

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; 2003, c. 7, s. 6; 2005, cc. 26, 27;  
2006, c. 46, s. 1(1)(a)-(f) and (h)-(r), ss. 2-17, 20-30, 33-39, 42-53,  
s. 55 (except new s. 146O), 56-64; 2007, c. 9, s. 40;  
2008, c. 32, ss. 2-5, 13, 15-17, 19-21

## 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 securities;

(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) *repealed 2006, c. 46, s. 1.*

(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) "control person" means

(i) a person or company who holds a sufficient number of the voting rights attached to all outstanding voting securities of an issuer to affect materially the control of the issuer and, where a person or company holds more than twenty per cent of the voting rights attached to all outstanding voting securities of an issuer, the person or company is deemed, in the absence of evidence to the contrary, to hold a sufficient number of the voting rights to affect materially the control of the issuer, or

(ii) each person or company in a combination of persons or companies acting in concert by virtue of an agreement, arrangement, commitment or understanding, who holds in total a sufficient number of the voting rights attached to all outstanding voting securities of an issuer to affect materially the control of the issuer and, where a combination of persons or companies holds more than twenty per cent of the voting

rights attached to all outstanding voting securities of an issuer, the combination of persons or companies is deemed, in the absence of evidence to the contrary, to hold a sufficient number of the voting rights to affect materially the control of the issuer;

(hb) "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 or under a delegation or other transfer of an extra-provincial authority under Section 149B;

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

(k) "director" means a director of a company or an individual performing a similar function or occupying a similar position for a company or for any other person;

(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 a control person,

(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 Nova Scotia securities laws, 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;

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

(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;

(rb) "investment fund" means a mutual fund or a non-redeemable investment fund;

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

(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" means

(i) where used in relation to an issuer other than an investment fund,

(A) a change in the business, operations or capital of the issuer that would reasonably be expected to have a significant effect on the market price or value of a security of the issuer, or

(B) a decision to implement a change referred to in paragraph (A) made by the directors of the issuer, or by senior management of the issuer who believe that confirmation of the decision by the directors is probable,

and

(ii) where used in relation to an issuer that is an investment fund,

(A) a change in the business, operations or affairs of the issuer that would be considered important by a reasonable investor in determining whether to purchase or to continue to hold a security of the issuer, or

(B) a decision to implement a change referred to in paragraph (A) made by

(I) the directors of the issuer or the directors of the investment fund manager of the issuer,

(II) senior management of the issuer who believe that confirmation of the decision by the directors is probable, or

(III) senior management of the investment fund manager of the issuer who believe that confirmation of the decision by the directors of the investment fund manager of the issuer is probable;

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

(x) "Minister" means the Minister of Finance 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" means

(i) an issuer whose primary purpose is to invest money provided by its security holders and whose securities entitle the holder to receive on demand, or within a specified period after demand, an amount computed by reference to the value of a proportionate interest in the whole or in part of the net assets, including a separate fund or trust account, of the issuer, or

(ii) an issuer that is designated as a mutual fund under Section 30A or in accordance with the regulations,

but does not include an issuer, or class of issuers, that is designated under Section 30A not to be a mutual fund;

(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;

(aaa) "non-redeemable investment fund" means

(i) an issuer

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

(B) that does not invest

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

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

and

(C) that is not a mutual fund,

or

(ii) an issuer that is designated as a non-redeemable investment fund under Section 30A or in accordance with the regulations,

but does not include an issuer, or class of issuers, that is designated under Section 30A not to be a non-redeemable investment fund;

(aab) "Nova Scotia securities laws" means this Act, the regulations, any decisions made by the Commission or the Director and any extra-provincial securities laws adopted or incorporated by reference under Section 149D;

(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 Nova Scotia securities laws 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", with respect to an issuer or registrant, means

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

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

(iii) an individual who performs functions for a person or company similar to those normally performed by an individual referred to in subclause (i) or (ii);

(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 securities" means securities prescribed by the Commission from time to time for the purpose of subclause (iv) of clause (at);

(afb) *repealed 2006, c. 46, s. 1.*

(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) to (aha) *repealed 2006, c. 46, s. 1.*

(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

(A) prospectus for which the Director has issued a receipt under this Act, or

(B) securities exchange take-over bid circular under this Act on or before the coming into force of this paragraph,

(ii) that has exchanged its securities with another issuer or with the holders of the securities of that other issuer in connection with an amalgamation, merger, reorganization, arrangement or similar transaction if one of the parties to the amalgamation, merger, reorganization, arrangement or similar transaction was a reporting issuer at the time of the amalgamation, merger, reorganization, arrangement or similar transaction,

(iii) *repealed 2006, c. 46, s. 1.*

(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 is organized for the purpose of regulating the operations and the standards of practice and business conduct of its members and their representatives with a view to promoting the protection of investors and the public interest;

(ar) *repealed 2006, c. 46, s. 1.*

(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 prescribed securities or banking transactions;

(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; 2005, c. 26, s. 1; 2005, c. 27, s. 1; 2006, c. 46, 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 eight 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; 2006, c. 46, s. 2.

