser and of all other securities of the co-operative owned by the member or the purchaser exceeds ten thousand dollars;

(amb) a trade which is a distribution but for clause (a), (b) or (c) of subsection (7C) of Section 77;

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

(1A) In applying clause (ama) of subsection (1), where the security is distributed

(a) in respect of a patronage dividend declared by the co-operative;

(b) in respect of the operation of a price check-off;

(c) in respect of a sale to a member of a producer co-operative; or

(d) pursuant to a prospectus,

the security shall not be taken into consideration.

(1B) Subject to the regulations, a co-operative shall file with the Director

(a) within sixty days after the calendar year end, a report prepared and executed in accordance with the regulations, describing all distributions of securities of the co-operative made in reliance on clause (ama) of subsection (1), other than distributions referred to in subsection (1A), if the total aggregate subscription price of the securities distributed in the calendar year exceeds two hundred thousand dollars; and

(b) a copy of an offering memorandum that is sent or delivered to a member of a co-operative or a purchaser in connection with a distribution made in reliance on clause (ama) of subsection (1), other than a distribution referred to in subsection (1A), at least ten days before the trade that is the first trade in respect of which the offering memorandum is sent or delivered.

(2) Subject to the regulations, registration is not required to trade in the following

securities:

(a) bonds, debentures or other evidences of indebtedness

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

(ii) of any municipal corporation in Canada, including debentures issued for public, separate, secondary or vocational school purposes, guaranteed by any municipal corporation in Canada or secured by or payable out of rates or taxes levied under the law of any province of Canada on property in such province and collectable by or through the municipality in which such property is situated,

(iii) of or guaranteed by a bank, a trust company, a loan company or an insurance company, other than bonds, debentures or other evidences of indebtedness which are subordinate in right of payment to deposits held by the issuer or guarantor of such bonds, debentures or other evidences of indebtedness,

(iv) of or guaranteed by the International Bank for Reconstruction and Development established by the Agreement for an International Bank for Reconstruction and Development approved by the *Bretton Woods Agreements Act* (Canada), if the bonds, debentures or evidences of indebtedness are payable in the currency of Canada or the United States of America, or

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

(b) certificates or receipts issued by a trust company for moneys received for guaranteed investment;

(c) securities issued by a private mutual fund;

(d) negotiable promissory notes or commercial paper maturing not more than one year from the date of issue, provided that each such note or commercial paper traded to an individual has a denomination or principal amount of not less than fifty thousand dollars and has a rating as prescribed in the regulations;

(e) mortgages or other encumbrances upon real or personal property, other than mortgages or other encumbrances contained in or secured by a bond, debenture or similar obligation or in a trust deed or other instrument to secure bonds or debentures or similar obligations, if such mortgages or other encumbrances are offered for sale by a person or company registered or exempted from registration under the *Mortgage Brokers' and Lenders' Registration Act*;

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

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

(h) *repealed 2001, c. 41, s. 25.*

(i) shares of a credit union within the meaning of the *Credit Union Act*;

(j) securities of an issuer which are not offered for sale to the public where immediately following the sale the issuer is a private issuer;

(k) securities issued and sold by a prospector for the purpose of financing a prospecting expedition;

(l) securities issued by a prospecting syndicate that has filed a prospecting syndicate agreement for which the Director has issued a receipt, where the securities are sold by the prospector or one of the prospectors who staked claims that belong to or are the subject of a declaration of trust in favour of the prospecting syndicate, and the prospector delivers a copy of the prospecting syndicate agreement to the person or company purchasing the security before accepting payment therefor;

(m) securities issued by a prospecting syndicate that has filed a prospecting syndicate agreement for which the Director has issued a receipt, if the securities are not offered for sale to the public and are sold to not more than fifty persons or companies;

(n) securities issued by a mining company or a mining exploration company as consideration for mining claims where the Director is given prior notice in writing of the proposed issue of the securities and the vendor enters into such escrow or pooling agreement as the Director considers necessary;

(o) variable insurance contracts issued by a company licensed under the *Insurance Act* if the variable insurance contract is

(i) a contract of group insurance,

(ii) a whole life insurance contract providing for the payment at maturity of an amount not less than three quarters of the premium paid up to the age of seventy-five for a benefit payable at maturity,

(iii) an arrangement for the investment of policy dividends and policy proceeds in a separate and distinct fund to which contributions are made only from policy dividends and policy proceeds, or

(iv) a variable life annuity;

(p) securities in respect of which the regulations provide that registration is not required.

(3) For the purpose of subsection (1)

(a) a trust company shall be deemed to be acting as principal when it trades as trustee or as agent for accounts fully managed by it;

(b) a portfolio manager or a person or company who, but for the applicability of an exemption pursuant to this Act or the regulations, would be required to be a portfolio manager in order to be in compliance with this Act is deemed to be acting as principal when it trades as agent for accounts fully managed by it. R.S., c. 418, s. 41; 1990, c. 15, ss. 35, 80; 1996, c. 32, s. 6; 2001, c. 41, s. 25.

Confirmation of trade

42 (1) Every registered dealer who has acted as principal or agent in connection with any trade in a security shall promptly send by prepaid mail or deliver to the customer a written confirmation of the transaction, setting forth

(a) the quantity and description of the security;

(b) the consideration;

(c) whether or not the registered dealer is acting as principal or agent;

(d) if acting as agent in a trade, the name of the person or company from or to or through whom the security was bought or sold;

(e) the date and the name of the stock exchange, if any, upon which the transaction took place;

(f) the commission, if any, charged in respect of the trade; and

(g) the name of the salesman, if any, in the transaction.

(2) Where a trade is made in a security of a mutual fund, the confirmation shall contain, in addition to the requirements of subsection (1)

(a) the price per share or unit at which the trade was effected; and

(b) the amount deducted by way of sales, service and other charges.

(3) Subject to the regulations, where a trade is made in a security of a mutual fund under a contractual plan, the confirmation shall contain, in addition to the requirements of subsections (1) and (2)

(a) in respect of an initial payment made under a contractual plan which requires the pre-payment of sales, service and other charges, a statement of the initial payment and the portion of the sales, service and other charges that is allocated to subsequent investments in the mutual fund and the manner of allocation thereof;

(b) in respect of each subsequent payment made under a contractual plan which requires the prepayment of sales, service and other charges, a statement of the portion of the sales, service and other charges that is allocated to the payment which is the subject of the confirmation;

(c) in respect of an initial purchase made under a contractual plan which permits the deduction of sales, service and other charges from the first and subsequent instalments, a brief statement of the sales, service and other charges to be deducted from subsequent purchases; and

(d) in respect of each purchase made under a contractual plan, a statement of the total number of shares or units of the mutual fund acquired and the amount of sales charges paid under the contractual plan up to the date the con-firmation is sent or delivered.

(4) For the purposes of clauses (d) and (g) of sub-section (1), a person or company or a salesman may be identified in a written confirmation by means of a code or symbols if the written confirmation also contains a statement that the name of the person, company or salesman will be furnished to the customer on request.

(5) Where a person or company uses a code or symbols for identification in a confirmation under subsection (1), the person or company shall forthwith file the code or symbols and their meaning, and shall notify the Director within five days of any change in or addition to the code or symbols or their meaning.

(6) Every dealer who has acted as agent in connection with any trade in a security shall promptly disclose to the Director upon request by the Director, the name of, and, to the extent of his knowledge after having made due inquiry, sufficient further particulars to identify the person or company from or to or through whom the security was bought or sold. R.S., c. 418, s. 42; 1990, c. 15, s. 80.

Order prohibiting calls to residences

43 (1) The Commission may, by order, suspend, cancel, restrict or impose terms and conditions upon the right of any person or company or class of persons or companies named or described in the order to

(a) call at any residence; or

(b) telephone from within the Province to any residence within or outside the Province,

for the purpose of trading in any security or in any class of securities.

(2) The Commission shall not make an order under subsection (1) without giving the person or company or class of persons or companies affected an opportunity to be heard.

(3) In this Section, "residence" includes any building or part of a building in which the occupant resides either permanently or temporarily and any premises appurtenant thereto.

(4) For the purposes of this Section, a person or company shall be deemed conclusively to have called or telephoned where an officer, director or salesman of the person or company calls or telephones on its behalf. R.S., c. 418, s. 43; 1990, c. 15, s. 36.

Representations prohibited

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

(a) will resell or repurchase; or

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

such security.

(2) No person or company, with the intention of effecting a trade in a security, shall give any undertaking, written or oral, relating to the future value or price of such security.

(3) No person or company, with the intention of effecting a trade in a security, shall, except with the written permission of the Director, make any representation, written or oral, that such security will be listed on any stock exchange or that application has been or will be made to list such security upon any stock exchange.

(4) This Section does not apply to any representation referred to in subsection (1) made to a person or to a company where the representation is contained in an enforceable written agreement and the security has an aggregate acquisition cost of more than fifty thousand dollars. R.S., c. 418, s. 44; 1990, c. 15, s. 80.

Unfair practice

44A (1) In this Section, "unfair practice" includes

(a) putting unreasonable pressure on a person to purchase, hold or sell a security;

(b) taking advantage of a person's inability or incapacity to reasonably protect the person's own interest because of physical or mental infirmity, ignorance, illiteracy, age or inability to understand the character, nature or language of any matter relating to a decision to purchase, hold or sell a security; or

(c) imposing terms or conditions that make a transaction in securities manifestly inequitable.

(2) No person or company shall engage in an unfair practice. 2002, c. 39, s. 3.

Registered dealer as principal

45 (1) Where a registered dealer, with the intention of effecting a trade in a security with any person or company other than another registered dealer, issues, publishes or sends a circular, pamphlet, letter, telegram or advertisement and proposes to act in the trade as a principal, the registered dealer shall so state in the circular, pamphlet, letter, telegram or advertisement or otherwise in writing before entering into a contract for the sale or purchase of any such security and before accepting payment or receiving any security or other consideration under or in anticipation of any such contract.

(2) A statement made in compliance with this Section or clause (c) of subsection (1) of Section 42 that a registered dealer proposes to act or has acted as principal in connection with a trade in a security does not prevent such registered dealer from acting as agent in connection with a trade of such security.

(3) This Section does not apply to trades referred to in subsection (1) of Section 41 or to securities referred to in subsection (2) of Section 41. R.S., c. 418, s. 45.

Disclosure of financial interest

46 Subject to the regulations, every registered adviser shall cause to be printed in a conspicuous position on every circular, pamphlet, advertisement, letter, telegram and other publication issued, published or sent out by him, in which the adviser recommends that a specific security be purchased, sold or held, in type not less legible than that used in the body of the circular, pamphlet, advertisement, letter or other publication, a full and complete statement of any financial or other interest that he or any partner, director, officer or a person or company that would be an insider of the adviser if the adviser was a reporting issuer may have either directly or indirectly in any securities referred to therein or in the sale or purchase thereof, including

(a) any ownership, beneficial or otherwise, that any of them may have in respect of such securities or in any securities issued by the same issuer;

(b) any option that any of them may have in respect of such securities, and the terms thereof;

(c) any commission or other remuneration that any of them has received or may expect to receive from any person or company in connection with any trade in such securities;

(d) any financial arrangement relating to such securities that any of them may have with any person or company; and

(e) any financial arrangement that any of them may have with any underwriter or other person or company who has any interest in the securities. R.S., c. 418, s. 46.

Disclosure of underwriting liability

47 Every registered dealer that recommends a purchase, sale, exchange or hold of a security in any circular, pamphlet, advertisement, letter, telegram or other publication issued, published or sent by it and intended for general circulation shall, in type not less legible than that used in the body of the publication, state whether the registered dealer or any of its officers or directors has at any time during the past twelve months assumed an underwriting liability with respect to such securities or for consideration provided financial advice to the issuer of such securities or whether the registered dealer or any of its officers or directors will receive any fees as a result of the recommended action. R.S., c. 418, s. 47.

Annual statement and names of partners

48 Every registered dealer shall, on the request of a customer, provide to the customer a copy of the most recently prepared annual statement of the dealer's financial condition, as filed with the Director or with the self-regulatory organization of which it is a member, made up and certified as required by the regulations together with a list of the names of the partners or directors and senior officers of the dealer made up and certified as of a date not more than thirty days prior to the request and shall inform its customers on every statement of account or in such other manner as the Director may approve that this information is available but where the Director determines that a registered dealer or a class of registered dealers is subject to conditions of registration or to regulations imposed by a self-regulatory organization that require provision to customers in the same or some other manner of other appropriate information, the Director may, subject to such terms and conditions as the Director may impose, exempt the registered dealer or class of registered dealers from the requirements of this Section. R.S., c. 418, s. 48; 1990, c. 15, s. 80.

Use of name of another registrant

49 No registrant shall use the name of another registrant on letterheads, forms, advertisements or signs, as correspondent or otherwise, unless he is a partner, officer or agent of or is authorized so to do in writing by the other registrant. R.S., c. 418, s. 49.

Registration not to be advertised

50 No person or company shall hold himself out as being registered by having printed in a circular, pamphlet, advertisement, letter, telegram or other stationery that he is registered. R.S., c. 418, s. 50.

Holding out by unregistered person

51 No person or company who is not registered shall, either directly or indirectly, hold himself out as being registered. R.S., c. 418, s. 51.

Advertising approval

52 No person or company shall make any representation, written or oral, that the Director or the Commission has in any way passed upon the financial standing, fitness or conduct of any registrant or upon the merits of any security or issuer. R.S., c. 418, s. 52; 1990, c. 15, s. 80.

Margin contracts

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

(a) he;

(b) his firm or a partner thereof; or

(c) the company or a director thereof,

has a direct or indirect interest, if the effect of such sale would, otherwise than unintentionally, be to reduce the amount of such securities in the hands of the dealer or under his control in the ordinary course of business below the amount of such securities that the dealer should be carrying for all customers, any such contract with a customer is, at the option of the customer, voidable and the customer may recover from the dealer all moneys paid with interest there-on or securities deposited in respect thereof.

(2) The customer may exercise such option by a notice to that effect sent by prepaid mail addressed to the dealer at his address for service in the Province. R.S., c. 418, s. 53.

Declaration as to short position

54 Any person or company who places an order for the sale of a security through an agent acting for him that is a registered dealer and who

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

shall, at the time of placing the order to sell, declare to his agent that he or his principal, as the case may be, does not own the security. R.S., c. 418, s. 54.

Voting of shares by registrant or custodian

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

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

that are not beneficially owned by the registrant or the custodian, as the case may be, shall not be voted by the registrant or custodian at any meeting of security holders of the issuer.

(2) Forthwith after receipt of a copy of a notice of a meeting of security holders of an issuer or of a take-over bid circular, issuer bid circular, directors' circular or director's or officer's circular or other similar and relevant material, the registrant or custodian shall, where the name and address of the beneficial owner of securities registered in the name of the registrant or custodian are known, send or deliver to each beneficial owner of such security as registered at the record date for notice of meeting or at the date of the take-over bid or issuer bid a copy of any notice, financial statement, information circular, take-over bid circular, issuer bid circular, directors' circular or director's or officer's circular or other similar and relevant material but the registrant or custodian is not required to send or deliver such material unless the issuer or other sender of the material or the beneficial owner of such securities has agreed to pay the reasonable costs to be incurred by the registrant or custodian in so doing.

(3) At the request of a registrant or custodian, the person or company sending material referred to in sub-section (2) shall forthwith furnish to the registrant or custodian, at the expense of the sender, the requisite number of copies of the material.

(4) A registrant or custodian shall vote or give a proxy requiring a nominee to vote any voting securities referred to in subsection (1) in accordance with any written voting instructions received from the beneficial owner.

(5) A registrant or custodian shall, if requested in writing by a beneficial owner, give to the beneficial owner or his nominee a proxy enabling the beneficial owner or his nominee to vote any voting securities referred to in subsection (1).

(6) For the purpose of this Section, "custodian" means a custodian of securities issued by a mutual fund held for the benefit of plan holders under a custodial agreement or other arrangement. R.S., c. 418, s. 55.

Advertising

56 (1) The Commission may, after giving the registered dealer an opportunity to be heard, and upon being satisfied that the registered dealer's past conduct with respect to the use of advertising and sales literature affords reasonable grounds for belief that it is necessary for the protection of the public to do so, order that the registered dealer shall deliver to the Commission, at least seven days before it is used, copies of all advertising and sales literature which the registered dealer proposes to use in connection with trading in securities.

(2) For the purposes of this Section,

(a) "advertising" includes television and radio commercials, newspaper and magazine advertisements and all other sales material generally disseminated through the communications media;

(b) "sales literature" includes records, videotapes and similar material, written matter and all other material, except preliminary prospectuses and prospectuses, designed for use in a presentation to a purchaser, whether such material is given or shown to him.

(3) Where the Commission has issued an order pursuant to subsection (1), the Commission may prohibit the use of the advertising and sales literature so delivered or may require that deletions or changes be made prior to its use.

(4) Where an order has been made pursuant to subsection (1), the Commission on application of the registered dealer at any time after the date thereof, may rescind or vary the order where, in its opinion, it is not contrary to the public interest to do so. R.S., c. 418, s. 56; 1990, c. 15, s. 37.

Prospecting syndicate agreement

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

(a) the sole purpose of the syndicate is the financing of prospecting expeditions, preliminary mining development or the acquisition of mining properties, or any combination thereof;

(b) the agreement clearly sets out

(i) the purpose of the syndicate,

(ii) the particulars of any transaction effected or in contemplation involving the issue of units for a consideration other than cash,

(iii) the maximum amount, not exceeding twenty-five per cent of the sale price, that may be charged or taken by a person or company as commission upon the sale of units in the syndicate,

(iv) the maximum number of units in the syndicate, not exceeding thirty-three and one-third per cent of the total number of units of the syndicate, that may be issued in consideration of the transfer to the syndicate of mining properties,

(v) the location of the principal office of the syndicate and that the principal office shall at all times be maintained in the Province and that the Director and the members of the syndicate shall be notified immediately of any change in the location of the principal office,

(vi) that a person or company holding mining properties for the syndicate shall execute a declaration of trust in favour of the syndicate with respect to such mining properties,

(vii) that, after the sale for cash of any issued units of the syndicate, no mining properties shall be acquired by the syndicate other than by staking unless such acquisition is approved by members of the syndicate holding at least two thirds of the issued units of the syndicate that have been sold for cash,

(viii) that the administrative expenditures of the syndicate, including, in addition to any other items, salaries, office expenses, advertising and commissions paid by the syndicate with respect to the sale of its units, shall be limited to one third of the total amount received by the treasury of the syndicate from the sale of its units,

(ix) that a statement of the receipts and disbursements of the syndicate shall be furnished to the Director and to each member annually,

(x) that ninety per cent of the vendor units of the syndicate shall be escrowed units and may be released upon the consent of the Director and that any release of such units shall not be in excess of one vendor unit for each unit of the syndicate sold for cash, and

(xi) that no securities, other than those of the syndicate's own issue, and no mining properties owned by the syndicate or held in trust for the syndicate shall be disposed of unless such disposal is approved by members of the syndicate holding at least two thirds of the issued units of the syndicate other than escrowed units; and

(c) the agreement limits the capital of the syndicate to a sum not exceeding two hundred and fifty thousand dollars.

(2) The Director may, in his discretion, issue a receipt for a prospecting syndicate agreement filed under this Section and is not required to determine whether it is in conformity with clauses (a), (b) and (c) of subsection (1).

(3) After a receipt is issued by the Director for a prospecting syndicate agreement, the requirements of the *Partnerships and Business Names Registration Act* as to filing do not apply to the prospecting syndicate.

(4) No registered dealer shall trade in a security issued by a prospecting syndicate either as agent for the prospecting syndicate or as principal.

(5) The Director shall not refuse to issue a receipt under subsection (1) without giving the person or company who filed the prospecting syndicate agreement an opportunity to be heard. R.S., c. 418, s. 57; 1990, c. 15, s. 80.

Preliminary prospectus and prospectus

58 (1) No person or company shall trade in a security on his own account or on behalf of any other person or company where such trade would be a distribution of such security unless a preliminary prospectus and a prospectus have been filed and receipts therefor obtained from the Director.

(2) A preliminary prospectus and a prospectus may be filed in accordance with this Act to enable the issuer to become a reporting issuer, notwithstanding the fact that no distribution is contemplated. R.S., c. 418, s. 58; 1990, c. 15, s. 80.

Preliminary prospectus

59 (1) A preliminary prospectus shall substantially comply with the requirements of this Act and the regulations respecting the form and content of a prospectus, except that the report or reports of the auditor or accountant required by the regulations need not be included.

(2) A preliminary prospectus may exclude information with respect to the price to the underwriter and offering price of any securities and other matters dependent upon or relating to such prices. R.S., c. 418, s. 59.

Receipt for preliminary prospectus

60 The Director shall issue a receipt for a preliminary prospectus forthwith upon the filing thereof. R.S., c. 418, s. 60; 1990, c. 15, s. 80.

Content of prospectus

61 (1) A prospectus shall provide full, true and plain disclosure of all material facts relating to the securities issued or proposed to be distributed and shall comply with the requirements of this Act and the regulations.

(2) The prospectus shall contain or be accompanied by such financial statements, reports or other documents as are required by this Act or the regulations. R.S., c. 418, s. 61.

Amendment where material change occurs

62 (1) Subject to subsection (2), where a material adverse change occurs after a receipt is obtained for a preliminary prospectus filed in accordance with subsection (1) of Section 58 and before the receipt for the prospectus is obtained or, where a material change occurs after the receipt for the prospectus is obtained but prior to the completion of the distribution under such prospectus, an amendment to such preliminary prospectus or prospectus, as the case may be, shall be filed as soon as practical and in any event within ten days after the change occurs.

(2) Where an amendment to a prospectus is filed pursuant to subsection (1) for the purpose of distributing securities in addition to the securities previously disclosed in the prospectus or an amendment to the prospectus such additional distribution shall not be proceeded with for a period of ten days after this amendment is filed or, in the event the Director informs the party filing in writing within ten days of the filing that he objects to the further distribution, until such time as a receipt for the amended prospectus is obtained from the Director.

(3) An amendment to a preliminary prospectus referred to in subsection (1) shall, forthwith after it has been filed, be forwarded to each recipient of the preliminary prospectus according to the record maintained pursuant to Section 72. R.S., c. 418, s. 62; 1990, c. 15, s. 80.

Certificate of issuer

63 (1) Subject to subsection (3) of this Section and subsection (2) of Section 68, a prospectus filed under subsection (1) of Section 58 or subsection (1) of Section 67 shall contain a certificate in, subject to the regulations, the following form, signed by the chief executive officer, the chief financial officer, and, on behalf of the board of directors, any two directors of the issuer, other than the foregoing, duly authorized to sign, and any person or company who is a promoter of the issuer:

The foregoing constitutes full, true and plain disclosure of all material facts relating to the securities offered by this prospectus as required by the *Securities Act* and the regulations thereunder.