### **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 by Commission**

6 (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. 2006, c. 46, s. 3.

### **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 ill-ness, 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.

(1A) The Secretary

(a) may accept service of all notices and other documents on behalf of the Commission;

(b) where authorized by the Commission, may sign a decision made by the Commission as a result of a hearing;

(c) may certify under the Secretary's hand a decision made by the Commission or a document, record or thing used in connection with a hearing by the Commission if certification is required for a purpose other than that stated in subsection (3) of Section 26;

(d) may exercise such other powers as are vested in the Secretary by this Act or the regulations; and

(e) shall perform such duties as are imposed on the Secretary by this Act or the regulations or by the Commission.

(1B) Where the Secretary is absent for any reason, the Commission may designate another individual to act in the capacity of Secretary and the individual designated has all the powers and duties of the Secretary.

(1C) A certificate purporting to be signed by the Secretary is, without proof of the office or signature, admissible in evidence, so far as it is relevant, for all purposes in any action, prosecution or other proceeding.

(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; 2006, c. 46, s. 4.

### **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 prescribe 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**

**19 (1)** The Commission may

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

(b) *repealed 2006, c. 46, s. 5.*

(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; 2006, c. 46, s. 5.

### **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,  
Securities Commission

Nova

Scotia

(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.

(3) A quorum of the Commission may assign to the Director any of its powers and duties under this Act, except powers and duties under Sections 6, 27 to 29D and 150.

(4) The Commission may revoke, in whole or in part, an assignment of powers and duties under subsection (3).

(5) An assignment under this Section is subject to such terms and conditions as set out in the assignment.

(6) Where the Director is absent or incapable of acting, the Commission may designate another individual to act as Director. R.S., c. 418, s. 23; 1990, c. 15, s. 28; 2006, c. 46, s. 6.

### **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.

**25** *repealed 2006, c. 46, s. 7.*

### **Appeal**

**26** (1) Any person or company directly affected by a decision of the Commission other than a decision made pursuant to Section 27, Section 79, 80 or 89, subsection (2) of Section 98, Section 121, subsection (2) of Section 123, sub-section (2) of Section 125, subsection (3) of Section 126, sub-section (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 Nova Scotia Court of Appeal within thirty days after the later of the making of the decision or the issuing of the reasons for the decision.

(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 Nova Scotia Court of Appeal may grant a stay until disposition of the appeal.

(3) The Secretary of the Commission shall certify to the ~~prothonotary~~ [registrar] of the Court of Appeal

- (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; 2006, c. 46, s. 8; 2008, c. 32, s. 2.

## **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 Nova Scotia securities laws;
- (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 Supreme Court of Nova Scotia 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 Supreme Court of Nova Scotia 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 or company 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 Supreme Court of Nova Scotia 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 Nova Scotia securities laws 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 Supreme Court of Nova Scotia 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 Nova Scotia securities laws 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 Nova Scotia securities laws 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 Supreme Court of Nova Scotia 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 Supreme Court of Nova Scotia for the return of the documents, records, securities, contracts or things.

**(13)** On hearing an application pursuant to subsection (12), a judge of the Supreme Court of Nova Scotia 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, at the request of the Chairman, provide the Chairman 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.

**(15A)** The report referred to in subsection (15) is privileged.

**(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; 2005, c. 27, s. 2; 2006, c. 46, ss. 9, 64; 2008, c. 32, s. 3.

### **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 (1)** Except in accordance with Section 29AA, no person or company shall disclose at any time, except to their counsel,

(a) the nature or content of an order under Section 27 or 29; or

(b) the name of any person examined or sought to be examined under Section 27, any testimony given under Section 27, any information obtained under Section 27, the nature or content of any questions asked under Section 27, the nature or content of any demands for the production of any document or other thing under Section 27 or the fact that any document or other thing was produced under Section 27.

(2) Where the Commission issues an order under Section 27 or the Minister issues an order under Section 29, all reports provided under subsection (15) of Section 27 or Section 29B, all testimony given under Section 27 and all documents and other things obtained under Section 27 relating to the investigation or examination that is the subject of the order are for the exclusive use of the Commission or of such other regulator as the Commission may specify in the order, and shall not be disclosed or produced to any other person or company or in any other proceeding except as permitted under Section 29AA. 2006, c. 46, s. 11.

### **Order authorizing disclosure**

**29AA (1)** Where the Commission considers that it would be in the public interest, it may make an order authorizing the disclosure to any person or company of

(a) the nature or content of an order under Section 27;

(b) the name of any person examined or sought to be examined under Section 27, any testimony given under Section 27, any information obtained under Section 27, the nature or content of any questions asked under Section 27, the nature or content of any demands for the production of any document or other thing under Section 27 or the fact that any document or other thing was produced under Section 27; or

(c) all or part of a report provided under subsection (15) of Section 27.

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

(a) persons and companies named by the Commission; and

(b) in the case of disclosure of testimony given or information obtained under Section 27, the person or company that gave the testimony or from which the information was obtained.

(3) Without the written consent of the person from whom the testimony was obtained, no order shall be made under subsection (1) authorizing the disclosure of testimony given under subsection (3) of Section 27 to

(a) a municipal, provincial, federal or other police force or a member of a police force; or

(b) a person responsible for the enforcement of the criminal law of Canada or of any other country or jurisdiction.

(4) An order under subsection (1) may be subject to terms and conditions imposed by the Commission.

(5) A court having jurisdiction over a prosecution under the *Summary Proceedings Act* initiated by the Commission may compel production to the court of any testimony given or any document or other thing obtained under Section 27 and, after inspecting the testimony, document or thing and providing all interested parties with an opportunity to be heard, the court may order the release of the testimony, document or thing to the defendant if the court determines that it is relevant to the prosecution, is not protected by privilege and is necessary to enable the defendant to make full answer and defence, but the making of an order under this subsection does not determine whether the testimony, document or thing is admissible in the prosecution.

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

- (a) a proceeding commenced or proposed to be commenced by the Commission under this Act; or
- (b) an examination of a witness, including an examination of a witness under Section 27.

(7) Without the written consent of the person from whom the testimony was obtained, no disclosure shall be made under subsection (6) of testimony given under subsection (3) of Section 27 to

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

(8) Testimony given under Section 27 shall not be admitted in evidence against the person from whom the testimony was obtained in a prosecution for an offence under Section 129 or in any other prosecution governed by the *Summary Proceedings Act*. 2006, c. 46, s. 11.

### **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)** Where the Commission considers it expedient,

- (a) for the due administration of Nova Scotia securities laws or the regulation of the capital markets in the Province; or
- (b) to assist in the due administration of the securities laws or the regulation of the capital markets in another jurisdiction,

the Commission may direct a person or company having on deposit or under its control or for safekeeping any funds, securities or property of any person or company to retain those funds, securities or property and to hold them until the Commission, in writing, revokes the direction or consents to release a particular fund, security or property from the direction, or until the Supreme Court of Nova Scotia orders otherwise.

(2) A direction under subsection (1) that names a bank or other financial institution applies only to the branches of the bank or other financial institution identified in the direction.

(3) A direction under subsection (1) does not apply to funds, securities or property in a clearing agency or to securities in process of transfer by a transfer agent unless the direction so states.

(4) The Commission may order that a direction under subsection (1) be certified to a registrar of deeds or the Minister of Natural Resources and that it be registered or recorded against the lands or claims identified in the direction, and on registration or recording of the certificate it has the same effect as a certificate of pending litigation.

(5) As soon as practicable and not later than seven days after a direction is issued under subsection (1), the Commission shall apply to the Supreme Court of Nova Scotia to continue the direction or for such other order as the court considers appropriate.

(6) A direction under subsection (1) may be made without notice but, in that event, copies of the direction shall be sent forthwith by such means as the Commission may determine to all persons and companies named in the direction.

(7) A person or company directly affected by a direction may apply to the Commission for clarification or to have the direction varied or revoked. 2006, c. 46, s. 12.

### **Appointment of receiver**

**29D** (1) The Commission may apply to the Supreme Court of Nova Scotia for an order appointing a receiver, receiver and manager, trustee or liquidator of all or any part of the property of any person or company.