(2) Subject to subsection (3) of this Section and subsection (2) of Section 68, a prospectus filed pursuant to subsection (2) of Section 58 shall contain a certificate in, subject to the regulations, the following form, signed by the chief executive officer, the chief financial officer, and, on behalf of the board of directors, any two directors of the issuer, other than the foregoing, duly authorized to sign, and any person or company who is a promoter of the issuer:

The foregoing constitutes full, true and plain disclosure of all material facts relating to the securities previously issued by the issuer as required by the *Securities Act* and the regulations thereunder.

(3) Where the issuer has only three directors, two of whom are the chief executive officer and the chief financial officer, the certificate may be signed by all the directors of the issuer.

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

(5) With the consent of the Director a promoter need not sign the certificate in a prospectus.

(6) The Director may, in his discretion, require any person or company who was a promoter of the issuer within the two preceding years to sign the certificate required by subsection (1) or (2) subject to such conditions as the Director may consider proper.

(7) With the consent of the Director a promoter may sign a certificate in a prospectus by his agent duly authorized in writing. R.S., c. 418, s. 63; 1990, c. 15, ss. 38, 80.

Certificate of underwriter

64 (1) Subject to subsection (2) of Section 68 where there is an underwriter, a prospectus shall contain a certificate in, subject to the regulations, the following form, signed by the underwriter or underwriters who, with respect to the securities offered by the prospectus, are in a contractual relationship with the issuer or security holder whose securities are being offered by the prospectus:

To the best of our knowledge, information and belief, the foregoing constitutes full, true and plain disclosure of all material facts relating to the securities offered by this prospectus as required by the *Securities Act* and the regulations thereunder.

(2) With the consent of the Director an underwriter may sign a certificate in a prospectus by his agent duly authorized in writing. R.S., c. 418, s. 64; 1990, c. 15, ss. 39, 80.

Required statements in prospectus and offering memorandum

65 (1) Every prospectus, except a prospectus filed under subsection (2) of Section 58, shall contain a statement of

- (a) the rights given to a purchaser by Sections 76 and 137; and
- (b) the limits on the time within which an action to enforce a right under Section 137 must be brought.

(2) In addition to the requirements of subsection (1), every prospectus of a mutual fund in the Province shall contain a statement of the rights given to a purchaser by Section 145.

(3) Every offering memorandum shall contain a statement of

- (a) the rights given to a purchaser by Sections 76A and 138 and a statement that such rights are in addition to any other right or remedy available at law to the purchaser; and
- (b) the limits on the time within which an action to enforce a right under Section 138 must be commenced. R.S., c. 418, s. 65; 1990, c. 15, s. 40.

Receipt for prospectus

66 (1) Subject to subsection (2) of this Section and subsection (4) of Section 68, the Director shall issue a receipt for a prospectus filed unless it appears to him that it is not in the public interest to do so.

(2) The Director shall not issue a receipt for a prospectus if it appears to him that

- (a) the prospectus or any document required to be filed therewith
 - (i) fails to comply in any substantial respect with any of the requirements of Sections 58 to 69 or the regulations,
 - (ii) contains any statement, promise, estimate or forecast that is misleading, false or deceptive, or
 - (iii) contains a misrepresentation;
- (b) an unconscionable consideration has been paid or given or is intended to be paid or given for promotional purposes or for the acquisition of property;

(c) the proceeds from the sale of the securities to which the prospectus relates that are to be paid into the treasury of the issuer, together with other resources of the issuer, are insufficient to accomplish the purpose of the issue stated in the prospectus;

(d) having regard to the financial condition of the issuer or an officer, director, promoter, or a person or company or combination of persons or companies holding sufficient of the securities of the issuer to affect materially the control of the issuer, the issuer cannot reasonably be expected to be financially responsible in the conduct of its business;

(e) the past conduct of the issuer or an officer, director, promoter or a person or company or combination of persons or companies holding sufficient of the securities of the issuer to affect materially the control of the issuer affords reasonable grounds for belief that the business of the issuer will not be conducted with integrity and in the best interests of its security holders;

(f) such escrow or pooling agreement as the Director considers necessary or advisable with respect to securities has not been entered into;

(g) such agreement as the Director considers necessary or advisable to accomplish the objects indicated in the prospectus for the holding in trust of the proceeds payable to the issuer from the sale of the securities pending the distribution of the securities has not been entered into;

(h) in the case of a prospectus filed by a finance company, as defined in the regulations,

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

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

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

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

(3) The Director shall not refuse to issue a receipt under subsection (1) or (2) without giving the person or company who filed the prospectus an opportunity to be heard.

(4) Where it appears to the Director that a preliminary prospectus, *pro forma* prospectus or prospectus raises a material question involving the public interest under subsection (1) or a new or novel question of interpretation under subsection (2) that might result in the Director refusing to issue a receipt under subsection (1) or (2), the Director may refer the question to the Commission for determination.

(5) The Director shall state the question in writing setting out the facts upon which the question is based.

(6) The question, together with any additional material, shall be lodged by the Director with the Secretary of the Commission and a copy of the question shall forthwith be served by the Secretary upon any interested person or company.

(7) The Commission, after giving the parties an opportunity to be heard, shall consider and determine the question and refer the matter back to the Director for final consideration pursuant to subsections (1) and (2).

(8) Subject to any order of the Supreme Court made under Section 26, the decision of the Commission on the question is binding on the Director.

(9) In determining whether to issue a receipt for a prospectus pursuant to subsection (1), the Director shall consider those matters contained in the regulations and the published policies of the Commission. R.S., c. 418, s. 66; 1990, c. 15, ss. 41, 80.

Refiling of prospectus

67 (1) No distribution of a security to which sub-section (1) of Section 58 applies shall continue longer than twelve months from the later of either

- (a) the date of the issuance of the receipt for the preliminary prospectus relating to such security; or
- (b) the date of the last prospectus filed pursuant to this Section,

as the case may be, which shall be the lapse date, unless a new prospectus is filed and a receipt therefor is obtained from the Director.

(2) A distribution may be continued for a further twelve months if

- (a) a *pro forma* prospectus prepared in accordance with the regulations is filed not less than thirty days prior to the lapse date of the previous prospectus;
- (b) a prospectus is filed not later than ten days following the lapse date of the previous prospectus; and
- (c) a receipt for the prospectus is obtained from the Director within the twenty days following the lapse date of the previous prospectus.

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

(4) Subject to any extension granted pursuant to subsection (5), all trades completed in reliance upon sub-section (2) after the lapse date may be cancelled at the option of the purchaser within ninety days of the purchaser's first knowledge of the failure to comply with such conditions where any of the conditions to the continuation of a distribution pursuant to subsection (2) are not complied with.

(5) The Commission may, upon an application of a reporting issuer, extend, subject to such terms and conditions as it may impose, the times provided by subsection (2) where, in its opinion, it would not be prejudicial to the public interest to do so. R.S., c. 418, s. 67; 1990, c. 15, ss. 42, 80.

Short form prospectus and summary statement

68 (1) A person or company may, if permitted by the regulations, file a short form of preliminary prospectus and a short form of prospectus in the prescribed form pursuant to Section 58, or a short form of *pro forma* prospectus and a short form of prospectus in the prescribed form pursuant to Section 67, and any such prospectus that complies with the regulations applicable thereto shall, for the purposes of Section 61, be considered to provide sufficient disclosure of all material facts relating to the securities issued or proposed to be distributed under the prospectus.

(2) A short form prospectus may contain one or more forms of certificate to be signed as alternatives to the forms of certificate set out in subsections (1) and (2) of Section 63 and subsection (1) of Section 64 and, where any such certificate in a short form prospectus is used in accordance with the regulations, it is not necessary to use the alternative certificate required by subsections (1) and (2) of Section 63 and subsection (1) of Section 64, as the case may be.

(3) A person or company may, if permitted by the regulations, file a summary statement as a separate document in the prescribed form together with a prospectus filed pursuant to Section 58 or 67.

(4) Where a summary statement is filed with a prospectus, the Director shall not issue a receipt for the prospectus if it appears to him that the summary statement does not comply with the regulations applicable thereto.

(5) A summary statement filed with a prospectus for which a receipt has been issued may be sent or delivered by a dealer to a purchaser of securities instead of a prospectus as required in Section 76, and, where a dealer so elects, the provisions of Sections 76 and 141 with respect to a prospectus apply with necessary modifications to a summary statement.

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

(7) Where, during the distribution of a security under a prospectus, an order is made to cease trading in the security, or the receipt issued by the Director for the prospectus is revoked or the prospectus lapses or the use of a prospectus is otherwise prohibited by the Act, the regulations or by a decision of the Commission or an order of a court, a summary statement filed with the prospectus shall cease to have force and effect for the purposes of Section 75 unless the Director otherwise orders.

(8) Nothing in this Section shall be construed to provide relief from liability arising under Section 137 where a misrepresentation is contained in a prescribed short form prospectus and, for the purposes of Section 137, where a misrepresentation is contained in a summary statement filed with a prospectus, the misrepresentation shall be deemed to be contained in the prospectus. R.S., c. 418, s. 68; 1990, c. 15, s. 80; revision corrected 1997.

Orders to furnish information and waiver of requirements

69 (1) Where a person or company proposing to make a distribution of previously issued securities of an issuer is unable to obtain from the issuer of the securities information or material that is necessary for the purpose of complying with Sections 58 to 69 or the regulations, the Director may order the issuer of the securities to furnish to the person or company that proposes to make the distribution such information and material as the Director considers necessary for the purposes of the distribution, upon such terms and subject to such conditions as he considers proper, and all such information and material may be used by the person or company to whom it is furnished for the purpose of complying with Sections 58 to 69 and the regulations.

(2) Where a person or company proposing to make a distribution of previously issued securities of an issuer is unable to obtain any or all of the signatures to the certificates required by this Act or the regulations, or otherwise to comply with Sections 58 to 69 or the regulations, the Director may, upon being satisfied that all reasonable efforts have been made to comply with Sections 58 to 69 and the regulations and that no person or company is likely to be prejudicially affected by such failure to comply, make such order waiving any of the provisions of Sections 58 to 69 or the regulations as he considers advisable, upon such terms and subject to such conditions as he considers proper. R.S., c. 418, s. 69; 1990, c. 15, s. 80.

Distribution during waiting period

70 (1) In this Section, "waiting period" means the interval, which shall be at least ten days, between the issuance by the Director of a receipt for a preliminary prospectus relating to the offering of a security and the issuance by him of a receipt for the prospectus.

(2) Notwithstanding Section 58, but subject to Sections 42 to 56 inclusive, it is permissible during the waiting period

(a) to distribute a notice, circular, advertisement or letter to or otherwise communicate with any person or company identifying the security proposed to be issued, stating the price thereof, if then determined, the name and address of a person or company from whom purchases of the security may be made and containing such further information as may be permitted or required by the regulations, if every such notice, circular, advertisement, letter or other communication states the name and address of a person or company from whom a preliminary prospectus may be obtained;

(b) to distribute a preliminary prospectus; and

(c) to solicit expressions of interest from a prospective purchaser if, prior to such solicitation or forthwith after the prospective purchaser indicates an interest in purchasing the security, a copy of the preliminary prospectus is forwarded to him. R.S., c. 418, s. 70; 1990, c. 15, s. 80.

Distribution of preliminary prospectus

71 Any dealer distributing a security to which Section 70 applies shall, in addition to the requirements of clause (c) of subsection (2) of Section 70, send a copy of the preliminary prospectus to each prospective purchaser who, without solicitation, indicates an interest in purchasing the security and requests a copy of such preliminary prospectus. R.S., c. 418, s. 71.

Distribution list

72 Any dealer distributing a security to which Section 70 applies shall maintain a record of the names and addresses of all persons and companies to whom the preliminary prospectus has been forwarded. R.S., c. 418, s. 72.

Defective preliminary prospectus

73 Where it appears to the Director that a preliminary prospectus is defective in that it does not substantially comply with the requirements of this Act and the regulations as to form and content, he may, without giving notice, order that the trading permitted by subsection (2) of Section 70 in the security to which the preliminary prospectus relates shall cease until a revised preliminary prospectus satisfactory to the Director is filed and forwarded to each recipient of the defective preliminary prospectus according to the record maintained under Section 72. R.S., c. 418, s. 73; 1990, c. 15, s. 80.

Material given on distribution

74 From the date of the issuance by the Director of a receipt for a prospectus relating to a security, a person or company trading in the security in a distribution, either on his own account or on behalf of any other person or company, may distribute the prospectus, any document filed with or referred to in the prospectus and any notice, circular, advertisement or letter of the nature described in clause (a) of subsection (2) of Section 70 or in the regulations, but shall not distribute any other printed or written material respecting the security that is prohibited by the regulations. R.S., c. 418, s. 74; 1990, c. 15, s. 80.

Order to cease trading

75 (1) Where it appears to the Commission after the filing of a prospectus under this Act and the issuance of a receipt therefor, that any of the circumstances set out in subsection (2) of Section 66 exist, the Commission may order that the distribution of the securities under the prospectus shall cease.

(2) No order shall be made pursuant to subsection (1) without a hearing unless in the opinion of the Commission the length of time required for a hearing could be prejudicial to the public interest, in which event a temporary order may be made which shall expire fifteen days from the date of the making thereof unless the hearing is commenced in which case the Commission may extend the order until the hearing is concluded.

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

(a) distribution of the securities under the prospectus by the person or company named in the order shall cease; and

(b) any receipt issued for the prospectus is revoked. R.S., c. 418, s. 75; 1990, c. 15, s. 43; 2002, c. 39, s. 4.

Obligation to deliver prospectus

76 (1) A dealer not acting as agent of the purchaser who receives an order or subscription for a security offered in a distribution to which subsection (1) of Section 58 or Section 67 is applicable shall, unless he has previously done so, send by prepaid mail or deliver to the purchaser the latest prospectus and any amendment to

the prospectus filed either before entering into an agreement of purchase and sale resulting from the order or subscription or not later than midnight on the second day, exclusive of Saturdays and holidays, after entering into such agreement.

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

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

(4) For the purpose of this Section, where the latest prospectus and any amendment to the prospectus is sent by prepaid mail, the latest prospectus and any amendment to the prospectus shall be deemed conclusively to have been received in the ordinary course of mail by the person or company to whom it was addressed.

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

(6) The receipt of the notice referred to in subsection (2) by a dealer who acted as agent of the vendor with respect to the sale of the security referred to in subsection (1) shall, for the purpose of this Section, be receipt by the vendor as of the date on which the agent received such notice.

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

(8) The onus of proving that the time for giving notice pursuant to subsection (2) has expired is upon the dealer from whom the purchaser has agreed to purchase the security. R.S., c. 418, s. 76.

Agreement not binding

76A (1) Where a vendor of a security offered in a distribution to which Section 58 or 67 does not apply by virtue of clause (a) of subsection (1) of Section 77 and an offering memorandum has been delivered to a purchaser, the agreement of purchase and sale is not binding upon the purchaser if the vendor or a person or company acting on behalf of the vendor receives written or telegraphic notice evidencing the intention of the purchaser not to be bound by the agreement of purchase and sale not later than midnight on the second day, exclusive of Saturdays and holidays, after receipt by the purchaser of the offering memorandum.

(2) Subsection (1) does not apply if the purchaser is a registrant or if the purchaser sells or otherwise transfers beneficial ownership of the security referred to in subsection (1), otherwise than to secure indebtedness, before the expiration of the time referred to in subsection (1).

(3) For the purposes of this Act and the regulations, an offering memorandum shall be deemed to have been sent by prepaid mail or delivered to a purchaser if it is sent by prepaid mail or delivered to an agent of the purchaser or a person or company who thereafter commences to act as agent of the purchaser with respect to the purchase of a security described in the offering memorandum provided that, for the purpose of this subsection, a person or company shall not be considered to be acting as agent of the purchaser unless the person or company is acting solely as agent of the purchaser with respect to the purchase and sale in question and has not received and has no agreement to receive compensation from or on behalf of the vendor with respect to the purchase and sale.

(4) The onus of proving that the time for giving notice pursuant to subsection (1) has expired is upon the vendor of the security. 1990, c. 15, s. 44.

Exemption from prospectus requirements

77 (1) Subject to the regulations, Sections 58 and 67 do not apply to a distribution where

(a) the purchaser is

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

(ii) a loan company or trust company,

(iii) an insurance company,

(iv) a subsidiary of any of the persons or companies referred to in subclause (i), (ii) or (iii) where the bank, loan company, trust company or insurance company, as the case may be, owns beneficially all of the voting securities of such subsidiary,

(v) Her Majesty in right of Canada or any province of Canada, or

(vi) any municipal corporation or public board or commission in Canada,

who purchases as principal;

(b) the trade is an isolated trade by or on behalf of an issuer in a specific security of its own issue, for the issuer's account, where the trade is not made in the course of continued and successive transactions of a like nature, and is not made by a person or company whose usual business is trading in securities, but this exemption shall only apply to a trade for a consideration which consists, in whole or in part, of mining, oil or gas claims or properties if prior notice of the trade is given, in writing, to the Director and the seller of the claims or properties enters into those escrow or pooling agreements that the Director may consider necessary;

(c) the party purchasing as principal is a company or a person, other than an individual, and is recognized by the Commission as an exempt purchaser;

(d) the purchaser purchases as principal, if the trade is in a security which has an aggregate acquisition cost to such purchaser of not less than one hundred and fifty thousand dollars, but this exemption is not available where a trade is made through an advertisement of the securities in printed media of general and regular paid circulation, radio or television unless an offering memorandum which includes a description of the securities being offered for sale is sent by prepaid mail or delivered by the seller or a person or a company acting on behalf of the seller to the purchaser before an agreement of purchaser and sale is entered into with such purchaser;

(e) the trade is to a lender, pledgee, mortgagee or other encumbrancer from the holdings of any person, company or combination of persons or companies described in subclause (iii) of clause (1) of subsection (1) of Section 2 for the purpose of giving collateral for a *bona fide* debt;

(f) the trade is made by an issuer

(i) in a security of its own issue that is distributed by it to holders of its securities as a stock dividend or other distribution out of earnings or surplus,

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

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

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

(g) the trade is made by an issuer in a security of a reporting issuer held by it that is distributed by it to holders of its securities as a dividend *in specie*;

(h) the trade is made by an issuer

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

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

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

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

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

(i) the trade is made in a security of a company that is exchanged by or for the account of such company with another company or the holders of the securities of that other company in connection with a statutory amalgamation or arrangement or a statutory procedure under which one company takes title to the assets of another company which in turn loses its existence by operation of law, or under which one company merges with one or more other companies;

(j) the trade is made in a security of an issuer that is exchanged by or for the account of the issuer with the security holders of another issuer in connection with a take-over bid as defined in Section 95;

(k) the trade is made in a security to a person or company pursuant to a take-over bid or issuer bid as defined in Section 95 made by that person or company;

(l) the trade is made by an issuer in a security of its own issue as consideration for a portion or all of the assets of any person or company, if the fair value of the assets so purchased is not less than one hundred and fifty thousand dollars, but this exemption shall only apply to a trade by or on behalf of an issuer for a consideration which consists, in whole or in part, of mining, oil or gas claims or properties if prior notice of the trade is given, in writing, to the Director and the seller of the claims or properties enters into those escrow or pooling agreements that the Director may consider necessary;

(m) the trade is made by an issuer in a security of its own issue in consideration of mining claims where the Director is given prior notice in writing of the trade and the vendor enters into such escrow or pooling agreement as the Director considers necessary;

(n) the trade is made by an issuer in the securities of its own issue with its employees or the employees of an affiliate who are not induced to purchase by expectation of employment or continued employment;

(o) the trade is made by an issuer in securities of its own issue where the trade is reasonably necessary to facilitate the incorporation or organization of the issuer and the securities are traded for a nominal consideration to not more than five incorporators or organizers unless the statute under which the issuer is incorporated or organized requires the trade to be for a

greater consideration or to a larger number of incorporators or organizers, in which case the securities may be traded for that greater consideration or to that larger number of incorporators or organizers;

(p) the trade is made by an issuer with a view to the sale of securities of its own issue if solicitations in all jurisdictions including the Province, are made to not more than fifty prospective purchasers resulting in sales to not more than twenty-five purchasers in all jurisdictions including the Province, and

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

(ii) each purchaser has access to substantially the same information concerning the issuer that a prospectus filed under this Act would provide and is

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

(B) a senior officer or director of the issuer or an affiliate of the issuer or a spouse, parent, brother, sister or child of any such director or officer,

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

(iv) no promoter of the issuer, other than a registered dealer, has acted as a promoter of any other issuer which has traded in securities of its own issue pursuant to the exemption in this clause, clause (w) or any other exemption specified in the regulations, whether such exemption is contained in this subsection or in the regulations, within the previous twelve months,

(v) an offering memorandum which includes a description of the securities being offered for sale is sent by prepaid mail or delivered by the issuer or a person or company acting on behalf of the issuer to the purchaser before an agreement of purchase of sale is entered into with such purchaser, and

(vi) no security of the issuer's own issue is being issued concurrently pursuant to the exemption in clause (w) or any other exemption specified in the regulations, whether such exemption is contained in this subsection or in the regulations,

but an issuer may only rely upon this exemption once in any period of time designated, from time to time, by the Commission;

(q) the trade is made from one registered dealer to another registered dealer where the registered dealer making the purchase is acting as principal;

(r) the trade is made between a person or company and an underwriter acting as purchaser or between or among underwriters;

(s) the trade is made in a security of an issuer where each of the parties to the trade is a person or company who is, as regards such issuer, a person or company referred to in subclause (iii) of clause (1) of subsection (1) of Section 2;

(t) the trade is made by an issuer in securities of its own issue with a promoter of the issuer or by a promoter of an issuer in securities of the issuer with another promoter of the issuer;

(u) the trade is made in securities of an issuer previously disposed of by the issuer pursuant to the exemption in clause (p) or (w) where each of the parties to the trade is one of the not more than twenty-five purchasers referred to in clause (p) or one of the not more than fifty purchasers referred to in clause (w);

(v) the trade is made by an issuer of equity securities pursuant to a plan made available by that issuer to all holders of a class of publicly traded securities of the issuer the last address of whom as shown on the books of the issuer is in the Province, which plan permits the holder to direct that dividends or interest paid in respect of securities of the issuer's own issue be applied to the purchase from the issuer of equity securities of the issuer's own issue of a class that is publicly traded or any other securities of the issuer which are redeemable at the option of the holder;

(va) a trade made by an issuer in consideration of a cash payment pursuant to the terms of a plan referred to in clause (v) which provides that holders of securities of the issuer who are permitted to direct that dividends or interest be applied in the manner referred to in that clause have the option to purchase for cash consideration additional securities of the same class as may be purchased with the application of dividends or interest, provided that the aggregate number of additional securities of any class which the issuer is permitted to issue pursuant to the exercise of such options in any financial year of the issuer does not exceed two per cent of the number of outstanding securities of the class at the commencement of the financial year;

(w) the trade is made by a promoter of an issuer or by an issuer in a government incentive security of the issuer's own issue, if solicitations, in all jurisdictions including the Province, are made to not more than seventy-five prospective purchasers resulting in sales to not more than fifty purchasers in all jurisdictions including the Province and,

(i) each purchaser to whom securities are sold in reliance on this exemption has been supplied information identifying every officer and director of the issuer and every promoter thereof and giving the particulars of such of their professional qualifications and associations during the immediately preceding five years as are relevant to the undertaking being financed and indicating which of the directors will be devoting his full time to the affairs of the issuer,

(ii) each purchaser has access to substantially the same information concerning the issuer that a prospectus filed under this Act would provide and is,

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

(B) a senior officer or director of the issuer or of an affiliate of the issuer or a spouse, parent, brother, sister or child of any such director or officer,

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

(iv) no promoter of the issuer, other than a registered dealer, has acted as a promoter of any issuer which has traded in securities of its own issue pursuant to the exemption in this clause, clause (p) or any other exemptions specified in the regulations, whether such exemption is contained in this subsection or in the regulations, within the previous twelve months,

(v) an offering memorandum which includes a description of the securities being offered for sale is sent by prepaid mail or delivered by the

seller or a person or company acting on behalf of the seller to the purchaser before an agreement of purchase and sale is entered into with the purchaser, and

(vi) no security of the issuer's own issue is being issued concurrently pursuant to the exemption in clause (p) or any other exemption specified in the regulations, whether such exemption is contained in this subsection or in the regulations,

but an issuer may only rely upon this exemption once in any period of time designated, from time to time, by the Commission;

(x) the trade is made in a security of an issuer to the issuer pursuant to the purchase or redemption of the security by the issuer;

(y) the trade is made by a person or company to a registered dealer in consideration of services performed by that registered dealer in connection with a distribution;

(z) the trade is made through a licensed real estate broker or a licensed real estate sales-man acting in the course of his employment in securities of a company where

(i) the licensed real estate broker has listed for sale real estate and incidental property owned by a company and the owner or owners of all of the issued and outstanding shares in the capital of the company are prepared to sell his or their shares as an alternative to the company selling the real estate and incidental property which has been so listed,

(ii) the securities which are the subject of the trade include all of the issued and outstanding shares in the capital of the company,

(iii) any sale of the shares which results from or in connection with the listing is to a single purchaser or group of purchasers who have not been introduced to each other by the owner or owners of the shares, the company or anyone acting on their behalf,

(iv) all shares sold as a result of or in connection with the listing are sold contemporaneously,

(v) the trade is a distribution solely by virtue of subclause (iii) of clause (l) of subsection (1) of Section 2, and

(vi) each purchaser who purchases any of the shares obtains legal advice before entering into a binding agreement to purchase the shares;

(aa) the trade is in an option, a commodity futures option or a commodity futures contract that is

(i) issued by a clearing house recognized by the Commission for this purpose, and

(ii) traded on an exchange recognized by the Commission for this purpose;

(ab) the trade is made in a security of an issuer previously

(i) issued by the issuer pursuant to the exemption contained in clause (p),

(ii) issued by the issuer or sold by a promoter of the issuer pursuant to the exemption contained in clause (w), or

(iii) issued by the issuer pursuant to any other exemption specified in the regulations, whether such exemption is contained in this subsection or in the regulations,

where each of the parties to the trade is one of the purchasers from either the issuer of such security or promoter of the issuer of such security;

(ac) the trade is made by a mutual fund to a holder of a share or unit in the fund where

(i) the trade is pursuant to provisions in the instrument legally constituting the fund permitting or requiring that dividends or distributions of income or capital gains attributable to the shares or units held by a holder be reinvested in additional shares or units of the fund of the same class or having the same attributes as the shares or units with respect to which the dividends or distributions of income or capital gains are attributable, and

(ii) no sales charge is payable with respect to the trade;

(ad) the trade is made in a share or unit of a mutual fund to a purchaser, other than the initial trade in a share or unit of the mutual fund to that purchaser, where

(i) the initial trade in the shares or units of the mutual fund to that purchaser was made in reliance on the exemption contained in clause (d), or

(ii) either the net asset value or the aggregate acquisition cost of the shares or units in the mutual fund held by the purchaser as at the date of the trade is not less than one hundred and fifty thousand dollars;

(ae) the trade is the transfer of beneficial ownership of a security to a lender, pledgee, mortgagee or other encumbrancer pursuant to a realization of security;

(af) the trade is made by an issuer in a security of its own issue to a trustee on behalf of an employee, senior officer or director of the issuer or an employee, senior officer or director of an affiliate of the issuer where the employee, senior officer or director is not induced to purchase by expectation of employment or continued employment;

(ag) the trade is made by an issuer or a promoter in the *bona fide* and reasonable belief that the exemption contained in clause (p) or (w) or any other exemption specified in the regulations, whether such exemption is contained in this subsection or in the regulations, applies and such exemption does not apply if the reason it does not apply is the failure of one or more of the purchasers to purchase as principal, to have access to the required information, to be a purchaser whose net worth or investment experience permits him to purchase under the exemption, to consult with or receive the required advice, to receive an offering memorandum or to receive an offering memorandum in a timely manner provided that

(i) the vendor has exercised due diligence to ensure that such failure did not occur,

(ii) the vendor delivers the offering memorandum to any purchaser on request, and

(iii) the issuer or promoter gives written notice to the Director of his intention to rely on this exemption within ten days after becoming aware of the unavailability of the exemption on which he had intended to rely and provides the Director with such details of the trade as the Director may from time to time require;

(ah) the trade is made by a co-operative in the course of a distribution by the co-operative of a security to a member of the co-operative or to a purchaser who becomes a member of the co-operative by virtue of the trade unless

(i) the aggregate acquisition cost of the security to the member or the purchaser and of all other securities of the co-operative purchased by the member or the purchaser in the preceding three hundred and sixty-five days exceeds one thousand dollars, or

(ii) the aggregate acquisition cost of the security to the member or the purchaser and of all other securities of the co-operative owned by the member or the purchaser exceeds ten thousand dollars.

(1A) In applying clause (ah) of subsection (1), where the security is distributed

- (a) in respect of a patronage dividend declared by the co-operative;
- (b) in respect of the operation of a price check-off;
- (c) in respect of a sale to a member of a producer co-operative; or
- (d) pursuant to a prospectus,

the security shall not be taken into consideration.

(1B) Subject to the regulations, a co-operative shall file with the Director

(a) within sixty days after the calendar year end, a report prepared and executed in accordance with the regulations, describing all distributions of securities of the co-operative made in reliance on clause (ah) of subsection (1), other than distributions referred to in subsection (1A), if the total aggregate subscription price of the securities distributed in the calendar year exceeds two hundred thousand dollars; and

(b) a copy of an offering memorandum that is sent or delivered to a member of a co-operative or a purchaser in connection with a distribution made in reliance on clause (ah) of subsection (1), other than a distribution referred to in subsection (1A), at least ten days before the trade which is the first trade in respect of which the offering memorandum is sent or delivered.

(2) For the purpose of subsection (1)

(a) a trust company shall be deemed to be acting as principal when it trades as trustee or as agent for accounts fully managed by it; and

(b) a portfolio manager or a person or a company who, but for the applicability of an exemption pursuant to this Act or the regulations would be required to be a portfolio manager in order to be in compliance with this Act, is deemed to be acting as principal when it trades as agent for accounts fully managed by it.

(3) Two copies of an offering memorandum that is required to be sent or delivered to a purchaser pursuant to subsection (1) or the regulations or is otherwise furnished to a purchaser in connection with a distribution to which Sections 58 and 67 do not apply by virtue of subsection (1) or the regulations shall be delivered to the Director concurrently with or before the date upon which a report of the trade referred to in subsection (4) or the regulations is required to be filed with the Director.

(4) Subject to the regulations, where a trade has been made pursuant to clause (a), (b), (c), (d), (l), (m), (p), (q), (u), (w), (y), (ab) or (ad) of subsection (1), the vendor shall within ten days file a report prepared and executed in accordance with the regulations, but no report is required where, by a trade pursuant to clause (a) of subsection (1), a bank, a loan company or a trust company acquires from a customer an evidence of indebtedness of the customer or an equity investment in the customer acquired concurrently with an evidence of indebtedness.

(4A) For the purpose of this Section and the regulations, where a purchaser has acquired securities pursuant to a distribution exempted from Sections 58 and 67 by clause (ag) of subsection (1) or which would have been exempted by that clause if there had been compliance with subclause (iii) thereof and the purchaser had no reasonable grounds to believe that the applicable exemption referred to in that clause on which the issuer or promoter intended to rely was not available to the issuer or the promoter, the purchaser is deemed to have acquired the securities pursuant to a distribution exempted from Sections 58 and 67 by the exemption referred to in that clause which the issuer or the promoter believed to be applicable to the trade.

(5) The first trade in securities previously acquired by the vendor pursuant to a distribution exempted from Sections 58 and 67 by clause (a), (b), (c), (d), (l), (m), (p), (q), (u), (w), (y), (ab) or (ad) of subsection (1) is a distribution unless

(a) the issuer of the securities is a reporting issuer and is not in default of any requirement of this Act or the regulations;

(b) the securities have been held for the applicable hold period from the date of the initial exempt trade or the date the issuer became a reporting issuer whichever is later;

(c) the vendor files a report within ten days prepared and executed in accordance with the regulations;

(d) such first trade is not a distribution as defined in subclause (iii) of clause (1) of subsection (1) of Section 2; and

(e) no effort is made to prepare the market or to create a demand for such securities and no extraordinary commission or consideration is paid in respect of such trade.

(6) The first trade in securities previously acquired by the vendor pursuant to a distribution exempted from Sections 58 and 67 by subclause (iii) of clause (f) of subsection (1), where the right to purchase, convert or exchange was previously acquired in connection with a distribution exempted by clause (a), (b), (c), (d), (l), (m), (p), (q), (u), (w), (y), (ab) or (ad) of subsection (1) is a distribution unless

(a) the issuer of the securities is a reporting issuer and is not in default of any requirement of this Act or the regulations;

(b) the applicable hold period has elapsed from the date of the trade exempted by clause (a), (b), (c), (d), (l), (m), (p), (q), (u), (w), (y), (ab) or (ad) of subsection (1) or the date the issuer became a reporting issuer whichever is later;

(c) the vendor files a report within ten days of the trade prepared and executed in accordance with the regulations;

(d) such first trade is not a distribution as defined in subclause (iii) of clause (1) of subsection (1) of Section 2; and

(e) no effort is made to prepare the market or create a demand for such securities and no extraordinary commission or consideration is paid in respect of such trade.

(7) Subject to subsections (8) and (9), the first trade in securities previously acquired by the vendor pursuant to a distribution exempted from Sections 58 and 67 by clause (f) of subsection (1) other than securities acquired under subclause (iii) thereof in the circumstances described in subsection (6) or clause (h), (i), (j), (k), (n), (v), (va), (ac) or (af) of subsection (1) and the first trade in previously issued securities of an issuer after the issuer ceased to be a private issuer is a distribution except that where

(a) the issuer of the securities is a reporting issuer and has been a reporting issuer for at least twelve months or, in the case of securities acquired under clause (i) of subsection (1), one of the amalgamating or merged companies or one of the continuing companies has been a reporting issuer for twelve months and, where a person or company in a special relationship with the reporting issuer, as defined in Section 82, is the seller, he or it has reasonable grounds to believe that the issuer is not in default of any requirement of the Act or the regulations;

(b) disclosure to the Director has been made of its exempt distribution or in the case of a company that has ceased to be a private company the issuer has filed with the Director such report with respect to its outstanding securities as may be required by the regulations; and

(c) no effort is made to prepare the market or to create a demand for the securities and no extraordinary commission or consideration is paid in respect of the trade,

then such first trade is a distribution only if it is a distribution as defined in subclause (iii) of clause (1) of subsection (1) of Section 2.

(7A) The first trade in securities of a private issuer previously acquired by the vendor pursuant to a distribution exempted from Sections 58 and 67 by virtue of being a distribution of securities referred to in clause (j) of subsection (2) of Section 41 is a distribution.

(7B) The first trade in securities previously acquired by the vendor pursuant to a distribution exempted from Sections 58 and 67 by clause (ae) of subsection (1) is a distribution unless such trade would not have been a distribution if

- (a) the trade had been made by the person or company that was the beneficial owner of the security at the time the vendor previously acquired the security; and
- (b) that person or company had owned the security throughout the period during which it was beneficially owned by the vendor.

(7C) The first and any subsequent trade by a member of a co-operative in a security of the co-operative previously acquired by the member pursuant to a distribution exempted from Sections 58 and 67 by clause (ah) of subsection (1) is a distribution unless the trade is made to

- (a) the spouse of the member;
- (b) a child of the member or the member's spouse; or
- (c) a company controlled, in law and in fact, directly or indirectly, by the member, the spouse of the member, one or more children of the member, one or more children of the member's spouse or any combination of the foregoing.

(8) Notwithstanding subsection (7), the first trade in securities previously acquired by the vendor pursuant to a distribution exempted from Sections 58 and 67 by subclause (iii) of clause (f) of subsection (1) where, in respect to the right to purchase, convert or exchange, a prospectus was filed by the issuer and a receipt obtained therefor is not a distribution if

- (a) the issuer is a reporting issuer at the time of the trade;
- (b) such first trade is not a distribution as defined in subclause (iii) of clause (l) of subsection (1) of Section 2; and
- (c) no effort is made to prepare the market or create a demand for such securities and no extraordinary commission or consideration is paid in respect of such trade.

(9) Notwithstanding subsection (7), the first trade in securities previously acquired by the vendor pursuant to a distribution exempted from Sections 58 and 67 by clause (j) of subsection (1) is not a distribution

- (a) if when that exemption was relied upon, a securities exchange take-over bid circular in respect of the securities was filed by the offeror; and
- (b) where a person or company in a special relationship with the reporting issuer, as defined in Section 82, is the seller, he or it has reasonable grounds to believe that the issuer is not in default of any requirement of the Act or the regulations,

unless the trade is a distribution as defined in subclause (iii) of clause (l) of subsection (1) of Section 2.

(10) The first trade in securities previously acquired under an exemption contained in

- (a) clause (r) of subsection (1) is a distribution;
- (b) clause (o) of subsection (1) is a distribution unless the purchaser is a promoter of the issuer;
- (c) clause (t) of subsection (1) or under the exemption in favour of a purchaser who is a promoter of the issuer contained in clause (b) of this subsection is a distribution unless the trade is made in accordance with the conditions and procedures described in clauses (b) and (c) of subsection (1).

(11) Sections 58 and 67 do not apply to a distribution within the meaning of subclause (iii) of clause (l) of subsection (1) of Section 2 if

- (a) the distribution is exempted by subsection (1); or

(b) the issuer of the security is a reporting issuer and has been a reporting issuer for at least the period of time prescribed by the regulations and is not in default of any requirement of this Act or the regulations and the seller, unless exempted by the regulations, has held the securities for the applicable hold period and

(i) files with the Director and any stock exchange recognized by the Commission for this purpose on which the securities are listed, at least seven days and not more than fourteen days prior to the first trade made to carry out the distribution,

(A) a notice of intention to sell in the form prescribed by the regulations disclosing particulars of the control position known to him, the number of securities to be sold and the method of distribution, and

(B) a declaration signed by each seller as at a date not more than twenty-four hours prior to its filing and prepared and executed in accordance with the regulations and certified as follows:

"The seller for whose account the securities to which this certificate relates are to be sold hereby represents that he has no knowledge of any material change which has ~~occurred~~ [occurred] in the affairs of the issuer of the securities which has not been generally disclosed and reported to the Director, nor has he any knowledge of any other material adverse information in regard to the current and prospective operations of the issuer which have not been generally disclosed",

and

(ii) files within three days after the completion of any trade a report of the trade in the form prescribed,

provided that the notice required to be filed pursuant to paragraph (A) of subclause (i) and the declaration required to be filed pursuant to paragraph (B) of subclause (i) shall be renewed and filed at the end of sixty days after the original date of filing and thereafter at the end of each twenty-eight day period so long as any of the securities specified under the original notice have not been sold or until notice has been filed that the securities so specified or any part thereof are no longer for sale;

(c) no effort is made to prepare the market or to create a demand for the securities and no extraordinary commission or other consideration is paid in respect of such trade.

(12) Subject to subsection (14), for the purpose of determining whether an issuer is a reporting issuer and, if so, whether the reporting issuer is not in default of any requirement of this Act or the regulations, the seller is entitled to apply to the Director for a certificate issued for this purpose in accordance with Section 147 and is entitled to rely on the certificate.

(13) Subject to subsection (14), for the purpose of determining whether a reporting issuer is not in default of any requirement of this Act or the regulations, the seller is entitled to rely on a list of defaulting reporting issuers which shall be maintained by the Director for public inspection in the Director's office during normal business hours.

(14) No person or company who knows or ought reasonably to know that a reporting issuer is in default may rely on the certificate or on the list.

(15) Subject to the regulations, for the purpose of this Section and the regulations which apply for the purpose of this Section, an issuer shall be deemed to have been a reporting issuer from the date that it met the condition of the appropriate subclause of clause (ao) of subsection (1) of Section 2 provided that in each case it is currently in compliance with the requirements of this Act. R.S., c. 418, s. 77; 1990, c. 15, ss. 45, 80; corrected s. (1)(a)(iii) 1997; 2001, c. 41, s. 26; 2002, c. 39, s. 5.

Deemed trade by beneficial owner

77A A trade in a security by a lender, pledgee, mortgagee or other encumbrancer for the purpose of liquidating a *bona fide* debt by selling or offering for sale a security pledged, mortgaged or otherwise encumbered in good faith as collateral for the debt where the security is not beneficially owned by the lender, pledgee, mortgagee or other encumbrancer shall be deemed to be a trade on behalf of the beneficial owner for the purpose of subclause (iii) of clause (l) of subsection (1) of Section 2, Section 77 and subsection (1) of Section 78 and the lender, pledgee, mortgagee or other encumbrancer may file all reports, notices, declarations and make disclosure to the Director on behalf of the beneficial owner. 1990, c. 15, s. 46.

Prospectus not required

78 (1) Sections 58 and 67 do not apply to a distribution of securities

(a) referred to in subsection (2) of Section 41, excepting clauses (n) and (p) thereof;

(b) that are listed and posted for trading on any stock exchange recognized for the purpose of this Section by the Commission where the securities are distributed through the facilities of the stock exchange pursuant to the rules of the stock exchange and the requirements of the Commission provided that a statement of material facts, which shall comply as to form and content with the regulations, is filed with and is accepted for filing by the stock exchange and the Director;

(c) that are options to sell or purchase securities known as puts and calls or any combination thereof which provide that the holder thereof may sell to or purchase from the writer of the option a specified amount of securities at a specific price, on or prior to a specified date or the occurrence of a specified event, provided

(i) the option has been written by a member of an exchange recognized by the Commission for this purpose or the performance under the option is guaranteed by a member of an exchange recognized by the Commission for this purpose,

(ii) the securities that are the subject of the option are listed and posted for trading on an exchange recognized by the Commission for this purpose, and

(iii) the option is in the form from time to time prescribed by the regulations;

(d) that are exempted by the regulations.

(2) Sections 76 and 137 apply *mutatis mutandis* to a distribution under clause (b) of subsection (1) as if Sections 58 and 67 were applicable thereto, and the statement of material facts referred to in clause (b) of subsection (1) shall be deemed conclusively to be a prospectus for the purposes of Sections 76 and 137.

(3) Every statement of material facts referred to in clause (b) of subsection (1) shall contain a statement of the rights given to a purchaser by Sections 76 and 137 and a statement of the limits on the time within which an action to enforce a right under Section 137 must be commenced. R.S., c. 418, s. 78; 1990, c. 15, ss. 47, 80.

Determination by Commission

79 (1) The Commission may, upon the application of an interested person or company, rule that any trade, intended trade, security, person or company is not subject to Section 31, 58 or 67 where it is satisfied that to do so would not be prejudicial to the public interest, and may impose such terms and conditions as are considered necessary.

(2) Where doubt exists whether a distribution of any security has been concluded or is currently in progress, the Commission may determine the question and rule accordingly.

(3) *repealed 1990, c. 15, s. 48.*

Determination by Commission

80 (1) The Commission may order or rule that any trade, intended trade, security, person or company is not subject to Section 31, 58 or 67 where it is satisfied that to do so would not be prejudicial to the public interest, and may impose such terms and conditions as are considered necessary.

(2) On the application of an issuer or the Director the Commission may, if in the opinion of the Commission to do so would not be prejudicial to the public interest, make an order declaring that a person or company is a reporting issuer and may impose such terms and conditions as are considered necessary.

(3) An order pursuant to subsection (2)

(a) shall not be made without giving the person or company in respect of which the order is made an opportunity to have a hearing before the Commission; and

(b) may, at the direction of the Commission, come into force on a date prior to the day on which the order is made but shall not result in the issuer being in non-compliance with a provision of this Act where, but for the order, the issuer was in compliance during the period the order was in force prior to the day on which it was made.

(4) An issuer who accepted or relied upon or accepts or relies upon an order, ruling or decision of the Commission made pursuant to subsection (1) of Section 79 or subsection (1) of this Section, either before or after the coming into force of this Section, is deemed to be a reporting issuer if such order, ruling or decision declares that the issuer is deemed to be a reporting issuer for any purpose of this Act or the regulations or if such order, ruling or decision is conditional upon the issuer complying with the Act as if it were a reporting issuer.

(5) The Commission may order or rule that any trade or class of trades is specified to be a distribution where, in the opinion of the Commission, to do so is in the public interest. 1990, c. 15, s. 49; 1996, c. 32, s. 7.

Publication and report of material change

81 (1) Subject to subsection (3), where a material change occurs in the affairs of a reporting issuer, it shall forthwith issue and file a press release authorized by a senior officer disclosing the nature and substance of the change.

(1A) The Commission may require a reporting issuer or a class of reporting issuers to publish, in the manner prescribed by the Commission, the press release referred to in subsection (1).

(2) Subject to subsection (3), the reporting issuer shall file a report of such material change in accordance with the regulations as soon as practical and in any event within ten days of the date on which the change occurs.