(2) No order shall be made under subsection (1) unless the court is satisfied that

(a) the appointment of a receiver, receiver and manager, trustee or liquidator of all or any part of the property of the person or company is in the best interests of the creditors of the person or company or of persons or companies any of whose property is in the possession or under the control of the person or company or the security holders of or subscribers to the person or company; or

(b) it is appropriate for the due administration of Nova Scotia securities laws.

(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.

(4A) Where an order is made appointing a receiver, receiver and manager, trustee or liquidator of the property of a person or company under this Section, the powers of the directors of the company that the receiver, receiver and manager, trustee or liquidator is authorized to exercise may not be exercised by the directors until the receiver, receiver and manager, trustee or liquidator is discharged by the court.

(5) An order made pursuant to this Section may be enforced in the same manner as any order or judgment of the Supreme Court of Nova Scotia 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; 2005, c. 27, s. 6; 2006, c. 46, ss. 13, 64.

### **Appointment of examiner**

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

(a) the financial and business affairs including, without limitation, the books, records, accounts, communications and other documents, whether in paper, electronic or other form, 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, conceal or refuse to give any information or thing reasonably required for the purpose of the examination.

(2A) For an examination pursuant to this Section, on production of the appointment, the person making the examination may

(a) enter the business premises of the person or company who is being examined during business hours; and

(b) make copies of the documents and records referred to in this Section.

(2B) In exercising the power to make copies under clause (b) of subsection (2A), the person making the examination under this Section may

(a) carry out the copying at the business premises of the person or company who is being examined; or

(b) on giving an appropriate receipt, remove the documents and records for the purpose of copying them at other premises specified in the receipt.

(2C) Records removed under clause (b) of subsection (2B) for copying must be promptly returned to the person or company from whom they were received.

(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; 2005, c. 27, s. 7.

### **Review of disclosures**

**29EA (1)** The Commission, or any member, employee or agent of the Commission, may conduct a review of the disclosures that have been made or that ought to have been made by a reporting issuer or mutual fund in the Province on a basis to be determined at the discretion of the Commission or the Director.

(2) A reporting issuer or mutual fund in the Province that is subject to a review under this Section shall, at such time or times as the Commission or Director may require, deliver to the Commission or Director any information and documents relevant to the disclosures that have been made or that ought to have been made by the reporting issuer or mutual fund.

(3) Notwithstanding the *Freedom of Information and Protection of Privacy Act*, information and documents obtained pursuant to a review under this Section are exempt from disclosure under that Act if the Commission determines that the information and documents should be maintained in confidence.

(4) A reporting issuer or mutual fund in the Province, or any person or company acting on behalf of a reporting issuer or mutual fund in the Province, shall not make any representation, written or oral, that the Commission has in any way passed upon the merits of the disclosure record of the reporting issuer or mutual fund. 2008, c. 32, s. 4.

### **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 Supreme Court of Nova Scotia shall hear the matter *in camera* and determine whether the claim of the privilege is proper.

- (4) If the judge of the Supreme Court of Nova Scotia 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 Supreme Court of Nova Scotia 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 Supreme Court of Nova Scotia shall reseal the contents in the package. 1990, c. 15, s. 30; 2002, c. 39, s. 2; 2006, c. 46, s. 64.

### **Self-regulatory organization**

**30 (1)** The Commission may, on the application of a person or company, recognize the person or company as a self-regulatory organization if the Commission is satisfied that to do so would be in the public interest.

(1A) A recognition under this Section shall be made in writing and shall be subject to such terms and conditions as the Commission may impose.

(1B) A recognized self-regulatory organization shall regulate the operations and the standards of practice and business conduct of its members and their representatives in accordance with its by-laws, rules, regulations, policies, procedures, interpretations and practices.

(2) The Commission may revoke or accept the voluntary surrender of 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.

(4A) The Commission or, with the approval of the Commission, the Director may, at any time, revoke, in whole or in part, a delegation of powers or duties made under subsection (4).

(5) The Director or 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.

(5A) Section 6 applies to the hearing and review of a decision, order or ruling under subsection (5) in the same manner as that Section applies to a hearing and review of 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; 2006, c. 46, s. 14; 2008, c. 32, s. 5.