(3) Where

(a) in the opinion of the reporting issuer, the disclosure required by subsections (1) and (2) would be unduly detrimental to the interests of the reporting issuer; or

(b) the material change consists of a decision to implement a change made by senior management of the issuer who believe that confirmation of the decision by the board of directors is probable and senior management of the issuer has no reason to believe that any person or company with knowledge of the material change has made use of such knowledge in purchasing or selling securities of the issuer,

the reporting issuer may, in lieu of compliance with subsection (1), forthwith file with the Director the report required under subsection (2) marked "confidential" together with written reasons for non-disclosure.

(4) Where a report has been filed with the Director under subsection (3), the reporting issuer shall advise the Director in writing where it believes the report should continue to remain confidential within ten days of the date of filing of the initial report and every ten days thereafter until the material change is generally

disclosed in the manner referred to in subsection (1) or, if the material change consists of a decision of the type referred to in clause (b) of subsection (3), until that decision has been rejected by the board of directors of the issuer. R.S., c. 418, s. 81; 1990, c. 15, ss. 50, 80.

Material change and trading where undisclosed

82 (1) No person or company in a special relationship with a reporting issuer shall purchase or sell securities of the reporting issuer with the knowledge of a material fact or material change with respect to the reporting issuer that has not been generally disclosed.

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

(3) No person or company that proposes

- (a)** to make a take-over bid, as defined in Section 95, for the securities of a reporting issuer;
- (b)** to become a party to a reorganization, amalgamation, merger, arrangement or similar business combination with a reporting issuer; or
- (c)** to acquire a substantial portion of the property of a reporting issuer,

shall inform another person or company of a material fact or a material change with respect to the reporting issuer before the material fact or material change has been generally disclosed except where the information is given in the necessary course of business to effect the take-over bid, business combination or acquisition.

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

(5) For the purpose of this Section, "person or company in a special relationship with a reporting issuer" means

- (a)** a person or company that is an insider, affiliate or associate of
 - (i)** the reporting issuer,
 - (ii)** a person or company that is proposing to make a take-over bid, as defined in Section 95, for the securities of the reporting issuer, or
 - (iii)** a person or company that is proposing to become a party to a reorganization, amalgamation, merger, arrangement or similar business combination with the reporting issuer or to acquire a substantial portion of its property;
- (b)** a person or company that is engaging in or proposes to engage in any business or professional activity with or on behalf of the reporting issuer or with or on behalf of a person or company described in subclause (ii) or (iii) of clause (a);
- (c)** a person who is a director, officer or employee of the reporting issuer or of a person or company described in subclause (ii) or (iii) of clause (a) or clause (b);
- (d)** a person or company that learned of the material fact or material change with respect to the reporting issuer while the person or company was a person or company described in clause (a), (b) or (c);
- (e)** a person or company that learns of a material fact or material change with respect to the issuer from any other person or company described in this subsection, including a person or company described in this clause, and knows or ought reasonably to have known that the other person or company is a person or company in such a relationship.

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

(a) a put, call, option or other right or obligation to purchase or sell securities of the reporting issuer; or

(b) a security, the market price of which varies materially with the market price of the securities of the issuer. 1990, c. 15, s. 51.

Interim financial statements

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

(a) where the reporting issuer has not completed its first financial year, for the periods commencing with the beginning of that year and ending nine, six and three months respectively before the date on which that year ends, but no interim financial statement is required to be filed for any period that is less than three months in length;

(b) where the reporting issuer has completed its first financial year, to the end of each of the three-month, six-month and nine-month periods of the current financial year that commenced immediately following the last financial year, including a comparative statement to the end of each of the corresponding periods in the last financial year,

made up as required by the regulations and in accordance with generally accepted accounting principles.

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

(a) where the mutual fund in the Province has not completed its first financial year, for the period commencing with the beginning of that year and ending six months before the date on which that year ends but, if the first financial year is less than six months in length, no interim financial statement is required to be filed; and

(b) where the mutual fund in the Province has completed its first financial year, for the six-month period of the current financial year that commenced immediately following the last financial year, including a comparative statement to the end of the corresponding period in the last financial year,

made up and certified as required by the regulations and in accordance with generally accepted accounting principles.

(3) Notwithstanding clause (b) of subsection (2), such interim financial statements required to be filed under that clause by a mutual fund in the Province as are prescribed by the regulations need not include comparative statements for the corresponding period in the last financial year. R.S., c. 418, s. 83; revision corrected 1991.

Comparative financial statements

84 (1) Every reporting issuer that is not a mutual fund and every mutual fund in the Province shall file annually within one hundred and forty days from the end of its last financial year comparative financial statements relating separately to

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

(b) the period covered by the financial year next preceding the last financial year, if any,

made up and certified as required by the regulations and in accordance with generally accepted accounting principles.

(2) Every financial statement referred to in subsection (1) shall be accompanied by a report of the auditor of the reporting issuer or mutual fund in the Province prepared in accordance with the regulations.

(3) The auditor of a reporting issuer or mutual fund in the Province shall make such examinations as will enable him to make the report required by subsection (2).

(4) The term "auditor", where used in relation to the reporting issuer or mutual fund in the Province, includes the auditor of the reporting issuer or mutual fund in the Province and any other independent public accountant.

(5) Notwithstanding subsection (1), such financial statements required to be filed under that subsection by a mutual fund in the Province for the period referred to in clause (a) of subsection (1) as are prescribed by the regulations need not include comparative statements for the period referred to in clause (b) of subsection (1). R.S., c. 418, s. 84.

Delivery of financial statements

85 Every financial statement required to be filed pursuant to Section 83 or Section 84 shall be concurrently sent by the reporting issuer or the mutual fund in the Province, as the case may be, to each holder of its securities, other than debt instruments, whose latest address as shown on the books of the reporting issuer or mutual fund is in the Province but, where the reporting issuer or mutual fund is subject to a corresponding requirement of the laws of the jurisdiction under which the reporting issuer or mutual fund is incorporated, organized or continued, then compliance with such corresponding requirement shall be deemed to be compliance with this Section. R.S., c. 418, s. 85; 1990, c. 15, s. 52.

Relief against certain requirements

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

- (a) permitting the omission from the financial statements required to be filed of
 - (i) comparative financial statements for particular periods of time,
 - (ii) sales or gross operating revenue where the Commission is satisfied that the disclosure of such information would be unduly detrimental to the interests of the reporting issuer, or
 - (iii) basic earnings per share or fully diluted earnings per share;
- (b) exempting, in whole or in part, any reporting issuer or class of reporting issuers from a requirement of Sections 81 to 89 or the regulations
 - (i) if such requirement conflicts with a requirement of the laws of the jurisdiction under which the reporting issuer or class of reporting issuers is incorporated, organized or continued,
 - (ii) if the reporting issuer or class of reporting issuers ordinarily distributes financial information to holders of its, or their, securities in a form, or at times, different from those required by Sections 81 to 89, or
 - (iii) if otherwise satisfied in the circumstances of the particular case that there is adequate justification for so doing. R.S., c. 418, s. 86; 1990, c. 15, s. 53.

Filing of information circular or annual report

87 (1) Where the management of a reporting issuer is required to send an information circular under clause (a) of subsection (1) of Section 92, the reporting issuer shall forthwith file a copy of such information circular certified in accordance with the regulations.

(2) In any case where subsection (1) is not applicable, the reporting issuer shall file annually within one hundred and forty days from the end of its last financial year a report prepared and certified in accordance with the regulations. R.S., c. 418, s. 87.

Compliance with filing requirements

88 Where the laws of the jurisdiction in which the reporting issuer was incorporated, organized or continued require the reporting issuer to file substantially the same information in that jurisdiction as is required by Sections 81 to 89, the reporting issuer may comply with the filing requirements of Sections 81 to 89 by filing copies of the press release, timely disclosure report, information circular or financial statements and auditor's report, as the case may be, required by that jurisdiction provided such releases, reports, circulars or statements are manually signed or certified in accordance with the regulations. R.S., c. 418, s. 88.

Order relieving small reporting issuer

89 Upon the application of

- (a) a reporting issuer that has fewer than fifteen security holders whose latest address as shown on the books of the reporting issuer is in the Province;
- (b) an issuer that is a reporting issuer by virtue of having filed a prospectus and obtained a receipt therefor under this Act but which reporting issuer has not, as at the date immediately following the lapse date of the prospectus as defined in subsection (1) of Section 67, distributed any of the securities offered by the prospectus; or
- (c) an issuer that is a reporting issuer as designated in the regulations for the purpose of this clause,

the Commission may order, subject to such terms and conditions as it may impose, that the reporting issuer shall be deemed to have ceased to be a reporting issuer where it is satisfied that to do so would not be prejudicial to the public interest. R.S., c. 418, s. 89; 1990, c. 15, s. 54.

Interpretation of Sections 90 to 94

90 For the purposes of Sections 90 to 94,

- (a) "information circular" means an information circular prepared in accordance with the regulations;
- (b) "solicit" and "solicitation" include
 - (i) any request for a proxy whether or not accompanied by or included in a form of proxy,
 - (ii) any request to execute or not to execute a form of proxy or to revoke a proxy,
 - (iii) the sending or delivery of a form of proxy or other communication to a security holder under circumstances reasonably calculated to result in the procurement,
 - (iv) the sending or delivery of a form of proxy to a security holder under Section 91,but do not include,
 - (v) the sending or delivery of a form of proxy to a security holder in response to an unsolicited request made by him or on his behalf, or
 - (vi) the performance by any person or company of ministerial acts or professional services on behalf of a person or company soliciting a proxy. R.S., c. 418, s. 90.

Mandatory solicitation of proxies

91 Subject to Section 94, if the management of a reporting issuer gives or intends to give to holders of its voting securities notice of a meeting, the management shall, concurrently with or prior to giving the notice to the security holders whose latest address as shown on the books of the reporting issuer is in the Province,

send by prepaid mail to each such security holder who is entitled to notice of meeting, at his latest address as shown on the books of the reporting issuer, a form of proxy for use at the meeting that complies with the regulations. R.S., c. 418, s. 91.

Solicitation of proxies

92 (1) Subject to subsection (2) and Section 94, no person or company shall solicit proxies from holders of its voting securities whose latest address as shown on the books of the reporting issuer is in the Province unless

(a) in the case of a solicitation by or on behalf of the management of a reporting issuer, an information circular, either as an appendix to or as a separate document accompanying the notice of the meeting, is communicated to each such security holder of the reporting issuer whose proxy is solicited;

(b) in the case of any other solicitation, the person or company making the solicitation, concurrently with or prior thereto, communicates an information circular to each such security holder whose proxy is solicited.

(2) Subsection (1) does not apply to

(a) any solicitation, otherwise than by or on behalf of the management of a reporting issuer, where the total number of security holders whose proxies are solicited is not more than fifteen, two or more persons or companies who are the joint registered owners of one or more securities being counted as one security holder;

(b) any solicitation by a person or company made under Section 55;
or

(c) any solicitation by a person or company in respect of securities of which he is the beneficial owner.

(3) An information circular required to be communicated under subsection (1) shall be sent to each security holder whose proxy is solicited at his latest address as shown on the books of the reporting issuer by prepaid mail or by personal delivery to that address.

(4) Where the Director is of the opinion that it would be impractical to communicate an information circular in the manner required by subsection (3), the Director may authorize the communication of the information circular in such manner as he considers likely to bring the information circular to the attention of the security holders and an information circular when communicated in the manner so authorized shall be deemed to have been communicated to the security holders. R.S., c. 418, s. 92; 1990, c. 15, s. 80.

Voting where proxies

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

(a) a poll is demanded by any security holder present at the meeting in person or represented thereat by proxy; or

(b) proxies requiring that the securities represented thereby be voted against what would otherwise be the decision of the meeting in relation to such matters or group of matters total more than five per cent of all the voting rights attached to all the securities entitled to be voted and be represented at the meeting. R.S., c. 418, s. 93.

Exemption

94 (1) Where a reporting issuer is complying with the requirements of the laws of the jurisdiction under which it is incorporated, organized or continued and the requirements are substantially similar to the requirements of Sections 90 to 94, the requirements of Sections 90 to 94 do not apply.

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

(a) if a requirement of Sections 90 to 94 conflicts with a requirement of the laws of the jurisdiction under which the reporting issuer is incorporated, organized or continued; or

(b) if otherwise satisfied in the circumstances of the particular case that there is adequate justification for so doing,

make an order on such terms and conditions as the Commission may impose, exempting, in whole or in part, a person or company from the requirements of Section 87 and Sections 90 to 94. R.S., c. 418, s. 94; 1990, c. 15, s. 55.

Note: Sections 95 to 111 do not apply to a take-over bid or an issuer bid as defined herein that commenced before July 15, 1991.

Interpretation of Sections 95 to 111

95 (1) In Sections 95 to 111,

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

(b) "class of securities" includes a series of a class of securities;

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

(d) "formal bid" means,

(i) a take-over bid or an issuer bid to which Section 101 applies, or

(ii) a take-over bid that is exempted from Sections 101 to 106 or an issuer bid that is exempted from Sections 101, 102, 103, 104 and 106,

(A) by reason of an exemption pursuant to clause (a) of subsection (1) of Section 99 or clause (e) of subsection (3) of Section 99, if the offeror is required to deliver a disclosure document of the type contemplated by subsection (10) of Section 139 to every security holder whose last address as shown on the books of the offeree issuer is in the Province, or

(B) by reason of an exemption pursuant to clause (e) of subsection (1) of Section 99 or clause (h) of subsection (3) of Section 99, if the offeror is required to deliver disclosure material relating to the bid to holders of the class of securities subject to the bid;

(e) "interested person" means, for the purpose of Sections 110 and 111,

(i) an offeree issuer,

(ii) a security holder, director or officer of an offeree issuer,

(iii) an offeror,

(iv) the Director, and

(v) any person or company not referred to in subclauses (i) to (iv) who, in the opinion of the Commission or the Court, as the case may be, is a proper person to make an application under Section 110 or 111, as the case may be;

(f) "issuer bid" means an offer to acquire or redeem securities of an issuer made by the issuer to any person or company who is in the Province or to any security holder of the issuer whose last address as shown on the books of the issuer is in the Province and includes a purchase, redemption or other acquisition of securities of the issuer by the issuer from any such person

or company, but does not include an offer to acquire or redeem debt securities that are not convertible into securities other than debt securities;

(g) "offer to acquire" includes,

(i) an offer to purchase, or a solicitation of an offer to sell, securities,

(ii) an acceptance of an offer to sell securities, whether or not such offer to sell has been solicited,

or any combination thereof, and the person or company accepting an offer to sell shall be deemed to be making an offer to acquire to the person or company that made the offer to sell;

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

(i) "offeror" means a person or company who makes a take-over bid, an issuer bid or an offer to acquire and, for the purpose of Section 107, includes a person or a company who acquires a security, whether or not by way of a take-over bid, issuer bid or offer to acquire;

(j) "offeror's securities" means securities of an offeree issuer beneficially owned, or over which control or direction is exercised, on the date of an offer to acquire, by an offeror or any person or company acting jointly or in concert with the offeror;

(k) "published market" means, as to any class of securities, any market on which such securities are traded if the prices at which they have been traded on that market are regularly published in a *bona fide* newspaper or business or financial publication of general and regular paid circulation;

(l) "take-over bid" means an offer to acquire outstanding voting or equity securities of a class made to any person or company who is in the Province or to any security holder of the offeree issuer whose last address as shown on the books of the offeree issuer is in the Province, where the securities subject to the offer to acquire, together with the offeror's securities, constitute in the aggregate twenty per cent or more of the outstanding securities of that class of securities at the date of the offer to acquire.

(2) For the purpose of Sections 95 to 111,

(a) a period of days shall be computed as commencing on the day next following the event which began the period and terminating at mid-night on the last day of the period, except that if the last day of the period does not fall on a business day, the period terminates at midnight on the next business day; and

(b) a take-over bid or an issuer bid expires at the later of,

(i) the end of the period, including any extension, during which securities may be deposited pursuant to a bid, and

(ii) the time at which the offeror becomes obligated by the terms of the bid to take-up or reject securities deposited there-under.

(3) For the purposes of Sections 95 to 111,

(a) a security shall be deemed to be convertible into a security of another class if, whether or not on conditions, it is or may be convertible into or exchangeable for, or if it carries the right or obligation to acquire, a security of the other class, whether of the same or another issuer; and

(b) a security that is convertible into a security of another class shall be ~~deemed~~ [deemed] to be convertible into a security or securities of each class into which the second-mentioned security may be converted, either directly or through securities of one or more other classes of securities that are themselves convertible. 1990, c. 15, s. 56.

Deemed beneficial ownership

96 (1) For the purpose of Sections 95 to 111, in determining the beneficial ownership of securities of an offeror or of any person or company acting jointly or in concert with the offeror, at any given date, the offeror, person or company shall be deemed to have acquired and be the beneficial owner of a security, including an unissued security, if the offeror, person or company is the beneficial owner of any security convertible within sixty days following such date into such a security or has the right or obligation, whether or not on conditions, to acquire within such sixty days beneficial ownership of the security whether through the exercise of an option, warrant, right or subscription privilege or otherwise.

(2) Where two or more offerors acting jointly or in concert make one or more offers to acquire securities of a class, the securities, subject to any such offer or offers to acquire, shall be deemed to be securities subject to the offer to acquire of each such offeror for the purpose of determining whether any such offeror is making a take-over bid.

(3) Where an offeror or any person or company acting jointly or in concert with the offeror is deemed by reason of subsection (1) to be the beneficial owner of unissued securities, the securities shall be deemed to be outstanding for the purpose of calculating the number of outstanding securities of that class in respect of that offeror's offer to acquire. 1990, c. 15, s. 56.

Acting jointly or in concert

97 (1) For the purpose of Sections 95 to 111, it is a question of fact as to whether a person or company is acting jointly or in concert with an offeror and, without limiting the generality of the foregoing, the following shall be presumed to be acting jointly or in concert with an offeror:

(a) every person or company who, as a result of any agreement, commitment or understanding, whether formal or informal, with the offeror or with any other person or company acting jointly or in concert with the offeror, acquires or offers to acquire securities of the issuer of the same class as those subject to the offer to acquire;

(b) every person or company who, as a result of any agreement, commitment or understanding, whether formal or informal, with the offeror or with any other person or company acting jointly or in concert with the offeror, intends to exercise jointly or in concert with the offeror or with any other person or company acting jointly or in concert with the offeror, any voting rights attaching to any securities of the offeree issuer;

(c) every associate or affiliate of the offeror.

(2) Notwithstanding subsection (1), a registered dealer acting solely in an agency capacity for the offeror in connection with a take-over bid or an issuer bid and not executing principal transactions for its own account in the class of securities subject to the offer to acquire or performing services beyond customary dealer's functions, shall not be presumed solely by reason of such agency relationship to be acting jointly or in concert with the offeror in connection with the bid. 1990, c. 15, s. 56.

Direct or indirect offer

98 For the purpose of Sections 95 to 111, a reference to an offer to acquire or to the acquisition or ownership of securities or to control or direction over securities shall be construed to include a direct or indirect offer to acquire or the direct or indirect acquisition or ownership of securities, or the direct or indirect control or direction over securities, as the case may be. 1990, c. 15, s. 56.

Exempt take-over bid or issuer bid

99 (1) Subject to the regulations, a take-over bid is exempt from Sections 101 to 106 if,

(a) the bid is made through the facilities of a stock exchange recognized by the Commission for the purpose of this clause;

(b) the bid is for not more than five per cent of the outstanding securities of a class of securities of the issuer and,

(i) the aggregate number of securities acquired by the offeror and any person or company acting jointly or in concert with the offeror within any period of twelve months in reliance upon the exemption provided by this clause does not, when aggregated with acquisitions otherwise made by the offeror and any person or company acting jointly or in concert with the offeror within the same twelve-month period, constitute in excess of five per cent of the outstanding securities of that class of the issuer at the commencement of the twelve-month period, and

(ii) if there is a published market for the securities acquired, the value of the consideration paid for any of the securities acquired is not in excess of the market price at the date of acquisition determined in accordance with the regulations plus reasonable brokerage fees or commissions actually paid;

(c) all of the following conditions apply,

(i) purchases are made from not more than five persons or companies in the aggregate, including persons or companies outside of the Province,

(ii) the bid is not made generally to security holders of the class of securities that is the subject of the bid, and

(iii) the value of the consideration paid for any of the securities, including brokerage fees or commissions, does not exceed one hundred and fifteen per cent of the market price of securities of that class at the date of the bid determined in accordance with the regulations;

(d) the offeree issuer is not a reporting issuer, there is not a published market in respect of the securities that are the subject of the bid and the number of holders of securities of that class is not more than fifty, exclusive of holders who are in the employment of the offeree issuer or an affiliate of the offeree issuer, and exclusive of holders who were formerly in the employment of the offeree issuer or an affiliate of the offeree issuer and who, while in that employment, were, and have continued after that employment to be, security holders of the offeree issuer;

(e) the number of holders, whose last address as shown on the books of the offeree issuer is in the Province, of securities of the class subject to the bid is fewer than fifty and the securities held by such holders constitute, in the aggregate, less than two per cent of the outstanding securities of that class, the bid is made in compliance with the laws of a jurisdiction that is recognized for the purpose of this clause by the Commission, and all material relating to the bid that is sent by the offeror to holders of securities of the class that is subject to the bid is concurrently sent to all holders of such securities whose last address as shown on the books of the offeree issuer is in the Province and filed; or

(f) it is exempted by the regulations.

(2) For the purpose of clause (c) of subsection (1), where an offeror makes an offer to acquire securities from a person or company and the offeror knows or ought to know after reasonable enquiry that,

(a) one or more other persons or companies on whose behalf that person or company is acting as nominee, agent, trustee, executor, administrator or other legal representative has a direct ~~beneficial~~ [beneficial] interest in those securities, then each of such others shall be included in the determination of the number of persons and companies to whom the offer to acquire has been made, but, where an *inter vivos* trust has been established by a single settlor or where an estate has not vested in all persons beneficially entitled thereto, the trust or estate shall be considered a single security holder in such determination; or

(b) the person or company acquired the securities in order that the offeror might make use of the exemption provided by clause (c) of subsection (1), then each person or company from whom those securities were acquired shall be included in the determination of the number of persons and companies to whom the offer to acquire has been made.