### **Designation by Commission**

**30A (1)** The Commission may, if the Commission considers that it would not be prejudicial to the public interest to do so, make an order designating

- (a) a good, article, service, right or interest, or a class of those, as a commodity;
- (b) a futures contract, or a class of futures contracts, not to be a futures contract;
- (c) a person or company as an insider;
- (ca) a person or company, or class of persons or companies, not to be an insider;
- (d) an issuer or a class of issuers to be, or not to be, a mutual fund;
- (e) an issuer or a class of issuers to be, or not to be, a non-redeemable investment fund; and
- (f) an issuer or a class of issuers to be, or not to be, a reporting issuer.

(2) An order made under subsection (1)

- (a) may be made by the Commission on its own motion or on the application of an interested person or company; and

(b) shall not be made without giving the affected or interested person or company an opportunity to have a hearing before the Commission. 2005, c. 26, s. 2; 2006, c. 46, s. 15.

### **Registration required**

- 31** (1) Subject to any exemption in Nova Scotia securities laws, 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; 2006, c. 46, s. 16.

### **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 or surrender of registration**

**33** (1) Where a registrant applies to surrender its registration, the Director may accept the surrender, subject to such terms and conditions as the Director may impose, unless the Director considers it prejudicial to the public interest to do so.

(2) On receiving an application under subsection (1), the Director may, without providing an opportunity to be heard, suspend the registration or impose conditions or restrictions on the registration.

(3) *repealed 2006, c. 46, s. 17.*

(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; 2006, c. 46, s. 17.

#### **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.

**38** *repealed 2006, c. 46, s. 20.*

#### **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.

40 *repealed 2006, c. 46, s. 20.*

#### **Exemption of certain trades or securities**

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

(a) to (aa) *repealed 2006, c. 46, s. 21.*

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

(ac) to (am) *repealed 2006, c. 46, s. 21.*

(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) to (g) *repealed 2006, c. 46, s. 21.*

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

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

(j) to (o) *repealed 2006, c. 46, s. 21.*

(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; 2006, c. 46, s. 21.

### 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 confirmation 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.

#### **Representation as registered**

**50 (1)** A person or company shall not represent that the person or company is registered under this Act unless

- (a) the representation is true; and
- (b) in making the representation, the person or company specifies the person or company's category of registration under this Act and the regulations.

**(2)** A person or company shall not make a statement about something that a reasonable investor would consider important in deciding whether to enter into or maintain a trading or advising relationship

with the person or company if the statement is untrue or omits information necessary to prevent the statement from being false or misleading in the circumstances in which it is made. 2006, c. 46, s. 22.

**51** *repealed 2006, c. 46, s. 22.*

### **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 thereon 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) Subject to any exemption in Nova Scotia securities laws, no person or company shall trade in a security on the person's or company's own account or on behalf of any other person or company, if such

trade would be a distribution of such security, unless a preliminary prospectus and a prospectus have been filed and receipts therefore have been issued by 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; 2006, c. 46, s. 23.

### **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.

### **Filing of amendment**

**62** (1) An amendment to a preliminary prospectus or a prospectus shall be filed and delivered in accordance with the regulations. 2006, c. 46, s. 24.

(2) Where an amendment to a prospectus is filed for the purpose of distributing securities in addition to the securities previously disclosed in the prospectus or an amendment to the prospectus, the additional distribution must comply with the regulations.

### **Certificates required**

**63** A prospectus or an amendment to a prospectus filed under this Act shall contain certificates in accordance with the regulations. 2006, c. 46, s. 24.

**64** *repealed 2006, c. 46, s. 24.*

### **Required statements in offering memorandum**

**65** (1) and (2) *repealed 2006, c. 46, s. 25.*

(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; 2006, c. 46, s. 25.

## 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 the Director that

- (a) the prospectus or any document required to be filed with it
  - (i) does not comply in any substantial respect with any of the requirements of this Act or the regulations,
  - (ii) contains any statement, promise, estimate or forward-looking information that is misleading, false or deceptive, or
  - (iii) contains a misrepresentation;
- (b) an unconscionable consideration has been paid or given or is intended to be paid or given for any services or promotional purposes or for the acquisition of property;
- (c) the aggregate of
  - (i) the proceeds from the sale of the securities under the prospectus that are to be paid into the treasury of the issuer, and
  - (ii) the other resources of the issuer,is insufficient to accomplish the purpose of the issue stated in the prospectus;
- (d) the issuer cannot reasonably be expected to be financially responsible in the conduct of its business because of the financial condition of
  - (i) the issuer,
  - (ii) any of the issuer's officers, directors, promoters or control persons, or
  - (iii) the investment fund manager of the issuer or any of the investment fund manager's officer, directors or control persons;
- (e) the business of the issuer may not be conducted with integrity and in the best interests of the security holders of the issuer because of the past conduct of
  - (i) the issuer,
  - (ii) any of the issuer's officers, directors, promoters or control persons, or
  - (iii) the investment fund manager of the issuer or any of the investment fund manager's officers, directors or control persons;
- (f) a person or company that has prepared or certified any part of the prospectus, or that is named as having prepared or certified a report or valuation used in connection with the prospectus, is not acceptable;
- (g) an escrow or pooling agreement in the form that the Director considers necessary or advisable with respect to the securities has not been entered into; or
- (h) adequate arrangements have not been made for the holding in trust of the proceeds payable to the issuer from the sale of securities pending the distribution of the securities.