106 if,

(3) Subject to the regulations, an issuer bid is exempt from Sections 101, 102, 103, 104 and

(a) the securities are purchased, redeemed or otherwise acquired in accordance with terms and conditions attaching thereto that permit the purchase, redemption or acquisition of the securities by the issuer without the prior agreement of the owners of the securities or where the securities are acquired to meet sinking fund or purchase fund requirements;

(b) the purchase, redemption or other acquisition is required by the instrument creating or governing the class of securities or by the enactment under which the issuer was incorporated, organized or continued;

(c) the securities carry with them or are accompanied by a right of the owner of the securities to require the issuer to redeem or repurchase the securities and the securities are acquired pursuant to the exercise of such right;

(d) the securities are acquired from a current or former employee of the issuer or of an affiliate of the issuer and, if there is a published market in respect of the securities,

(i) the value of the consideration paid for any of the securities acquired does not exceed the market price of the securities at the date of acquisition determined in accordance with the regulations, and

(ii) the aggregate number or, in the case of convertible debt securities, the aggregate principal amount of securities acquired by the issuer within a period of twelve months in reliance on the exemption provided by this clause does not exceed five per cent of the securities of that class issued and outstanding at the commencement of the period;

(e) the bid is made through the facilities of a stock exchange recognized by the Commission for the purpose of this clause;

(f) following the publication of a notice of intention in the form and manner prescribed by the regulations, the issuer purchases securities in the normal course in the open market, including through the facilities of a stock exchange, if the aggregate number, or, in the case of convertible debt securities, the aggregate principal amount, of securities acquired by the issuer within a period of twelve months in reliance on the exemption provided by this clause does not exceed five per cent of the securities of that class issued and outstanding at the commencement of the period;

(g) the issuer is not a reporting issuer, there is not a published market in respect of the securities that are the subject of the bid and the number of holders of securities of the issuer is not more than fifty, exclusive of holders who are in the employment of the issuer or an affiliate of the issuer, and exclusive of holders who were formerly in the employment of the issuer or an affiliate of the issuer and who while in that employment were, and have continued after the employment to be, security holders of the issuer;

(h) the number of holders, whose last address as shown on the books of the issuer is in the Province, of securities of the class subject to the bid is fewer than fifty and the securities held by such holders constitute, in the aggregate, less than two per cent of the outstanding securities of that class, the bid is made in compliance with the laws of a jurisdiction that is recognized for the purpose of this clause by the Commission, and all material relating to the bid that is sent by the offeror to holders of securities of the class that is subject to the bid is concurrently sent to all holders of such securities whose last address as shown on the books of the issuer is in the Province and filed; or

(i) it is exempted by the regulations.

(4) A bid that is made in reliance upon any exemption in this Section through the facilities of a stock exchange shall be made in accordance with the by-laws, regulations and policies of the exchange. 1990, c. 15, s. 56.

Restriction on acquisition or sale of securities

100 (1) In this Section, "offeror" means,

(a) an offeror making a formal bid other than a bid referred to in clause (e) of subsection (1) of Section 99 or clause (h) of subsection (3) of Section 99;

(b) a person or company acting jointly or in concert with an offeror referred to in clause (a);

(c) a security holder of an offeror referred to in clause (a) who, as regards the offeror, is a person or company or a member of a combination of persons or companies referred to in subclause (iii) of clause (l) of subsection (1) of Section 2 or an associate or affiliate of such security holder.

(2) An offeror shall not offer to acquire or make, or enter into, an agreement, commitment or understanding to acquire beneficial ownership of any securities of the class that are subject to a take-over bid otherwise than pursuant to the bid on and from the day of the announcement of the offeror's intention to make the bid until its expiry.

(3) Notwithstanding subsection (2), an offeror making a take-over bid may purchase, through the facilities of a stock exchange recognized by the Commission for the purpose of clause (a) of subsection (1) of Section 99, securities of the class that are subject to the bid and securities convertible into securities of that class commencing on the third business day following the date of the bid until the expiry of the bid, if

(a) the intention to make such purchases is stated in the take-over bid circular;

(b) the aggregate number of securities acquired pursuant to this subsection does not constitute in excess of five per cent of the outstanding securities of that class as at the date of the bid; and

(c) the offeror issues and files a press release forthwith after the close of business of the exchange on each day on which securities have been purchased pursuant to this subsection disclosing the information prescribed by the regulations.

(4) An offeror making an issuer bid shall not offer to acquire, or make or enter into any agreement, commitment or understanding to acquire, beneficial ownership of any securities of the class that are subject to the bid otherwise than pursuant to the bid on and from the day of the announcement of the offeror's intention to make the bid until the bid's expiry, but this subsection does not apply so as to prevent the offeror from purchasing, redeeming or otherwise acquiring any such securities during such period in reliance on an exemption pursuant to clause (a), (b) or (c) of subsection (3) of Section 99.

(5) Where a take-over bid that is a formal bid is made by an offeror and, within the period of ninety days immediately preceding the bid, the offeror acquired ~~beneficial~~ [beneficial] ownership of securities of the class subject to the bid pursuant to a transaction not generally available on identical terms to holders of that class of securities,

(a) the offeror shall offer consideration for securities deposited under the bid at least equal to and in the same form as the highest consideration that was paid on a per security basis under any of such prior transactions or the offeror shall offer at least the cash equivalent of such consideration; and

(b) the offeror shall offer to acquire under the bid that percentage of securities of the class subject to the bid that is at least equal to the highest percentage that the number of securities acquired from a seller in such a prior transaction was of the total number of securities of that class beneficially owned by such seller at the time of the prior transaction.

(6) An offeror shall not acquire beneficial ownership of securities of the class that was subject to the bid by way of a transaction that is not generally available on identical terms to holders of that class of securities during the period beginning with the expiry of the bid and ending at the end of the twentieth business day thereafter, and whether or not any securities are taken up under the bid.

(7) Subsections (5) and (6) do not apply to trades effected in the normal course on a published market, so long as,

(a) any broker acting for the purchaser or seller does not perform services beyond the customary broker's function and does not receive more than reasonable fees or commissions;

(b) the purchaser or any person or company acting for the purchaser does not solicit or arrange for the solicitation of offers to sell securities of the class subject to the bid; and

(c) the seller or any person or company acting for the seller does not solicit or arrange for the solicitation of offers to buy securities of the class subject to the bid.

(8) An offeror shall not, except pursuant to the bid, sell or make or enter into any agreement, commitment or understanding to sell any securities of the class subject to the bid on and from the day of the announcement of the offeror's intention to make the bid until its expiry.

(9) Notwithstanding subsection (8), an offeror, before the expiry of a bid, may make or enter into an arrangement, commitment or understanding to sell securities that may be taken up by the offeror pursuant to a bid, after the expiry of the bid, if the intention to sell is disclosed in the take-over bid circular or issuer bid circular, as the case may be. 1990, c. 15, s. 56.

Requirements for bids

101 Subject to the regulations, the following rules apply to every take-over bid and issuer bid:

1. The bid shall be made to all holders of securities of the class that is subject to the bid who are in the Province, and delivered by the offeror to all holders, whose last address as shown on the books of the offeree issuer is in the Province, of securities of that class and of securities that, before the expiry of the bid, are convertible into securities of that class.

2. The offeror shall allow at least thirty-five days from the date of the bid during which securities may be deposited pursuant to the bid.

3. No securities deposited pursuant to the bid shall be taken up by the offeror until the expiration of thirty-five days from the date of the bid.

4. Securities deposited pursuant to the bid may be withdrawn by or on behalf of the depositing security holder

(a) at any time where the securities have not been taken up by the offeror;

(b) at any time before the expiration of ten days from the date of a notice of change or variation pursuant to Section 104; and

(c) where the securities have not been paid for by the offeror within three business days after having been taken up.

5. The right of withdrawal conferred by subparagraph (b) of paragraph 4 does not apply,

(a) where the securities have been taken up by the offeror at the date of the notice;

(b) where a variation in the terms of a bid consists solely of an increase in the consideration offered for the securities subject to the bid and the time for deposit is not extended for a period greater than that required by subsection (5) of Section 104; or

(c) in the circumstances described in subsection (6) of Section 104.

6. Notice of withdrawal of any securities under paragraph [paragraph] 4 shall be made by or on behalf of the depositing security holder by a method that provides the depositary designated under the bid with a written or printed copy and, to be effective, the notice must be actu-

ally received by the depository and, where notice is given in accordance with this paragraph, the offeror shall return the securities to the depositing security holder.

7. Where the bid is made for less than all of the class of securities subject to the bid and where a greater number of securities is deposited pursuant thereto than the offeror is bound or willing to acquire under the bid, the securities shall be taken up and paid for by the offeror, as nearly as may be *pro rata*, disregarding fractions, according to the number of securities deposited by each depositing security holder.

8. Where an offeror purchases securities as permitted by subsection (3) of Section 100, the securities so purchased shall be counted in the determination of whether a condition as to the minimum number of securities to be deposited in the bid has been fulfilled, but shall not reduce the number of securities the offeror is bound under the bid to take up.

9. Subject to paragraphs 10 and 11, the offeror shall take up and pay for securities deposited under the bid, where all the terms and conditions of the bid have been complied with or waived, not later than ten days after the expiry of the bid.

10. Any securities that are taken up by the offeror under the bid shall be paid for by the offeror as soon as possible, and in any event not more than three business days after the taking up of the securities.

11. Any securities deposited pursuant to the bid subsequent to the date on which the offeror first takes up securities deposited under the bid shall be taken up and paid for by the offeror within ten days of the deposit of the securities.

12. A bid may not be extended by the offeror, where all the terms and conditions thereof have been complied with except those waived by the offeror, unless the offeror first takes up all securities deposited thereunder and not withdrawn.

12A. Notwithstanding paragraph 12, where the offeror waives any terms or conditions of a bid and extends the bid in circumstances where the rights of withdrawal conferred by clause (b) of paragraph 4 are applicable, the bid shall be extended without the offeror first taking up the securities which are subject to such rights of withdrawal.

13. Where all the terms and conditions of the bid have been complied with or waived, the offeror shall forthwith issue a notice by press release to that effect, which press release shall disclose the approximate number of securities deposited and the approximate number that will be taken up. 1990, c. 15, s. 56; 2001, c. 18, s. 1.

Consideration in cash

102 Where a take-over bid or issuer bid provides that the consideration for the securities deposited pursuant to the bid is to be paid in cash or partly in cash, the offeror shall make adequate arrangements prior to the bid to ensure that the required funds are available to effect payment in full for all securities that the offeror has offered to acquire. 1990, c. 15, s. 56.

Identical consideration

103 (1) Subject to the regulations, where a take-over bid or issuer bid is made, all holders of the same class of securities shall be offered identical consideration.

(2) If an offeror makes or intends to make a take-over bid or issuer bid, neither the offeror nor any person or company acting jointly or in concert with the offeror shall enter into any collateral agreement, commitment or understanding with any holder or beneficial owner of securities of the offeree issuer that has the effect of providing to the holder or owner a consideration of greater value than that offered to the other holders of the same class of securities.

(3) Where a variation in the terms of the take-over bid or issuer bid before the expiry of the bid increases the value of the consideration offered for the securities subject to the bid, the offeror shall pay such increased consideration to each person or company whose securities are taken up pursuant to the bid, whether or not such securities were taken up by the offeror before the variation. 1990, c. 15, s. 56.

Take-over bid or issuer bid circular

104 (1) An offeror shall deliver, with or as part of a take-over bid or issuer bid, a take-over bid circular or issuer bid circular, as the case may be.

(2) Where, before the expiry of a take-over bid or issuer bid or after the expiry of the bid but before the expiry of all rights to withdraw the relevant securities, a change has occurred in the information contained in a take-over bid circular or issuer bid circular or in any notice of change or notice of variation that would reasonably be expected to affect the decision of the holders of the securities of the offeree issuer to accept or reject the bid, a notice of the change shall be delivered to every person or company to whom the circular was required to be delivered and whose securities were not taken up at the date of the occurrence of the change.

(3) Subsection (2) does not apply to a change that is not within the control of the offeror or of an affiliate of the offeror unless it is a change in a material fact relating to the securities being offered in exchange for securities of the offeree issuer.

(4) Where there is a variation in the terms of a take-over bid or issuer bid, including any extension of the period during which securities may be deposited thereunder and whether or not the variation results from the exercise of any right contained in the bid, a notice of the variation shall be delivered to every person or company to whom the take-over bid circular or issuer bid circular was required to be delivered and whose securities were not taken up at the date of the variation.

(5) Subject to subsection (6), where there is a variation in the terms of a take-over bid or issuer bid, the period during which securities may be deposited pursuant to the bid shall not expire before ten days after the notice of variation has been delivered.

(6) Subsection (5) does not apply to a variation in the terms of a bid consisting solely of the waiver of a condition in the bid where the consideration offered for the securities that are subject to the bid consists solely of cash.

(7) A take-over bid circular, issuer bid circular, notice of change and notice of variation shall be in the form and shall contain the information required by Sections 95 to 111 and the regulations. 1990, c. 15, s. 56.

Directors' circular

105 (1) Where a take-over bid has been made, a directors' circular shall be prepared and delivered by the board of directors of an offeree issuer to every person and company to whom a take-over bid must be delivered pursuant to paragraph 1 of Section 101 not later than fifteen days after the date of the bid.

(2) The board of directors shall include in a directors' circular either a recommendation to accept or to reject a take-over bid and the reasons for their recommendation, or a statement that they are unable to make or are not making a recommendation and, if no recommendation is made, the reasons for not making a recommendation.

(3) An individual director or officer may recommend acceptance or rejection of a take-over bid if the director or officer delivers with the recommendation a circular prepared in accordance with the regulations.

(4) Where a board of directors is considering recommending acceptance or rejection of a take-over bid, it shall, at the time of sending or delivering a directors' circular, advise the security holders of this fact and may advise them not to tender their securities until further communication is received from the directors.

(5) Where subsection (4) applies, the board of directors shall deliver the recommendation or the decision not to make a recommendation at least seven days before the scheduled expiry of the period during which securities may be deposited under the bid.

(6) Where, before the expiry of a take-over bid or after the expiry of the bid but before the expiry of all rights to withdraw the securities that have been deposited under the bid,

(a) a change has occurred in the information contained in a directors' circular or in any notice of change to a directors' circular that would reasonably be expected to affect the decision of the holders of the securities to accept or reject the bid, the board of directors of the offeree issuer shall forthwith deliver a notice of the change to every person or company to whom the circular was required to be sent disclosing the nature and substance of the change; or

(b) a change has ~~occured~~ [occurred] in the information contained in an individual director's or officer's circular or any notice of change thereto that would reasonably be expected to affect the decision of the holders of the securities to accept or reject the bid, other than a change that is not within the control of the individual director or officer, as the case may be, the individual director or officer, as the case may be, shall forthwith deliver a notice of change in relation thereto to the board of directors.

(7) Where an individual director or officer sub-mits a circular pursuant to subsection (3) or a notice of change pursuant to clause (b) of subsection (6) to the board of directors, the board, at the offeree issuer's expense, shall deliver a copy of the circular or notice to the persons and companies referred to in subsection (1).

(8) A directors' circular, director's or officer's circular and a notice of change shall be in the form and contain the information required by Sections 95 to 111 and the regulations. 1990, c. 15, s. 56; 2001, c. 18, s. 2.

Commencement of take-over bid

106 (1) A take-over bid may be commenced in accordance with subsection (2) or (7).

(2) A take-over bid may, and an issuer bid shall, be commenced by delivering the bid to the security holders referred to in paragraph 1 of Section 101 in accordance with subsection (6).

(3) Where a bid is commenced pursuant to subsection (2), the bid shall be filed and, in the case of a take-over bid, delivered to the offeree issuer's principal office on the same day as, or as soon as practicable after, the bid is delivered under subsection (2).

(4) A notice of change or variation in respect of a bid shall be filed and, in the case of a take-over bid, delivered to the offeree issuer's principal office on the same day as, or as soon as practicable after, the notice of change or variation is delivered to holders of securities of the offeree issuer.

(5) Every directors' circular and every individual director's or officer's circular or any related notice of change that is delivered to security holders of an offeree issuer shall be filed and shall be delivered to the offeror's principal office on the day the directors' circular or individual director's or officer's circular or the notice of change is delivered to the holders of securities of the offeree issuer, or as soon as practicable thereafter.

(6) A take-over bid or issuer bid, a take-over bid circular, an issuer bid circular, a directors' circular, an individual director's or officer's circular and every notice of change or variation in any such bid or circular shall be mailed by prepaid first-class mail or delivered by personal delivery or in such other manner as the Director may approve to the intended recipient and any bid, circular or notice so mailed or delivered is deemed to have been delivered and, subject to subsections (8) and (9), is deemed conclusively for the purpose of Sections 95 to 111 and the regulations to have been dated as of the date on which it was so mailed or delivered to all or substantially all of the persons or companies entitled to receive it.

(7) An offeror may commence a take-over bid by publishing an advertisement containing a brief summary of the bid in at least one major daily newspaper of general and regular paid circulation in the Province, or by disseminating the advertisement in a prescribed manner, if

(a) on or before the date of first publication or first dissemination of the advertisement, the offeror, or a person or company acting on its behalf, files the bid and delivers it to the offeree issuer's principal office and files the advertisement;

(b) on or before the date of first publication or first dissemination of the advertisement, the offeror, or a person or company acting on its behalf, requests from the offeree issuer a list of the security holders referred to in paragraph 1 of Section 101; and

(c) within two business days of the receipt by or on behalf of the offeror of a list of the security holders referred to in paragraph 1 of Section 101, the bid is delivered to those security holders in accordance with subsection (6).

(8) Where a take-over bid is commenced in accordance with subsection (7), the bid is deemed conclusively for the purpose of Sections 95 to 111 and the regulations to have been dated as of the date of first publication or first dissemination of the advertisement referred to in subsection (7).

(9) Where a take-over bid is advertised in accordance with subsection (7), and the offeror or a person or company acting on its behalf has complied with clauses (a) and (b) of subsection (7) but has not yet delivered the bid pursuant to clause (c) of subsection (7), a change or variation in the bid prior to the date on which the bid is delivered to security holders in accordance with clause (c) of subsection (7) that is advertised in a manner provided under subsection (7) is deemed conclusively for the purpose of Sections 95 to 111 and the regulations to have been dated as of the date of first publication or first dissemination of the advertisement relating to the change or variation if

(a) the advertisement contains a brief summary of the change or variation;

(b) on or before the date of first publication or first dissemination of the advertisement relating to the change or variation, the offeror, or a person or company acting on its behalf, files the notice of change or variation and delivers it to the offeree issuer's principal office, and files such advertisement; and

(c) within two business days of the receipt by or on behalf of the offeror of a list of the security holders referred to in paragraph 1 of Section 101, the bid and notice of change or variation is delivered to those security holders in accordance with subsection (2) or (4) of Section 104, as applicable, and subsection (6).

(10) Where an offeror, or a person or company acting on its behalf, satisfies the requirements of subsection (9), the notice of change or variation is not required to be filed and delivered under subsection (4). 2001, c. 18, s. 3.

Press release other than where formal bid

107 (1) Every offeror that, except pursuant to a formal bid, acquires beneficial ownership of, or the power to exercise control or direction over, or securities convertible into, voting or equity securities of any class of a reporting issuer that, together with such offeror's securities of that class, would constitute ten per cent or more of the outstanding securities of that class,

(a) shall issue and file forthwith a press release containing the information prescribed by the regulations; and

(b) within two business days, shall file a report containing the same information as is contained in the press release issued pursuant to clause (a).

(2) Where an offeror is required to file a report pursuant to subsection (1) or a further report pursuant to this subsection and the offeror or any person or company acting jointly or in concert with the offeror acquired beneficial ownership of, or the power to exercise control or direction over, or securities convertible into, an additional two per cent or more of the outstanding securities of the class or there is a change in any other material fact in such a report, the offeror

(a) shall issue and file forthwith a press release containing the information prescribed by the regulations; and

(b) within two business days, shall file a report containing the same information as is contained in the press release issued pursuant to clause (a).

(3) During the period commencing on the occurrence of an event in respect of which a report or further report is required to be filed pursuant to this Section and terminating on the expiry of one business day from the date that the report or further report is filed, neither the offeror nor any person or company acting jointly or in concert with the offeror shall acquire or offer to acquire beneficial ownership of any securities of the class in respect of which the report or further report is required to be filed or any securities convertible into securities of that class.

(4) Subsection (3) does not apply to an offeror that is the beneficial owner of, or has the power to exercise control or direction over, securities that, together with such offeror's securities of that class, constitute twenty per cent or more of the outstanding securities of that class. 1990, c. 15, s. 56.

Press release where formal bid

108 (1) Where, after a formal bid has been made for voting or equity securities of an offeree issuer that is a reporting issuer and before the expiry of the bid, an offeror, other than the person or company making the bid, acquires beneficial ownership of, or the power to exercise control or direction over, securities of the class subject to the bid which, when added to such offeror's securities of that class, constitute five per cent or more of the outstanding securities of that class, the offeror shall, not later than the opening of trading on the next business day, issue a press release containing the information prescribed by the regulations and, forthwith, the offeror shall file a copy of the press release.

(2) Where an offeror that has filed a press release pursuant to subsection (1) or a further press release pursuant to this subsection or any person or company acting jointly or in concert with the offeror acquires beneficial ownership of, or control or direction over, securities of the class subject to the bid which, when added to the securities of that class acquired after the filing of the press release by the offeror and any person or company acting jointly or in concert with the offeror, aggregates an additional two per cent or more of the class of outstanding securities, the offeror shall, not later than the opening of trading on the next business day, issue a further press release containing the information prescribed by the regulations and, forthwith, the offeror shall file a copy of the press release. 1990, c. 15, s. 56.

Identical facts to be reported

109 Where the facts required to be reported or in respect of which a press release is required to be filed pursuant to Sections 107 and 108 are identical, a report or press release is required only under the provision requiring the earlier report or press release, as the case may be. 1990, c. 15, s. 56.

Powers of Commission

110 (1) Where, on the application of an interested person, it appears to the Commission that a person or company has not complied or is not complying with Sections 95 to 111 or the regulations related to those Sections, it may issue, subject to such terms and conditions as it may impose, an order

(a) restraining the distribution of any document used or issued in connection with a take-over bid or issuer bid;

(b) requiring an amendment to or variation of any document used or issued in connection with a take-over bid or issuer bid and requiring the distribution of any amended, varied or corrected document; and

(c) directing any person or company to comply with Sections 95 to 111 or the regulations related to those Sections or restraining any person or company from contravening those Sections or the regulations related to those Sections and directing the directors and senior officers of the person or company to cause the person or company to comply with or to cease contravening those Sections or the regulations related to those Sections.

(2) Upon an application by any interested person or company, the Commission may, subject to such terms and conditions as it may impose,

(a) decide for the purpose of subsection (2) of Section 103 that an agreement, commitment or understanding with a selling security holder is made for reasons other than

to increase the value of the consideration paid to the selling security holder for the securities of the selling security holder and that the agreement, commitment or understanding may be entered into notwithstanding that subsection;

(b) vary any time period set out in Sections 95 to 111 and the regulations related to those Sections; and

(c) exempt any person or company from any of the requirements of Sections 95 to 111 or the regulations related to those Sections where the Commission is satisfied that to do so would not be prejudicial to the public interest. 1990, c. 15, s. 56; 1996, c. 32, s. 8.