(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 pre-liminary 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; 2006, c. 46, s. 26.

#### **Distribution after lapse date**

67 (1) No distribution of a security to which subsection (1) of Section 58 applies shall continue after the prescribed lapse date, unless the distribution is in accordance with the regulations.

(2) Where a distribution to which subsection (1) applies is not in accordance with the regulations, all trades completed after the prescribed lapse date may be cancelled at the option of the purchaser in accordance with the regulations. 2006, c. 46, s. 27.

#### **Short form prospectus and summary statement**

68 (1) A person or company may, where permitted by the regulations, file a short form of preliminary prospectus, short form of prospectus, *pro forma* prospectus, preliminary simplified prospectus, simplified prospectus or *pro forma* simplified prospectus under Section 58 or 67 in the prescribed form and any such prospectus that complies with the regulations applicable thereto shall, for the purpose 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) *repealed 2006, c. 46, s. 28.*

(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; 2006, c. 46, s. 28; revision corrected.

### **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, as prescribed by the regulations, or, where no waiting period is prescribed, the interval between the issuance by the Director of a receipt for a preliminary prospectus relating to the offering of the security and the issuance by the Director 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; 2006, c. 46, s. 29.

### **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 sub-section (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 sub-section (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 sub-section (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 (ag) 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) to (ag) *repealed 2006, c. 46, s. 33.*

(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)** *repealed 2006, c. 46, s. 33.*

**(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)** *repealed 2006, c. 46, s. 33.*

**(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) to (7B)** *repealed 2005, c. 27, s. 8.*

**(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) and (9)** *repealed 2005, c. 27, s. 8.*

(10) *repealed 2006, c. 46, s. 33.*

(11) *repealed 2005, c. 27, s. 8.*

(12) The Commission may publish a list of reporting issuers who are in default of any requirement of this Act or the regulations.

(13) and (14) *repealed 2006, c. 46, s. 33.*

(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 Nova Scotia securities laws. 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; 2005, c. 27, s. 8; 2006, c. 46, s. 33.

### **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 and an exemption from Section 58 contained in Nova Scotia securities laws 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; 2005, c. 27, s. 9.

### **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 (p) thereof;

(b) and (c) *repealed 2006, c. 46, s. 34.*

(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; 2006, c. 46, s. 34.

### **Determination by Commission**

**79** The Commission may, upon the application of an interested person or company, grant an exemption from Section 31 or 58 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. 2008, c. 32, s. 13.

### **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.

#### **Disclosure by reporting issuer**

**81** (1) A reporting issuer shall, in accordance with the regulations, provide

(a) prescribed periodic disclosure about its business and affairs;

(b) disclosure of a material change; and

(c) other prescribed disclosure.

(2) An issuer that is not a reporting issuer shall disclose prescribed information in accordance with the regulations. 2006, c. 46, s. 35.

#### **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 pro-posing 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 pro-posing to become a party to a reorganiza-tion, 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 profes-sional 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 com-pany 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 to 88** *repealed 2006, c. 46, s. 36.*

#### **Order relieving reporting issuer**

**89** Upon the application of a reporting issuer, the Commission may order, subject to such terms and conditions as it may impose, that the reporting issuer is deemed to have ceased to be a reporting issuer if it is satisfied that to do so would not be prejudicial to the public interest. 2006, c. 46, s. 37.

#### **Compliance with regulations**

**90** (1) Where the regulations provide for the form, content, filing and sending of information circulars or form of proxy, any person or company that sends or is required to send an information circular or a form of proxy to security holders of a reporting issuer shall do so in accordance with the regulations.

(2) A proxy that is executed by a security holder may confer authority, and is subject to any restrictions, as prescribed or otherwise provided for under the regulations. 2006, c. 46, s. 38.