Application to Court

111 (1) An interested person may apply to the Trial Division of the Supreme Court for an order pursuant to this Section.

(2) Where, on an application pursuant to sub-section (1), the judge hearing the application is satisfied that a person or company has not complied with Sections 95 to 111 or the regulations related to those Sections, the judge may make such interim or final order as the judge thinks fit, including, without limiting the generality of the foregoing,

(a) an order compensating any interested person who is a party to the application for damages suffered as a result of a contravention of Sections 95 to 111 or the regulations related to those Sections;

(b) an order rescinding a transaction with any interested person, including the issue of a security or a purchase and sale of a security;

(c) an order requiring any person or company to dispose of any securities acquired pursuant to or in connection with a take-over bid or an issuer bid;

(d) an order prohibiting any person or company from exercising any or all of the voting rights attaching to any securities;

(e) an order requiring the trial of an issue. 1990, c. 15, s. 56.

Interpretation of Sections 112 to 128

112 (1) For the purposes of Sections 112 to 128,

(a) "mutual fund" means, except in Section 119, a mutual fund that is a reporting issuer;

(b) "related mutual funds" includes more than one mutual fund under common management;

(c) "related person or company" in relation to a mutual fund means a person in whom, or a company in which, the mutual fund, its management company and its distribution company are prohibited by the provisions of Sections 112 to 128 from making any investment.

(2) For the purposes of Sections 112 to 128,

(a) any issuer in which a mutual fund holds in excess of ten per cent of the voting securities or in which the mutual fund and related mutual funds hold in excess of twenty per cent of the voting securities shall be deemed to be a related person or company of that mutual fund or of each of those mutual funds;

(b) the acquisition or disposition of a put, call or other option with respect to a security shall be deemed a change in the beneficial ownership of the security to which such put, call or other option relates; and

(c) for the purpose of reporting under Section 113, ownership shall be deemed to pass at such time as an offer to sell is accepted by the purchaser or his agent or an offer to buy is accepted by the vendor or his agent. R.S., c. 418, s. 112; 1990, c. 15, s. 57.

Report of insider

113 (1) A person or company who becomes an insider of a reporting issuer, other than a mutual fund, shall, within ten days after the end of the month in which he becomes an insider, file a report as of the day on which he became an insider disclosing any direct or indirect beneficial ownership of or control or direction over securities of the reporting issuer as may be required by the regulations.

(2) A person or company who has filed or is required to file a report pursuant to this Section or any predecessor thereof and whose direct or indirect beneficial ownership of or control or direction over securities of the reporting issuer changes from that shown or required to be shown in the report or in the latest report filed by him pursuant to this Section or any predecessor thereof shall, within ten days following the end of the month in which the change takes place, file a report of his direct or indirect beneficial ownership of or his control or direction over securities of the reporting issuer at the end of the month and the change or changes therein that occurred during that month giving such details of each transaction as may be required by the regulations.

(3) *repealed 1990, c. 15, s. 58.*

(4) A person or company who becomes an insider of a reporting issuer by reason of subsection (8) or (9) of Section 2 shall file the reports required by subsections (1) and (2) for the previous six months or such shorter period that he was a director or senior officer of the reporting issuer within ten days after the end of the month in which the issuer became an insider of the reporting issuer or the reporting issuer became an insider of another reporting issuer, as the case may be. R.S., c. 418, s. 113; 1990, c. 15, s. 58.

114 *repealed 1990, c. 15, s. 59.*

115 *repealed 1990, c. 15, s. 59.*

Report of insider of transfer by insider

116 No insider of a reporting issuer shall transfer or cause to be transferred any securities of the reporting issuer into the name of an agent, nominee or custodian without delivering to the Director a report of such transfer in accordance with the regulations except for a transfer for the purpose of giving collateral for a *bona fide* debt. R.S., c. 418, s. 116; 1990, c. 15, s. 80.

Report of person or company of transfer by insider

117 Where voting securities are registered in the name of a person or company other than the beneficial owner and the person or company knows that they are beneficially owned by an insider and that the insider has failed to file a report of such ownership with the Director as required by Sections 112 to 128, the person or company shall file a report in accordance with the regulations except where the transfer was for the purpose of giving collateral for a *bona fide* debt. R.S., c. 418, s. 117; 1990, c. 15, s. 80.

Interpretation of Sections 119 to 123

118 For the purposes of Sections 119, 120, 121, 122 and 123

(a) "investment" means a purchase of any security of any class of securities of an issuer including bonds, debentures, notes or other evidences of indebtedness thereof, and a loan to persons or companies but does not include an advance or loan, whether secured or unsecured, that is made by a mutual fund, its management company or its distribution company that is merely ancillary to the main business of the mutual fund, its management company or its distribution company;

(b) a person or company or a group of persons or companies has a significant interest in an issuer, if

(i) in the case of a person or company, he or it, as the case may be, owns beneficially, either directly or indirectly, more than ten per cent, or

(ii) in the case of a group of persons or companies, they own beneficially, either individually or together and either directly or indirectly, more than fifty per cent, of the outstanding shares or units of the issuer;

(c) a person or company or a group of persons or companies is a substantial security holder of an issuer if that person or company or group of persons or companies owns beneficially, either individually or together or directly or indirectly, voting securities to which are attached more than twenty per cent of the voting rights attached to all the voting securities of the issuer for the time being outstanding, but in computing the percentage of voting rights attached to voting securities owned by an underwriter, there shall be excluded any voting securities acquired by him as underwriter in a distribution of such securities but such exclusion ceases to have effect on completion or cessation of the distribution by him;

(d) where a person or company or group of persons or companies owns beneficially, directly or indirectly, or pursuant to this clause is deemed to own beneficially, voting securities of an issuer, that person or company or group of persons or companies shall be deemed to own beneficially a proportion of voting securities of any other issuer that are owned beneficially, directly or indirectly, by the first mentioned issuer, which proportion shall equal the proportion of the voting securities of the first mentioned issuer that are owned beneficially, directly or indirectly, or that pursuant to this clause are deemed to be owned beneficially, by that person or company or group of persons or companies. R.S., c. 418, s. 118.

Prohibited investment by mutual fund

119 (1) No mutual fund in the Province shall knowingly make an investment by way of loan to

(a) any officer or director of the mutual fund, its management company or distribution company or an association of any of them; or

(b) any individual, where the individual or an associate of the individual is a substantial security holder of the mutual fund, its management company or distribution company.

(2) No mutual fund in the Province shall knowingly make an investment

(a) in any person or company who is a substantial security holder of the mutual fund, its management company or distribution company;

(b) in any person or company in which the mutual fund, alone or together with one or more related mutual funds, is a substantial security holder; or

(c) in an issuer in which

(i) any officer or director of the mutual fund, its management company or distribution company or an associate of any of them, or

(ii) any person or company who is a substantial security holder of the mutual fund, its management company or its distribution company,

has a significant interest.

(3) No mutual fund in the Province or its management company or its distribution company shall knowingly hold an investment made after the fifteenth day of October, 1987, that is an investment described in this Section. R.S., c. 418, s. 119.

Prohibited arrangement respecting mutual fund

120 No mutual fund or its management company or its distribution company shall knowingly enter into any contract or other arrangement that results in its being directly or indirectly liable or contingently liable in respect of any investment by way of loan to, or other investment in, a person or company to whom it is by Section 119 prohibited from making a loan or in which it is prohibited from making any other investment, and for the purpose of Section 119 any such contract or other arrangement shall be deemed to be a loan or an investment, as the case may be. R.S., c. 418, s. 120.

Relieving order

121 Upon an application of an interested person or company, the Commission may, where it is satisfied

(a) that a class of investment or a particular investment represents the business judgment of responsible persons uninfluenced by considerations other than the best interests of a mutual fund; or

(b) that a particular investment is in fact in the best interests of a mutual fund,

order, subject to such terms and conditions as it may impose, that Section 119 or 120 does not apply to the class of investment, particular investment, contract or other arrangement, as the case may be. R.S., c. 418, s. 121; 1990, c. 15, s. 60.

Exception to investment prohibition

122 Notwithstanding clause (d) of Section 118, a mutual fund is not prohibited from making an investment in an issuer only because a person or company or a group of persons or companies who own beneficially, directly or indirectly, or are deemed to own beneficially, voting securities of the mutual fund or its management company or its distribution company are by reason thereof deemed to own beneficially voting securities of the issuer. R.S., c. 418, s. 122.

Fees on investment

123 (1) No mutual fund shall make any investment in consequence of which a related person or company of the mutual fund will receive any fee or other compensation except fees paid pursuant to a contract which is disclosed in any preliminary prospectus or prospectus, or any amendment to either of them, that is filed by the mutual fund and is accepted by the Director.

(2) The Commission may, upon the application of a mutual fund and where it is satisfied that it would not be prejudicial to the public interest to do so, order, subject to such terms and conditions as it may impose, that subsection (1) does not apply to the mutual fund. R.S., c. 418, s. 123; 1990, c. 15, ss. 61, 80.

Standard of care

124 (1) Every person or company responsible for the management of a mutual fund shall exercise the powers and discharge the duties of its office honestly, in good faith and in the best interests of the mutual fund, and in connection therewith shall exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances.

(2) For the purposes of subsection (1), a person or company is responsible for the management of a mutual fund if he has legal power or right to control the mutual fund or if in fact he is able to do so. R.S., c. 418, s. 124.

Filing by management company

125 (1) Every management company shall file a report prepared in accordance with the regulations of

(a) every transaction of purchase or sale of securities between the mutual fund and any related person or company;

(b) every loan received by the mutual fund from, or made by the mutual fund to, any of its related persons or companies;

(c) every purchase or sale effected by the mutual fund through any related person or company with respect to which the related person or company received a fee either from the mutual fund or from the other party to the transaction or from both; and

(d) any transaction in which, by arrangement other than an arrangement relating to insider trading in portfolio securities, the mutual fund is a joint participant with one or more of its related persons or companies,

in respect of each mutual fund to which it provides services or advice, within thirty days after the end of the month in which it occurs.

(2) The Commission may, upon the application of the management company of a mutual fund and where it is of the opinion that it would not be prejudicial to the public interest to do so, order, subject to such terms and conditions as it may impose, that subsection (1) does not apply to any transaction or class of transactions. R.S., c. 418, s. 125; 1990, c. 15, s. 62.

Restriction on portfolio manager

126 (1) In this Section, "responsible person" means a portfolio manager and every individual who is a partner, director or officer of a portfolio manager together with every affiliate of a portfolio manager and every individual who is a director, officer or employee of such affiliate or who is an employee of the portfolio manager, if the affiliate or the individual participates in the formulation of, or has access prior to implementation to investment decisions made on behalf of or the advice given to the client of the portfolio manager.

(2) The portfolio manager shall not knowingly cause any investment portfolio managed by it to

(a) invest in any issuer in which a responsible person or an associate of a responsible person is an officer or director unless the specific fact is disclosed to the client and the written con-sent of the client to the investment is obtained before the purchase;

(b) purchase or sell the securities of any issuer from or to the account of a responsible per-son, any associate of a responsible person or the portfolio manager; or

(c) make a loan to a responsible person or an associate of a responsible person or the port-folio manager.

(3) Where the Commission determines that a portfolio manager or a class of portfolio managers is subject to regulations, imposed by a self-regulatory organization, to substantially the same effect as the requirements set out in subsection (2), the Commission may, subject to such terms and conditions as the Commission may impose, exempt the portfolio manager or class of portfolio managers from the requirements of subsection (2). R.S., c. 418, s. 126; 1990, c. 15, s. 63.

Trades by mutual fund insiders

127 No person or company who has access to informa-tion concerning the investment program of a mutual fund or the investment portfolio managed for a client by a portfolio manager shall purchase or sell securities of an issuer for his or its account where the portfolio securities of the mutual fund or the investment portfolio managed for a client by a portfolio manager includes securities of that issuer and where the information is used by the person or company for his or its direct benefit or advantage. R.S., c. 418, s. 127.

Exemption

128 (1) Where the laws of the jurisdiction in which the reporting issuer is incorporated, organized or continued require substantially the same reports in that jurisdiction as are required by this Act, the filing requirements of this Act may be complied with by filing reports required by the laws of such jurisdiction manually signed or certified in accord-ance with the regulations.

(2) Subject to subsection (1), the Commission may

(a) upon the application of an interested person or company

(i) if a requirement of Sections 112 to 128, conflicts with a requirement of the laws of the jurisdiction under which the reporting issuer is incorporated, organized or continued, or

(ii) if otherwise satisfied in the cir-cumstances of the particular case that there is adequate justification for so doing; or

(b) of its own motion,

make an order on such terms and conditions as seem to the Commission just and expedient, exempting in whole or in part, a person or company, class of persons or companies or class of transactions from the requirements of Sections 112 to 128. R.S., c. 418, s. 128; 1990, c. 15, s. 64.

Offences

129 (1) Every person or company who

(a) makes a statement in any material, evidence or information submitted or given under this Act or the regulations to the Commission, its representative, the Director or any person appointed to make an investigation or audit under this Act that, at the time and in the light of the circumstances under which it is made, is a misrepresentation;

(b) makes a statement in any application, release, report, preliminary prospectus, pro-spectus, offering memorandum, return, financial statement, information circular, take-over bid circular, issuer bid circular or other document required to be filed, sent, delivered or furnished under this Act or the regulations that, at the time and in the light of the circumstances under which it is made, is a misrepresentation;

(c) contravenes this Act or the regulations; or

(d) fails to observe or to comply with any direction, decision, ruling, order or other requirement made under this Act or the regulations,

is guilty of an offence and is liable to a fine of not more than one million dollars or to imprisonment for a term of not more than two years, or to both.

(2) No person or company is guilty of an offence under clause (a) or (b) of subsection (1) if he or it, as the case may be, did not know and in the exercise of reasonable diligence could not have known that the statement was a misrepresentation.

(3) Where a company or a person other than an individual is guilty of an offence under subsection (1), every director or officer of such company or person who authorized, permitted or acquiesced in such offence is also guilty of an offence and on summary conviction is liable to a fine of not more than one million dollars or to imprisonment for a term of not more than two years, or to both.

(4) Where a person or company has contravened subsection (1), (2) or (3) of Section 82 and the person or company has made a profit by reason of the contravention, the fine to which the person or company is liable on conviction shall be not less than the profit made by the person or the company by reason of the contravention and not more than the greater of

(a) one million dollars; and

(b) an amount equal to triple the profit made by such person or company by reason of the contravention,

and the maximum fines referred to in subsection (1) do not apply in such circumstances.

(5) For the purposes of subsection (4), "profit" means

(a) if the accused purchased securities in contravention of subsection (1) of Section 82, the average market price of the security in the twenty trading days following general disclosure of the material fact or material change less the amount that the accused paid for the security;

(b) if the accused sold securities in contravention of subsection (1) of Section 82, the amount that the accused received for the security less the average market price of the security in the twenty trading days following general disclosure of the material fact or material change;

(c) if the accused informed another person or company of a material fact or material change in contravention of subsection (2) or (3) of Section 82 and received any direct

or indirect consideration for providing such information, the value of the consideration. R.S., c. 418, s. 129; 1990, c. 15, ss. 65, 80.

Consent of Attorney General

130 No proceedings under Section 129 shall be instituted except with the consent or under the direction of the Attorney General. R.S., c. 418, s. 130.

More than one offence

131 An information in respect of any contravention of this Act may be for one or more offences, and no information, summons, warrant, conviction or other proceeding in any prosecution is objectionable or insufficient by reason of the fact that it relates to two or more offences. R.S., c. 418, s. 131.

Execution of warrant

132 (1) Where a provincial judge, magistrate or justice of the peace of another province of Canada issues a warrant for the arrest of any person on a charge of contravening any provision of a statute of such province or territory similar to this Act, any judge of the provincial court or justice of the peace within whose jurisdiction that person is or is suspected to be, may, upon satisfactory proof of the handwriting of the provincial judge, magistrate or a justice of the peace who issued the warrant, make an endorsement thereon in the form prescribed by the regulations, and a warrant so endorsed is sufficient authority to the person bringing the warrant and to all other persons to whom it was originally directed and to all constables within the territorial jurisdiction of the judge of the provincial court or justice of the peace so endorsing the warrant to execute it within that jurisdiction and to take the person arrested thereunder either out of or anywhere in the Province and to rearrest such person anywhere in the Province.

(2) Any constable of the Province or of any other province of Canada who is passing through the Province having in his custody a person arrested in another province under a warrant endorsed under subsection (1) is entitled to hold, take and rearrest the accused anywhere in the Province under such warrant without proof of the warrant or the endorsement thereof. R.S., c. 418, s. 132.

Order for compliance

133 (1) Where it appears to the Commission that any person or company has failed to comply with or is violating any decision or any provision of this Act or the regulations, the Commission may, notwithstanding the imposition of any penalty in respect of such non-compliance or violation and in addition to any other rights it may have, apply to the Trial Division of the Supreme Court for an order

(a) directing the person or company to comply with the decision or provision or restraining the person or company from violating the decision or provision; and

(b) directing the directors and senior officers of the person or company to cause the person or company to comply with or to cease violating the decision or provision,

and, upon the application, the Court may make such order, or such other order as it thinks fit.

(2) An appeal lies to the Appeal Division of the Supreme Court from an order made pursuant to subsection (1). R.S., c. 418, s. 133; 1990, c. 15, s. 66.

Order by Commission

134 (1) Where the Commission considers it to be in the public interest, the Commission, after a hearing, may order

(a) that a person or company comply with or cease contravening, and that the directors and senior officers of the person or company cause the person or company 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 made a rule or order of the Supreme Court of Nova Scotia, or

(iii) a by-law, rule or other regulatory instrument or policy or a direction, decision, order or ruling made under a by-law, rule, regulation or policy of a self-regulatory organization;

(b) that

(i) all persons or companies,

(ii) the person or company or persons or companies named or described in the order, or

(iii) one or more classes of persons or companies,

cease trading in a specified security or in a class of security;

(c) that any or all of the exemptions described or referred to in any of Section 40 or 41, subsection (1) of Section 77, subsection (11) of Section 77, subsection (1) of Section 78, subsection (1) of Section 99 or subsection (3) of Section 99 do not apply to a person or company;

(d) that a person

(i) resign any position that the person holds as a director or officer of an issuer, and

(ii) is prohibited from becoming or acting as a director or officer of any issuer; or

(e) that a registrant or issuer

(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 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.

(2) Where the Commission considers that the length of time required to hold a hearing pursuant to subsection (1), other than pursuant to subclause (ii) or (iii) of clause (e) of subsection (1), could be prejudicial to the public interest, the Commission may make a temporary order without a hearing, to have effect for not longer than fifteen days after the date the temporary order is made.

(3) Where the Commission considers it necessary and in the public interest, the Commission may, without a hearing, make an order extending a temporary order until a hearing is held and a decision is rendered.

(4) The Commission shall send written notice of every order made pursuant to this Section to any person or company that is directly affected by the order.

(5) Where notice of a temporary order is sent pursuant to subsection (4), the notice shall be accompanied by a notice of hearing and review to be held before the Commission, which hearing and review shall be deemed to be a hearing and review pursuant to Section 25.

(6) The Commission may make a cease trading order pursuant to clause (b) of subsection (1) notwithstanding the filing of a report pursuant to subsection (3) of Section 81. 1990, c. 15, s. 67.

Administrative penalty

135 Where the Commission, after a hearing,

- (a) determines that a person or company has contravened
 - (i) a provision of this Act or of the regulations, or
 - (ii) a decision, whether or not the decision has been made a rule or order of the Supreme Court of Nova Scotia; 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 one hundred thousand dollars. 1990, c. 15, s. 67.

Payment of costs

135A The Commission may, after a hearing, order a person or company convicted of an offence or against whom an order has been made pursuant to Section 133, 134 or 135 to pay costs in connection with the investigation and prosecution of the offence or the investigation and conduct of the proceeding in respect of which the order was made pursuant to Section 133, 134 or 135, such costs not to exceed the costs prescribed in the regulations. 1996, c. 32, s. 9.

Limitation period

136 (1) No proceedings shall be commenced in a court more than one year after the facts upon which the proceedings are based first came to the knowledge of the Commission.

(2) No proceedings under this Act shall be commenced before the Commission more than two years after the facts upon which the proceedings are based first came to the knowledge of the Commission. R.S., c. 418, s. 136; 1990, c. 15, s. 68.

Power to impose terms and conditions

136A Where the Commission makes an order pursuant to Section 134 or 135, the Commission may do so on such terms and conditions as the Commission considers necessary or appropriate. 1996, c. 32, s. 10.

Misrepresentation in prospectus

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

- (a) the issuer or a selling security holder on whose behalf the distribution is made;
- (b) each underwriter of the securities who is required to sign the certificate required by Section 64;
- (c) every director of the issuer at the time the prospectus or the amendment to the prospectus was filed;
- (d) every person or company whose consent has been filed pursuant to a requirement of the regulations but only with respect to reports, opinions or statements that have been made by them; and
- (e) every person or company who signed the prospectus or the amendment to the prospectus other than the persons or companies included in clauses (a) to (d),

or, where the purchaser purchased the security from a person or company referred to in clause (a) or (b) or from another underwriter of the securities, he may elect to exercise a right of rescission against such person, company or underwriter, in which case he shall have no right of action for damages against such person, company or underwriter.

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

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

(a) that the prospectus or the amendment to the prospectus was filed without his knowledge or consent, and that, on becoming aware of its filing, he forthwith gave reasonable general notice that it was so filed;

(b) that, after the issue of a receipt for the prospectus and before the purchase of the securities by the purchaser, on becoming aware of any misrepresentation in the prospectus or an amendment to the prospectus he withdrew his consent thereto and gave reasonable general notice of such withdrawal and the reason therefor;

(c) that, with respect to any part of the prospectus or the amendment to the prospectus purporting to be made on the authority of an expert or purporting to be a copy of or an extract from a report, opinion or statement of an expert, he had no reasonable grounds to believe and did not believe that there had been a misrepresentation or that such part of the prospectus or the amendment to the prospectus did not fairly represent the report, opinion or statement of the expert or was not a fair copy of or extract from the report, opinion or statement of the expert;

(d) that, with respect to any part of the prospectus or the amendment to the prospectus purporting to be made on his own authority as an expert or purporting to be a copy of or an extract from his own report, opinion or statement as an expert but that contains a misrepresentation attributable to failure to represent fairly his report, opinion or statement as an expert,

(i) he had, after reasonable ~~investigation~~ [investigation], reasonable grounds to believe and did believe that such part of the prospectus or the amendment to the prospectus fairly represented his report, opinion or ~~statement~~ [statement], or

(ii) on becoming aware that such part of the prospectus or the amendment to the prospectus did not fairly represent his report, opinion or statement as an expert, he forthwith advised the Director and gave reasonable general notice that such use had been made and that he would not be responsible for that part of the prospectus or the amendment to the prospectus; or

(e) that, with respect to a false statement purporting to be a statement made by an official person or contained in what purports to be a copy of or extract from a public official document, it was a correct and fair representation of the statement or copy of or extract from the document, and he had reasonable grounds to believe and did believe that the statement was true.

(4) No person or company, other than the issuer or selling security holder, is liable under subsection (1) with respect to any part of the prospectus or the amendment to the prospectus purporting to be made on his own authority as an expert or purporting to be a copy of or an extract from his own report, opinion or statement as an expert unless such person or company

(a) failed to conduct such reasonable investigation as to provide reasonable grounds for a belief that there had been no misrepresentation; or

(b) believed there had been a misrepresentation.

(5) No person or company, other than the issuer or selling security holder, is liable under subsection (1) with respect to any part of the prospectus or the amendment to the prospectus not purporting to be made on the authority of an expert and not purporting to be a copy of or an extract from a report, opinion or statement of an expert unless he

(a) failed to conduct such reasonable investigation as to provide reasonable grounds for a belief that there had been no misrepresentation; or

(b) believed there had been misrepresentation.

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

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

(8) All or any one or more of the persons or companies specified in subsection (1) are jointly and severally liable, and every person or company who becomes liable to make any payment under this Section may recover a contribution from any person or company who, if sued separately, would have been liable to make the same payment provided that the court may deny the right to recover such contribution where, in all circumstances of the case, it is satisfied that to permit recovery of such contribution would not be just and equitable.

(9) In no case shall the amount recoverable under this Section exceed the price at which the securities were offered in the distribution to other than underwriters.

(10) The right of action for rescission or damages conferred by this Section is in addition to and without derogation from any other right the purchaser may have at law. R.S., c. 418, s. 137; 1990, c. 15, ss. 69, 80; revision corrected 1991.

Misrepresentation in offering memorandum

138 (1) Where

(a) an offering memorandum sent or delivered to a purchaser, together with any amendment to the offering memorandum; or

(b) advertising or sales literature as defined by subsection (2) of Section 56,

contains a misrepresentation, a purchaser who purchases a security referred to in it is deemed to have relied on that misrepresentation, if it was a misrepresentation at the time of purchase, and

(c) has a right of action for damages against

(i) the seller,

(ii) every director of the seller at the date of the offering memorandum, and

(iii) every person who signed the offering memorandum; or

(d) may elect to exercise a right of rescission against the seller, in which case the purchaser has no right of action for damages against any person or company under clause (c).

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

(3) No person or company is liable under sub-section (1) if the person or company proves that

(a) the offering memorandum or the amendment to the offering memorandum was sent or delivered to the purchaser without the person's or company's knowledge or consent and that, on becoming aware of its delivery, the person or company gave reasonable general notice that it was delivered without the person's or company's knowledge or consent;

(b) after delivery of the offering memorandum or the amendment to the offering memorandum and before the purchase of the securities by the purchaser, on becoming

aware of any mis-representation in the offering memorandum, or amendment to the offering memorandum, the person or company withdrew the person's or company's consent to the offering memorandum, or amendment to the offering memorandum, and gave reasonable general notice of the withdrawal and the reason for it; or

(c) with respect to any part of the offering memorandum or amendment to the offering memorandum purporting

(i) to be made on the authority of an expert, or

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

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

(iii) there had been a misrepresentation, or

(iv) the relevant part of the offering memorandum or amendment to the offering memorandum

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

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

(4) No person or company is liable under sub-section (1) with respect to any part of an offering memorandum or amendment to the offering memorandum not purporting

(a) to be made on the authority of an expert; or

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

unless the person or company

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

(d) believed that there had been a misrepresentation.

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

(6) In an action for damages under clause (c) of 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) The liability of all persons or companies referred to in clause (c) of subsection (1) is joint and several with respect to the same cause of action.

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

(9) The amount recoverable by a plaintiff under this Section may not exceed the price at which the securities were offered under the offering memorandum or amendment to the offering memorandum.

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

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

(12) For the purpose of subsection (1), advertising or sales literature is deemed not to contain a misrepresentation unless the advertising or sales literature

- (a) contains an untrue statement of material fact; or
- (b) omits to state a material fact that is necessary to prevent a statement contained in the advertising or sales literature from being mis-leading in light of the circumstances in which the statement was made.

(13) In this Section, for greater certainty, "seller" includes the issuer where the securities are distributed by the issuer. 2002, c. 39, s. 6.

Misrepresentation in circular

139 (1) Where a take-over bid circular sent to the security holders of an offeree issuer as required by Section 104 or any notice of change or variation in respect thereof contains a misrepresentation, every such security holder shall be deemed to have relied on the misrepresentation and may elect to exercise a right of action for rescission or damages against the offeror or a right of action for damages against

- (a) every person who at the time the circular or notice, as the case may be, was signed was a director of the offeror;
- (b) every person or company whose consent in respect of the circular or notice, as the case may be, has been filed pursuant to a requirement of the regulations but only with respect to reports, opinions or statements that have been made by the person or company; and
- (c) each person who signed a certificate in the circular or notice, as the case may be, other than the persons included in clause (a).

(2) Where a directors' circular or a director's or officer's circular delivered to the security holders of an offeree issuer as required by Section 105 or any notice of change or variation in respect thereof contains a misrepresentation, every such security holder shall be 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 that contained the misrepresentation.

(3) Subsection (1) applies with necessary modifications where an issuer bid circular or any notice of change or variation in respect thereof contains a misrepresentation.

(4) No person or company is liable pursuant to subsection (1), (2) or (3) if the person or company proves that the security holder had knowledge of the misrepresentation.

(5) No person or company, other than the offeror, is liable under subsection (1), (2) or (3) if he proves

- (a) that the take-over bid circular, issuer bid circular, directors' circular or director's or officer's circular, as the case may be, was sent without his knowledge or consent and that, on becoming aware of it, he forthwith gave reasonable general notice that it was so sent;
- (b) that, after the sending of the take-over bid circular, issuer bid circular, directors' circular or director's or officer's circular, as the case may be, on becoming aware of any misrepresentation in the take-over bid circular, issuer bid circular, directors' circular or director's or officer's circular, he withdrew his consent thereto and gave reasonable general notice of the withdrawal and the reason therefor;
- (c) that, with respect to any part of the circular purporting to be made on the authority of an expert or purporting to be a copy of or an extract from a report, opinion or statement of an expert, he had no reasonable grounds to believe and did not believe that there had been a misrepresentation or that such part of the circular did not fairly represent the report, opinion or statement of the expert or was not a fair copy of or extract from the report, opinion or statement of the expert;

(d) that, with respect to any part of the circular purporting to be made on his own authority as an expert or purporting to be a copy of or an extract from his own report, opinion or statement as an expert, but that contains a misrepresentation attributable to failure to represent fairly his report, opinion or statement as an expert,

(i) he had, after reasonable investigation, reasonable grounds to believe and did believe that such part of the circular fairly represented his report, opinion or statement as an expert, or

(ii) on becoming aware that such part of the circular did not fairly represent his report, opinion or statement as an expert, he forthwith advised the Director and gave reasonable general notice that such use had been made and that he would not be responsible for that part of the circular; or

(e) that, with respect to a false statement purporting to be a statement made by an official person or contained in what purports to be a copy of or extract from a public official document, it was a correct and fair representation of the statement or copy of or extract from the document and he had reasonable grounds to believe and did believe that the statement was true.

(6) No person or company, other than the offeror, is liable under subsection (1), (2) or (3) with respect to any part of the circular purporting to be made on his own authority as an expert or purporting to be a copy of or an extract from his own report, opinion or statement as an expert unless he

(a) failed to conduct such reasonable investigation as to provide reasonable grounds for a belief that there had been no misrepresentation; or

(b) believed there had been a misrepresentation.

(7) No person or company, other than the offeror, is liable under subsection (1), (2) or (3) with respect to any part of the circular not purporting to be made on the authority of an expert and not purporting to be a copy of or an extract from a report, opinion or statement of an expert unless he

(a) failed to conduct such reasonable investigation as to provide reasonable grounds for a belief that there had been no misrepresentation; or

(b) believed there had been a misrepresentation.

(8) All or any one or more of the persons or companies specified in subsection (1), (2) or (3) are jointly and severally liable, and every person or company who becomes liable to make any payment under this Section may recover a contribution from any person or company who, if sued separately, would have been liable to make the same payment provided that the court may deny the right to recover such contribution where, in all the circumstances of the case, it is satisfied that to permit recovery of such contribution would not be just and equitable.

(9) In an action for damages pursuant to subsection (1), (2) or (3) based on a misrepresentation affecting a security offered by the offeror company in exchange for securities of the offeree company, the defendant is not liable for all or any portion of such damages that he proves do not represent the depreciation in value of the security as a result of the misrepresentation.

(10) Where the offeror

(a) in a take-over bid exempted from Sections 101 to 106 by clause (a) of subsection (1) of Section 99; or

(b) in an issuer bid exempted from Sections 101, 102, 103, 104 and 106 by clause (e) of subsection (3) of Section 99,

is required, by the by-laws, regulations or policies of the stock exchange through the facilities of which the take-over bid or issuer bid is made, to file with it or to deliver to security holders of the offeree a disclosure document, the disclosure document shall be deemed, for the purpose of this Section, to be a take-over bid circular or issuer bid circular, as the case may be, delivered to the security holders as required by Section 104.

(11) The right of action for rescission or damages conferred by this Section is in addition to and without derogation from any other right the security holders of the offeree issuer may have at law. R.S., c. 418, s. 139; 1990, c. 15, ss. 71, 80.

Standard of reasonableness

140 In determining what constitutes reasonable investigation or reasonable grounds for belief for the purposes of Sections 137 and 139, the standard for reasonableness shall be that required of a prudent man in the circumstances of the particular case. R.S., c. 418, s. 140.

Liability of dealer, offeror, seller and underwriter

141 (1) Where a prospectus has been filed pursuant to Section 58 or 67 and a receipt therefor obtained from the Director, a purchaser of a security to whom the prospectus was required to be sent or delivered but was not sent or delivered in compliance with subsection (1) of Section 76 has a right of action for rescission or damages against the dealer who failed so to comply.

(2) A security holder to whom a take-over bid and take-over bid circular, an issuer bid and issuer bid circular or a notice of change or variation to any such bid or circular was required to be delivered but were not delivered in compliance with Section 101 or 104 has a right of action for rescission or damages against the offeror who failed to comply with the applicable requirement.

(3) Where a security is traded in a distribution contrary to Section 58 or 67, a purchaser of the security has a right of action for rescission against the person from whom the security was purchased and a right of action for damages against the underwriter and the issuer or other person who sold the security.

(4) No action shall be commenced to enforce a right created pursuant to subsection (3) more than

(a) in the case of an action for rescission, two years after the date of the transaction that gave rise to the cause of action; or

(b) in the case of an action for damages, three years after the date of the transaction that gave rise to the cause of action. 1990, c. 15, s. 72.

Material fact and special relationship

142 (1) Every person or company in a special relationship with a reporting issuer who purchases or sells securities of the reporting issuer with knowledge of a material fact or material change with respect to the reporting issuer that has not been generally disclosed is liable to compensate the seller or purchaser of the securities, as the case may be, for damages as a result of the trade unless the person or company in the special relationship with the reporting issuer proves that

(a) the person or company reasonably believed that the material fact or material change had been generally disclosed; or

(b) the material fact or material change was known or ought reasonably to have been known to the seller or purchaser, as the case may be.

(2) Every

(a) reporting issuer;

(b) person or company in a special relationship with a reporting issuer; and

(c) person or company that proposes

(i) to make a take-over bid, as defined in Section 95, for the securities of a reporting issuer,

(ii) to become a party to a reorganization, amalgamation, merger, arrangement or similar business combination with a reporting issuer, or

(iii) to acquire a substantial portion of the property of a reporting issuer,

and who informs another person or company of a material fact or material change with respect to the reporting issuer that has not been generally disclosed is liable to compensate for damages any person or company that thereafter sells securities of the reporting issuer to or purchases securities of the reporting issuer from the person or company that received the information unless the person or company referred to in clause (a), (b) or (c), as the case may be, proves that

(d) the informing person or company reasonably believed the material fact or material change had been generally disclosed;

(e) the material fact or material change was known or ought reasonably to have been known to the seller or purchaser, as the case may be;

(f) in the case of an action against a reporting issuer or a person in a special relationship with the reporting issuer, the information was given in the necessary course of business; or

(g) in the case of an action against a person or company described in subclause (i), (ii) or (iii) of clause (c), the information was given in the necessary course of business to effect the take-over bid, business combination or acquisition.

(3) Any person or company who has access to information concerning the investment program of a mutual fund in the Province or the investment portfolio managed for a client by a portfolio manager or by a registered dealer acting as a portfolio manager and uses that information for his or its direct benefit or advantage to purchase or sell securities of an issuer for his or its account where the portfolio securities of the mutual fund or the investment portfolio managed for the client by the portfolio manager or registered dealer include securities of that issuer is accountable to the mutual fund or the client of the portfolio manager or registered dealer, as the case may be, for any benefit or advantage received or receivable as a result of such purchase or sale.

(4) Every person or company who is an insider, affiliate or associate of a reporting issuer that

(a) sells or purchases the securities of the reporting issuer with knowledge of a material fact or material change with respect to the reporting issuer that has not been generally disclosed; or

(b) communicates to another person, other than in the necessary course of business, knowledge of a material fact or material change with respect to the reporting issuer that has not been generally disclosed,

is accountable to the reporting issuer for any benefit or advantage received or receivable by the person or company as a result of the purchase, sale or communication, as the case may be, unless the person or company proves that the person or company reasonably believed that the material fact or material change had been generally disclosed.

(5) Where more than one person or company in a special relationship with a reporting issuer is liable under subsection (1) or (2) as to the same transaction or series of transactions, their liability is joint and several.

(6) In assessing damages under subsection (1) or (2), the court shall consider

(a) if the plaintiff is a purchaser, the price that he paid for the security less the average market price of the security in the twenty trading days following general disclosure of the material fact or material change; or

(b) if the plaintiff is a vendor, the average market price of the security in the twenty trading days following general disclosure of the material fact or material change less the price that he received for the security,

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

(7) For the purpose of this Section, "a person or company in a special relationship with a reporting issuer" has the same meaning as in subsection (5) of Section 82.

(8) For the purposes of subsections (1) and (2), a security of the reporting issuer shall be deemed to include

(a) a put, call, option or other right or obligation to purchase or sell securities of the reporting issuer; or

(b) a security, the market price of which varies materially with the market price of the securities of the issuer. R.S., c. 418, s. 142; 1990, c. 15, s. 73.

Action on behalf of issuer or mutual fund

143 (1) Upon application by the Commission or by any person or company who was at the time of a transaction referred to in subsection (1) or (2) of Section 142 or is at the time of the application a security holder of the reporting issuer, a judge of the Trial Division of the Supreme Court may, if satisfied that

(a) the Commission or the person or company has reasonable grounds for believing that the reporting issuer has a cause of action under subsection (4) of Section 142; and

(b) either

(i) the reporting issuer has refused or failed to commence an action under Section 142 within sixty days after receipt of a written request from the Commission or such person or company so to do, or

(ii) the reporting issuer has failed to prosecute diligently an action commenced by it under Section 142,

make an order, upon such terms as to security for costs and otherwise as to the judge seems fit, requiring the Commission or authorizing such person or company or the Commission to commence or continue an action in the name of and on behalf of the reporting issuer to enforce the liability created by subsection (4) of Section 142.

(2) Upon the application by the Commission or any person or company who was at the time of a transaction referred to in subsection (3) of Section 142 or is at the time of the application a security holder of the mutual fund, a judge of the Trial Division of the Supreme Court may, if satisfied that

(a) the Commission or the person or company has reasonable grounds for believing that the mutual fund has a cause of action under subsection (3) of Section 142; and

(b) the mutual fund has either

(i) refused or failed to commence an action under subsection (3) of Section 142 within sixty days after receipt of a written request from the Commission or the person or company so to do, or

(ii) failed to prosecute diligently an action commenced by it under subsection (3) of Section 142,

make an order, upon terms as to security for costs or otherwise as to the judge seems proper, requiring the Commission or authorizing the person or company or the Commission to commence and prosecute or to continue an action in the name of and on behalf of the mutual fund to enforce the liability created by subsection (3) of Section 142.

(3) Where an action under subsection (3) or (4) of Section 142 is

(a) commenced;

(b) commenced and prosecuted; or

(c) continued,

by a board of directors of a reporting issuer, the trial judge or a judge of the Trial Division of the Supreme Court may order that the costs properly incurred by the board of directors in commencing, commencing and prosecuting or continuing the action, as the case may be, shall be paid by the reporting issuer, if he is satisfied that the action was *prima facie* in the best interests of the reporting issuer and the security holders thereof.

(4) Where an action under subsection (3) or (4) of Section 142 is

- (a) commenced;
- (b) commenced and prosecuted; or
- (c) continued,

by a person or company who is a security holder of the reporting issuer, the trial judge or a judge of the Trial Division of the Supreme Court may order that the costs properly incurred by such person or company in commencing, commencing and prosecuting or continuing the action, as the case may be, shall be paid by the reporting issuer, if he is satisfied that

- (d) the reporting issuer failed to commence the action or had commenced it but had failed to prosecute it diligently; and
- (e) the continuance of the action is *prima facie* in the best interests of the reporting issuer and the security holders thereof.

(5) Where an action under subsection (3) or (4) of Section 142 is

- (a) commenced;
- (b) commenced and prosecuted; or
- (c) continued,

by the Commission, the trial judge or a judge of the Trial Division of the Supreme Court shall order the reporting issuer to pay all costs properly incurred by the Commission in commencing, commencing and prosecuting or continuing the action, as the case may be.

(6) In determining whether an action or its continuance is *prima facie* in the best interests of a reporting issuer and the security holders thereof, the judge shall consider the relationship between the potential benefit to be derived from the action by the reporting issuer and the security holders thereof and the cost involved in the prosecution of the action.

(7) Notice of every application under subsection (1) or (2) shall be given to the Commission, the reporting issuer or the mutual fund, as the case may be, and each of them may appear and be heard thereon.

(8) Every order made under subsection (1) or (2) requiring or authorizing the Commission to commence and prosecute or continue an action shall provide that the reporting issuer or mutual fund, as the case may be, shall cooperate fully with the Commission in the commencement and prosecution or continuation of the action, and shall make available to the Commission all books, records, documents and other material or information known to the reporting issuer or mutual fund or reasonably ascertainable by the reporting issuer or mutual fund relevant to such action.

(9) An appeal lies to the Appeal Division of the Supreme Court from any order made pursuant to this Section. R.S., c. 418, s. 143; 1990, c. 15, s. 74.

Rescission of contract

144 (1) Where subsection (1) of Section 45 applies to a contract and that subsection is not complied with, a person or company who has entered into the contract is entitled to rescission thereof by mailing or delivering written notice of rescission to the registered dealer within sixty days of the date of the delivery of the security to or by the person or company, as the case may be, but, in the case of a purchase by the person or company, only if he is still the owner of the security purchased.

(2) Where clause (c) of subsection (1) of Section 42 applies to a contract and a registered dealer has failed to comply with that subsection by not disclosing that he acted as principal, a person or company who has entered into the contract is entitled to rescission thereof by mailing or delivering written notice of rescission to the registered dealer within seven days of the date of the delivery of the written confirmation of the contract.

(3) For the purpose of subsection (2), a confirmation sent by prepaid mail shall be deemed conclusively to have been delivered to the person or company to whom it was addressed in the ordinary course of mail.

(4) In an action respecting a rescission to which this Section applies, the onus of proving compliance with Section 42 or 45 is upon the registered dealer.

(5) No action respecting a rescission shall be commenced under this Section after the expiration of a period of ninety days from the date of the mailing or delivering the notice pursuant to subsection (1) or (2). R.S., c. 418, s. 144.

Rescission of purchase

145 (1) Every purchaser of a security of a mutual fund in the Province may, where the amount of the purchase does not exceed the sum of fifty thousand dollars, rescind the purchase by notice given to the registered dealer from whom the purchase was made within forty-eight hours after receipt of the confirmation for a lump sum purchase or within sixty days after receipt of the confirmation for the initial payment under a contractual plan but, subject to subsection (5), the amount the purchaser is entitled to recover on exercise of this right to rescind shall not exceed the net asset value of the securities purchased, at the time the right is exercised.

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

(3) The notice mentioned in subsection (1) shall be in writing, and may be given by prepaid mail, telegram or other means.

(4) A confirmation sent by prepaid mail shall be deemed conclusively to have been received in the ordinary course of mail by the person or company to whom it was addressed.

(5) Every registered dealer from whom the purchase was made shall reimburse the purchaser who has exercised his right of rescission in accordance with this Section for the amount of sales charges and fees relevant to the investment of the purchaser in the mutual fund in respect of the shares or units of which the notice of exercise of the right of rescission was given. R.S., c. 418, s. 145.

Limitation period

146 (1) Unless otherwise provided in this Act, no action shall be commenced to enforce a right created more than

(a) in the case of an action for rescission, one hundred and eighty days after the date of the transaction that gave rise to the cause of action; or

(b) in the case of any action, other than an action for rescission, the earlier of,

(i) one hundred and eighty days after the plaintiff first had knowledge of the facts giving rise to the cause of action, or

(ii) three years after the date of the transaction that gave rise to the cause of action.

(2) Notwithstanding subsection (1), no action shall be commenced to enforce the right created under Section 138 more than one hundred and twenty days after the date on which payment was made for the securities or after the date on which the initial payment for the securities was made where payments subsequent

to the initial payment are made pursuant to a contractual commitment assumed prior to, or concurrently with, the initial payment. R.S., c. 418, s. 146.

Admissibility of documents

147 A statement as to

- (a) the registration or non-registration of any person or company;
- (b) the filing or non-filing of any document or material required or permitted to be filed;
- (c) any other matter pertaining to such registration, non-registration, filing or non-filing, or to any such person, company, document or material; or
- (d) the date the facts upon which any proceedings are to be based first came to the knowledge of the Director or the Commission,

purporting to be certified by the Director or a member of the Commission is, without proof of the office or signature of the person certifying, admissible in evidence, so far as relevant, for all purposes in any action, proceeding or prosecution. R.S., c. 418, s. 147; 1990, c. 15, s. 75.