#### **Mandatory solicitation of proxies**

**91 and 92** *repealed 2006, c. 46, s. 38.*

### **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.

**94** *repealed 2006, c. 46, s. 38.*

**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 99**

**95** In Sections 95 to 99,

(a) “interested person” means

(i) an issuer whose securities are the subject of a take-over bid, issuer bid or other offer to acquire,

(ii) a security holder, director or officer of an issuer described in subclause (i),

(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 Supreme Court of Nova Scotia, as the case may be, is a proper person to make an application under Section 98 or 99;

(b) “issuer bid” means a direct or indirect offer to acquire or redeem a security or a direct or indirect acquisition or redemption of a security that is

(i) made by the issuer of the security, and

(ii) within a prescribed class of offers, acquisitions or redemptions;

(c) “take-over bid” means a direct or indirect offer to acquire a security that is

(i) made directly or indirectly by a person or company other than the issuer of the security, and

(ii) within a prescribed class of offers to acquire. 2006, c. 46, s. 39.

### **Requirement for take-over bid**

**96** A person or company shall not make a take-over bid or issuer bid, whether alone or acting jointly or in concert with one or more persons or companies, except in accordance with the regulations. 2006, c. 46, s. 39.

### **Acceptance or rejection of bid**

**97 (1)** When a take-over bid has been made, the directors of the issuer whose securities are the subject of the bid shall

(a) determine whether to recommend acceptance or rejection of the bid or determine not to make a recommendation; and

(b) make the recommendation, or a statement that they are not making a recommendation, in accordance with the regulations.

(2) An individual director or officer of the issuer described in subsection (1) may recommend acceptance or rejection of the take-over bid if the recommendation is made in accordance with the regulations. 2006, c. 46, s. 39.

#### **Order by Commission**

**98** (1) On application by an interested person, where the Commission considers that a person or company has not complied or is not complying with Sections 95 to 99 or the regulations, the Commission may make an order

(a) restraining the distribution of any document, record or materials used or issued in connection with a take-over bid or issuer bid;

(b) requiring an amendment to or variation of any document, record or materials used or issued in connection with a take-over bid or issuer bid and requiring the distribution of amended, varied or corrected information;

(c) directing any person or company to comply with Sections 95 to 99 or the regulations;

(d) restraining any person or company from contravening Sections 95 to 99 or the regulations;

(e) directing the directors and officers of any person or company to cause the person or company to comply with or to cease contravening Sections 95 to 99 or the regulations.

(2) On application by an interested person, the Commission may order that a person or company is exempt from any requirement under Sections 95 to 99 or the regulations if the Commission considers it would not be prejudicial to the public interest to do so. 2006, c. 46, s. 39.

#### **Order by Supreme Court**

**99** (1) On application by an interested person, where the Supreme Court of Nova Scotia is satisfied that a person or company has not complied with Sections 95 to 99 or the regulations, the Supreme Court of Nova Scotia may make an interim or final order as the court sees fit, including, without limiting the foregoing, an order

(a) compensating any interested person who is a party to the application for damages suffered as a result of a contravention of Sections 95 to 99 or the regulations;

(b) rescinding a transaction with any interested person, including the issue of a security or a purchase and sale of a security;

(c) requiring any person or company to dispose of any securities acquired pursuant to or in connection with a take-over bid or issuer bid;

(d) prohibiting any person or company from exercising any or all of the voting rights attached to any securities; or

(e) requiring the trial of an issue.

(2) Where the Director is not the applicant under subsection (1), the Director

(a) must be given notice of the application; and

(b) is entitled to appear at the hearing and make representations to the Supreme Court of Nova Scotia. 2006, c. 46, s. 39.

## **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 and 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** Every investment fund manager shall

(a) exercise the powers and discharge the duties of its office honestly, in good faith and in the best interests of the investment fund; and

(b) exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances. 2006, c. 46, s. 42.

#### **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 consent 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 person, 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 portfolio 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 information 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.

### **Approved transaction**

**127A** Where the regulations so provide, a body established under subsection (1) of Section 127D by an investment fund may approve a transaction that is prohibited under Sections 112 to 127 and, in that case, the prohibition does not apply to the transaction. 2006, c. 46, s. 43.