Filing and inspection of material

148 (1) Where this Act or the regulations require that material be filed, the filing shall be effected, unless provided otherwise herein or in the regulations, by depositing the material, or causing it to be deposited, with the Director and all material so filed or filed as otherwise provided herein or in the regulations shall, subject to subsection (2), be made available by the Director for public inspection during the normal business hours of the Director.

(2) Notwithstanding subsection (1), the Commission may require the Director to and if so required the Director shall hold material or any class of material required to be filed by this Act in confidence so long as the Commission is of the opinion that the material so held discloses intimate financial, personal or other information and that the desirability of avoiding disclosure thereof in the interests of any person or company affected outweighs the desirability of adhering to the principle that material filed with the Director be available to the public for inspection.

(3) Notwithstanding the *Freedom of Information and Protection of Privacy Act*, the Commission may provide information to and receive information from other securities or financial regulatory authorities, stock exchanges, self-regulatory bodies or organizations, law enforcement and other governmental or regulatory authorities and any information technology service provider approved by the Commission to facilitate the exchange of information pursuant to this Act, and the rules and regulations made thereunder, both in Canada and elsewhere, and any information so received by the Commission is exempt from disclosure under this Act if the Commission determines that the information should be maintained in confidence. R.S., c. 418, s. 148; 1990, c. 15, ss. 76, 80; 2001, c. 18, s. 4.

Immunity

149 (1) No action or other proceeding for damages shall be instituted against the Director or the Commission or any member thereof, or any officer, servant or agent of the Director or the Commission for any act done in good faith in the performance or intended performance of any duty or in the exercise or the intended exercise of any power under this Act or a regulation, or for any neglect or default in the performance or exercise in good faith of such duty or power.

(2) No person or company has any rights or remedies and no proceedings lie or shall be brought against any person or company for any act or omission of the last-mentioned person or company done or omitted in compliance with this Act, the regulations or any direction, decision, order, ruling or other requirement made or given under this Act or the regulations.

(3) For the purpose of subsection (2), where, pursuant to Section 3, the Commission appoints an expert, any act or omission done or omitted in good faith by the person so appointed, in the discharge or intended discharge of that person's duties, shall be considered to be done or omitted in compliance with this Act.

(4) Subsection (1) does not, by reason of subsection (2) and (3) of Section 5 of the *Proceedings against the Crown Act*, relieve the Crown of liability in respect of a tort committed by the Director or the Commission or any person referred to in subsection (1) to which the Crown would otherwise be subject and the Crown is liable under that Act for any such tort in a like manner as if subsection (1) had not been enacted. R.S., c. 418, s. 149; 1990, c. 15, ss. 77, 80; revision corrected 1997.

Regulations and rules

150 The Governor in Council may make regulations and the Commission may make rules

(a) prescribing categories for persons and companies and the manner of allocating persons and companies to categories, including permitting the Director to make such allocations, and prescribing the form and content of and governing the use of prospectuses, preliminary prospectuses, *pro forma* prospectuses, summary statements, offering memoranda and statements of material facts to be filed by, and financial conditions applicable to, persons and companies in accordance with their categories;

(b) designating mutual funds or a class or classes thereof as private mutual funds;

(c) *repealed 1990, c. 15, s. 78.*

(d) prescribing the form and content of financial statements and interim financial statements required to be filed pursuant to this Act;

(e) prescribing requirements respecting applications for registration and renewal of registration, and providing for the expiration of registrations;

(f) authorizing the delegation by the Commission to a stock exchange or the Investment Dealers Association of Canada of any powers or duties of the Director or the Commission respecting the registration or renewal of registration of, or any matter respecting such registration or renewal, including the conduct of audits of and ensuring compliance with this Act and the regulations or rules by any persons or class of persons required to be registered pursuant to this Act or class of such persons, subject to such terms and conditions as the regulations or rules or the Commission may determine;

(g) classifying registrants into categories and prescribing the terms and conditions of registration of registrants in each category but no registrant shall be included in a category designated as

(i) investment dealer, unless he is a member of the Atlantic District of the Investment Dealers' Association of Canada,

(ii) broker, unless he is a member of a stock exchange recognized by the Commission;

(h) regulating the listing and trading of securities and records relating thereto;

(i) governing the furnishing of information to the public, to the Director or to the Commission by a registrant in connection with securities or trades there-in;

(j) prescribing the form and content of the financial statements to be provided to the customer of a registered dealer pursuant to Section 48;

(k) governing the furnishing of information by a registrant or class of registrants to a person or company recognized by the Director and governing the payment of fees with respect thereto;

(l) regulating the trading of securities other than on a stock exchange recognized by the Commission;

(m) governing the keeping of accounts and records, the preparation and filing of financial statements of the affairs of the security issuers and the audit requirements with respect thereto;

(n) respecting fees payable by an issuer to a management company as consideration for investment advice, alone or together with administrative or management services, provided by the management company to the mutual fund;

(o) respecting sales charges imposed by a distribution company or contractual plan service company under a contractual plan on purchasers of shares or units of a mutual fund, and commissions to be paid to salesmen of shares or units of a mutual fund;

(p) designating any person or company or any class of persons or companies who shall not be required to obtain registration as an adviser;

(q) prescribing the fees payable to the Director including fees for filing, fees upon applications for registration, fees in respect of audits and other fees in connection with the administration of this Act and the regulations or rules;

(r) prescribing the documents, certificates, reports, releases, statements, agreements and other information and the form, content and other particulars relating thereto that are required to be filed, furnished or delivered under this Act and the regulations or rules;

(s) prescribing the practice and procedure of investigations under Section 27;

(t) prescribing the forms for use under this Act and the regulations or rules and authorizing the Commission or Director to vary such form in specified circumstances;

(u) prescribing trades or securities, in addition to the trades and securities referred to in Section 41, in respect of which registration shall not be required;

(v) prescribing trades or securities, referred to in Section 41 in respect of which there shall cease to be exemption from registration;

(w) prescribing trades or securities, in addition to the trades and securities referred to in Sections 77 and 78, in respect of which Section 58 does not apply;

(x) prescribing trades or securities in respect of which Sections 58 and 67 shall be applicable notwithstanding Sections 77 and 78;

(y) *repealed 1990, c. 15, s. 78.*

(z) prescribing terms and conditions that shall be contained in an escrow or pooling agreement with respect to securities issued for a consideration other than cash;

(aa) prescribing the practice and procedure by which the Commission recognizes exempt purchasers under clause (d) of subsection (1) of Section 41 and pursuant to clause (c) of subsection (1) of Section 77;

(ab) exempting any category of registered advisers from the provisions of Section 46 or varying the provisions of Section 46, as they apply to any category of registered advisers;

(ac) prescribing the information required or permitted to be distributed under subsection (2) of Section 70;

(ad) respecting the matters referred to in clause (h) of subsection (2) of Section 66, and, without limiting the generality of the foregoing, pertaining to requirements as to paid-up capital and surplus, liquidity of assets, ratios of debt to paid-up capital and surplus, audit procedures, the furnishing of interim financial statements and the provisions of trust indentures and the qualifications, rights, duties and obligations of trustees thereunder;

(ae) requiring any issuer or class of issuers to comply with all or any of the provisions of this Act and the regulations or rules which apply to reporting issuers and provide that such issuer or issuers shall be deemed to be reporting issuers for the purposes of designated provisions of this Act and the regulations or rules;

(af) respecting the content and distribution of written, printed or visual material and advertising that may be distributed or used by a person or company with respect to a security whether in the course of distribution or otherwise;

(ag) prescribing the form and content of the reports to be filed pursuant to the provisions dealing with insider trading and self-dealing;

(ah) respecting any other matter necessary or advisable to carry out effectively the intent and purpose of Sections 95 to 128, including, without restricting the generality of the foregoing,

providing for exemptions in addition to those set out in subsections (1) and (3) of Section 99, providing for exemptions for Section 100, restricting any exemption set out in sub-section (1) or (3) of Section 99 or Section 100, prescribing rules in addition to those set out in Section 101 and varying any rule set out in that Section, varying any periods of time, percentages and numbers of persons, companies or security holders referred to in Sections 95 to 128 and prescribing the form and content of any circular, report or other document required to be delivered or filed;

- (ai) prescribing each applicable hold period for the purposes of Section 77;
- (aj) prescribing a penalty for the early redemption of shares or units of a mutual fund;
- (ak) prescribing the form and content of proxies, information circulars and reports;
- (al) permitting the Commission or the Director to exempt any person or company from the provisions of the regulations or rules or vary the provisions as they apply to any person or company;
- (am) assigning to the Commission such powers and duties of the Director and re-assigning any such powers and duties to the Commission;
- (an) specifying any issuer or class of issuers to be a reporting issuer or reporting issuers;
- (ao) respecting any matter necessary or advisable to carry out effectively the intent and purpose of Sections 82 and 142, including, without restricting the generality of the foregoing, exempting any class or classes of persons and companies, trades or securities from any of the requirements of Section 82 and from liability pursuant to Section 142 and prescribing standards for determining when a material fact or material change has been generally disclosed;
- (ap) defining, enlarging or restricting the meaning of any word or expression used in this Act or the regulations or rules and not otherwise defined;
- (aq) varying the amounts referred to in Sections 41 and 77;
- (ar) authorizing the Commission to relieve reporting issuers or a class of reporting issuers from any provisions of this Act or the regulations or rules or modifying the application of any such provisions to such reporting issuers or class of reporting issuers where the Commission is satisfied that to do so would not be prejudicial to the public interest;
- (as) further defining the meaning of "trust company", "loan company" and "insurance company" for the purpose of this Act;
- (at) providing that a trade is in specified circumstances a distribution;
- (au) requiring an offering memorandum to be sent or delivered to a purchaser or prospective purchaser as a condition of a vendor being entitled to rely on a certain exemption or certain exemptions contained in this Act or the regulations or rules from the requirements of Sections 58 and 67;
- (av) specifying the information which is required to be contained in offering memoranda generally or in an offering memorandum required by a particular provision of this Act or the regulations or rules;
- (aw) respecting the use and distribution of offering memoranda;
- (ax) modifying the application of subsection (15) of Section 77 with respect to a reporting issuer or class of reporting issuers;
- (ay) extending the application of Section 137, with such modifications as are considered appropriate, to a misrepresentation contained in an offering memorandum or an amendment to an offering memorandum as if the offering memorandum or amendment to the offering memorandum were a prospectus or amendment to a prospectus;
- (az) specifying exemptions for the purpose of clauses (v), (ac) and (am) of subsection (1) of Section 41 and clauses (p), (w) and (ag) of subsection (1) of Section 77;
- (aaa) providing for variations in the forms of certificates contained in subsections (1) and (2) of Section 63 and subsection (1) of Section 64;

- (aab) providing conflict of interest rules and requirements for registrants;
- (aac) providing for rights of appeal to the Commission for persons or companies directly affected by a decision of a self-regulatory organization;
- (aad) specifying issuers that are reporting issuers who may apply for an order pursuant to clause (c) of Section 89;
- (aae) authorizing the Commission, where permitted to do so by another jurisdiction, to exercise, with respect to matters coming within the purview of the Commission by virtue of this Act, those powers and duties in that other jurisdiction that the Commission may exercise and perform in the Province including the holding of hearings in that jurisdiction in conjunction with a board, commission, other agency or official established by that other jurisdiction that the Commission performs in the Province;
- (aaf) authorizing a board, commission, other agency or official established by another jurisdiction which performs a similar function in that jurisdiction that the Commission performs in the Province to hold hearings together with the Commission with respect to matters coming within the jurisdiction of the Commission;
- (aag) describing persons or companies who are deemed to be holders of securities of an issuer whose latest address is in the Province;
- (aah) deeming or permitting the Commission to deem a disclosure document or type of disclosure document to be a prospectus for the purpose of Sections 76, 137 and 141;
- (aai) prescribing standards of practice and conduct of registrants and directors, partners, officers and employees of registrants in dealing with customers and clients, including prospective customers and clients;
- (aaj) extending the application of subsection (3) of Section 30 to any member or employee of a member of a person or company described in subsection (1) of Section 30 that is not recognized by the Commission pursuant to subsection (1) of Section 30;
- (aak) varying the application of this Act to establish procedures for or requirements in respect of the preparation, form, content and filing of preliminary prospectuses, prospectuses and other offering documents and the issuing of receipts therefor that facilitate or expedite the distribution of securities or the issuing of such receipts, including, without limiting the generality of the foregoing,
 - (i) procedures for and requirements in respect of the distribution of securities by means of a prospectus incorporating by reference other documents,
 - (ii) procedures for and requirements in respect of the distribution of securities by means of a simplified or summary prospectus,
 - (iii) procedures for and requirements in respect of the distribution of securities on a continuous or delayed basis,
 - (iv) procedures for and requirements in respect of the pricing of securities after the issuance of a receipt for the prospectus filed in relation thereto, and
 - (v) procedures for and requirements in respect of the expedited or selective review of any preliminary prospectuses or prospectuses;
- (aal) designating activities, including the use of documents or advertising, in which persons or companies are permitted to engage or are prohibited from engaging in with respect to the trading or distribution of securities;
- (aam) prescribing or respecting the media, format, preparation, form, content, execution, certification, dissemination and other use, filing and review of all documents required under or governed by this Act or the regulations or rules and all documents determined by the regulations or rules to be ancillary to any such documents, including, without limiting the generality of the foregoing,
 - (i) applications for registration and other purposes,
 - (ii) preliminary prospectuses and prospectuses,
 - (iii) interim financial statements and financial statements,

- (iv) proxies and information circulars, and
- (v) take-over bid circulars, issuer bid circulars and directors'

circulars,

and varying the form and content of any of the foregoing, and any regulations or rules made pursuant to this clause may substitute a form of document and its contents prescribed therein for any form of documents and its contents prescribed by this Act;

(aan) varying the application of this Act to permit or require, and establishing requirements for and procedures in respect of, the use of an electronic or computer-based system for the filing, delivery or deposit of all documents or information required under or governed by this Act or the regulations or rules and all documents determined by the regulations or rules to be ancillary to any such documents, including, without limiting the generality of the foregoing,

(i) prescribing the format and means of transmission of such documents or information,

(ii) prescribing the time at which documents or information filed, delivered or deposited to the use of such system are deemed to have been filed, delivered or deposited,

(iii) prescribing the circumstances in which persons or companies are deemed to have signed or certified documents filed, delivered or deposited through the use of such system for all purposes of this Act, including, without limiting the generality of the foregoing, the civil liability provisions of Sections 137, 138 and 139,

(iv) prescribing the use of one or more authorized service providers by persons or companies permitted or required to file, deliver or deposit documents or information with the Director or the Commission through the electronic or computer-based system, and prescribing or approving the fees payable by such persons or companies to such service providers;

(aao) respecting the conduct of the Commission and its employees in relation to duties and responsibilities and discretionary powers pursuant to this Act, including rules in relation to potential conflicts of interest of members of the Commission, the Director and staff of the Commission and providing that the rules are binding on and are a term of employment or appointment of such members, Director and staff;

(aap) enunciating principles to which the Commission shall have due regard in pursuing the purposes of this Act;

(aaq) providing for costs in respect of proceedings pursuant to this Act, and in respect of investigations, examinations or appointments made pursuant to this Act or the regulations;

(aar) prescribing the circumstances under which an offering memorandum is required to be delivered or furnished to a prospective purchaser of securities and filed with the Commission or the Director;

(aas) prescribing the uses or disposition of administrative penalties paid to the Commission pursuant to this Act;

(aat) prescribing procedures or practices to be followed in relation to matters coming before the Commission;

(aau) varying the application of this Act to establish procedures for or requirements in respect of the preparation, form, content and filing of registration documents and the issuing of registration certificates that facilitate or expedite the granting of registrations and the issuing of such certificates;

(aav) approving any agreement, memorandum of understanding or arrangement entered into with another securities or financial regulatory authority including any self-regulating body or organization whether recognized pursuant to Section 30 or not, or any jurisdiction;

(aaw) authorizing the Commission to delegate to a securities or financial regulatory authority in another jurisdiction any of the powers and duties of the Commission or the Director pursuant to this Act;

(aax) deeming any authority to whom a delegation has been made by the Commission in accordance with a regulation or rule to be the agent of the Commission for the purpose of Section 149;

(aay) prescribing the conditions and circumstances under which a company may undertake the duties, responsibilities and activities which a person who is a registrant and a shareholder of the company is authorized to undertake by virtue of being a registrant, including the establishment of a scheme for the registration of the company and the category of such registration;

(aaz) imposing liability on a registrant who is a dealer or adviser for acts or omissions, of the type prescribed, of a company which is a registrant pursuant to a scheme established pursuant to the authority in clause (aay) where the dealer or adviser has a prescribed contractual relationship with the company;

(ba) imposing liability on a person who is a registrant and a shareholder of a company for acts or omissions of the company where the company that performs the acts or fails to perform the acts is a registrant pursuant to a scheme established pursuant to the authority in clause (aay);

(baa) prescribing the terms and conditions under which a person who is in a contractual relationship with a dealer is deemed to be an employee of the dealer for the purpose of this Act, the regulations and the rules and qualified for registration as a salesman of the dealer;

(bab) imposing liability on a registrant who is a dealer for the acts and omissions, of the type prescribed, of a person deemed to be an employee of the dealer under a regulation or rule made pursuant to clause (baa);

(bac) prescribing requirements for, or varying the requirements in respect of, the exemptions in Sections 41, 77 and 78;

(bad) prescribing that subclauses (ii) and (iii) of clause (c) of subsection (1) of Section 138 do not apply where the offering memorandum is of a type specified;

(bb) respecting any matter that the Governor in Council or the Commission considers necessary or advisable to carry out effectively the intent and purpose of this Act. R.S., c. 418, s. 150; 1990, c. 15, ss. 78, 80; 1996, c. 32, s. 11; clause (n) of revision corrected 1997; 2001, c. 18, s. 5; 2001, c. 41, s. 27; 2002, c. 39, s. 7.

Procedural rules

150A (1) The Governor in Council may

(a) make regulations prescribing the processes and procedures that the Commission shall abide by in exercising its power to make rules;

(b) by order, amend or repeal any rule made by the Commission.

(2) The Commission shall

(a) give notice to the Governor in Council of every rule approved by the Commission by sending a copy of the rule to the Minister within seven days of the date of approval by the Commission for consideration by the Governor in Council; and

(b) publish in the Royal Gazette, as soon as practicable, a rule made by the Commission and give notice of the effective date of the rule.

(3) A rule is effective in accordance with its terms, but, subject to subsection (4), is not effective prior to the expiration of seventy-five days after the Commission approves the rule and, if, within sixty days after the Commission approves the rule, the Governor in Council notifies the Commission through the Minister that it has disapproved the rule or if the Governor in Council returns the rule to the Commission for further consideration, the rule is not effective until approved by the Governor in Council.

(4) With the approval of the Governor in Council, the time limit for the effective date of a rule may be abridged and the rule becomes effective on the date specified by the Governor in Council.

(5) A rule has the force of law but is not a regulation within the meaning of the *Regulations Act* and is not subject to the *Regulations Act*.

(6) Where a rule conflicts with any regulation, the regulation shall, to the extent of the conflict, prevail.

(7) The Commission's *General Rules of Practice and Procedure* approved by order in council 88-188, dated February 23, 1988, are deemed to be rules effectively made pursuant to Section 150 and not to be regulations and remain in effect until amended or repealed by regulation or rule.

(8) The Commission's *Conflict of Interest Rules*, adopted on November 2, 1994, are deemed to be rules effectively made pursuant to Section 150 and remain in effect until amended or repealed by regulation or rule.

(9) Regulations made pursuant to Section 150 before December 20, 1996, are deemed to be rules effectively made pursuant to Section 150 on December 20, 1996, and not to be regulations and remain in effect until amended or repealed by regulation or rule. 1996, c. 32, s. 12; 2001, c. 18, s. 6.

Content of rules or regulations

150B (1) Where regulations or rules may be made pursuant to Section 150 in respect of registrants, issuers, other persons or companies, securities, trades or other matters or things, the regulations or rules may be made in respect of any class or category of registrants, issuers, other persons or companies, securities, trades or other matters or things.

(2) A regulation or rule may incorporate by reference, in whole or in part, any standard, procedure or guideline and may require compliance with any standard, procedure or guideline.

(3) A regulation or rule may be general or particular in its application, may be limited as to time and place and may exclude any place from the application of the regulation or rule. 1996, c. 32, s. 12.

Discretion to revoke or vary order

151 The Director or the Commission may, where in his or its opinion to do so would not be prejudicial to the public interest, make an order on such terms and conditions as may be imposed revoking or varying any decisions made under this Act or the regulations. R.S., c. 418, s. 151; 1990, c. 15, ss. 79, 80.

Power to exempt

151A (1) Where, in the opinion of the Commission, it is not prejudicial to the public interest, the Commission may, on its own motion or on the application of any interested person or company, by order, on such terms or conditions as the Commission considers necessary or appropriate, exempt

(a) any person or company or category of persons or companies;

(b) any trade or distribution or category of trade or distribution,

from any or all of the provisions of this Act or the regulations.

(2) Subsection (1) is not limited or restricted in its application by virtue of the Commission having the power pursuant to this Act or the regulations to exempt any person, company, trade, intended trade or distribution from a particular provision of this Act or the regulations. 1996, c. 32, s. 13.

Transition

152 (1) Every registration made pursuant to Chapter 280 of the Revised Statutes, 1967, and in effect immediately before the fifteenth day of October, 1987, continues in the same manner as if made or issued under this Act.

(2) A receipt for a prospectus is deemed to have been issued under this Act with respect to the trading of a security where immediately before the fifteenth day of October, 1987, a registration statement with respect to that trading is in effect. R.S., c. 418, s. 152.

Provisions subject to proclamation

153 Subsections (1) and (2) of Section 7, clauses (q) and (r) of subsection (1) of Section 41, clauses (j) and (k) of subsection (1), clause (d) of subsection (6), clause (b) of sub-section (8), subclauses (ii) and (iii) of clause (b) of subsection (11) and subsections (12), (13) and (14) of Section 77, subsection (3) of Section 79, Sections 95 to 111, subsection (1) of Section 114 and Sections 115 and 139 come into force on and not before such day as the Governor in Council orders and declares by proclamation. R.S., c. 418, s. 153.

Proclaimed (ss. 7(1) and (2), 41(1)(q) and 77(1)(j))	-	September 24, 1991
In force (ss. 7(1) and (2), 41(1)(q) and 77(1)(j))	-	October 1, 1991
Proclaimed (ss. 139(5)-(9))	-	December 3, 1991
In force (ss. 139(5)-(9))	-	December 3, 1991
Remaining provisions repealed or repealed and re-enacted	-	July 15, 1991