### **“prescribed” defined**

**127B** In Sections 127C and 127D, “prescribed” means prescribed in the regulations. 2006, c. 46, s. 43.

### **Compliance with requirements**

**127C** For the purpose of this Act, a reporting issuer shall comply with such requirements as may be prescribed with respect to the governance of reporting issuers, including requirements relating to

- (a) the composition of its board of directors and qualifications for membership on the board, including matters respecting the independence of members;
- (b) the establishment of specified types of committees of the board of directors, the mandate, functioning and responsibilities of each committee, the composition of each committee and the qualifications for membership on the committee, including matters respecting the independence of members;
- (c) the establishment and enforcement of a code of business conduct and ethics applicable to its directors, officers and employees and applicable to persons or companies that are in a special relationship with the reporting issuer, including the minimum requirements for such a code; and
- (d) procedures to regulate conflicts of interest between the interests of the reporting issuer and those of a director or officer of the issuer. 2006, c. 46, s. 43.

### **Oversight body**

**127D (1)** Where required to do so by the regulations, an investment fund shall establish and maintain a body for the purpose of overseeing activities of the investment fund and the investment fund manager, reviewing or approving prescribed matters affecting the investment fund, including transactions referred to in Section 127A, and disclosing information to security holders of the fund, to the investment fund manager and to the Commission.

- (2) The body referred to in subsection (1) has such powers and duties as may be prescribed.

2006, c. 46, s. 43.

### **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 accordance 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 circumstances of the particular case that there is adequate justification for so doing; or
  - (b) of its own motion,

make an order on such terms and conditions as seem to the Commission just and expedient, exempting in whole or in part, a person or company, 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 Nova Scotia securities laws 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 Nova Scotia securities laws that, at the time and in the light of the circumstances under which it is made, is a misrepresentation;

(c) contravenes Nova Scotia securities laws; or

(d) fails to observe or to comply with any direction, decision, ruling, order or other requirement made under Nova Scotia securities laws,

is guilty of an offence and is liable to a fine of not more than five million dollars or to imprisonment for a term of not more than five years less a day, or to both.

**(1A)** Clauses (a) and (b) of subsection (1) do not apply to a statement made or given to the Commission in a submission in respect of a proposed rule or policy.

**(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 five million dollars or to imprisonment for a term of not more than five years less a day, or to both.

**(4)** Notwithstanding subsection (1) and in addition to any imprisonment imposed under subsection (1), a person or company who is convicted of contravening subsection (1), (2) or (3) of Section 82 is liable to a minimum fine equal to the profit made or the loss avoided by the person or company by reason of the contravention and a maximum fine equal to the greater of

(a) five million dollars; and

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

**(5)** Where it is not possible to determine the profit made or loss avoided by the person or company by reason of the contravention, subsection (4) does not apply but subsection (1) continues to apply.

**(6)** In subsections (4) and (5),

(a) “loss avoided” means the amount by which the amount received for the security sold in contravention of subsection (1) of Section 82 exceeds the average trading price of the security in the twenty trading days following general disclosure of the material fact or the material change;

(b) “profit made” means

(i) the amount by which the average trading price of the security in the twenty trading days following general disclosure of the material fact or the material change exceeds the amount paid for the security purchased in contravention of subsection (1) of Section 82,

(ii) in respect of a short sale, the amount by which the amount received for the security sold in contravention of subsection (1) of Section 82 exceeds the average trading price of the security in the twenty trading days following general disclosure of the material fact or the material change, or

(iii) the value of any consideration received for informing another person or company of a material fact or material change with respect to the reporting issuer in contravention of subsection (2) or (3) of Section 82. R.S., c. 418, s. 129; 1990, c. 15, ss. 65, 80; 2006, c. 46, s. 44.

### **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.

### **Misleading appearance or fraud**

**132A** A person or company shall not, directly or indirectly, engage or participate in any act, practice or course of conduct relating to securities or derivatives of securities that the person or company knows or reasonably ought to know

(a) results in or contributes to a misleading appearance of trading activity in, or an artificial price for, a security or derivative of a security; or

(b) perpetrates a fraud on any person or company. 2006, c. 46, s. 45.

### **Misleading or untrue statement**

**132B (1)** A person or company shall not make a statement that the person or company knows or reasonably ought to know

(a) in a material respect and at the time and in the light of the circumstances under which it is made, is misleading or untrue or does not state a fact that is required to be stated or that is necessary to make the statement not misleading; and

(b) would reasonably be expected to have a significant effect on the market price or value of a security.

(2) A breach of subsection (1) does not give rise to a statutory right of action for damages otherwise than under Sections 137 to 146N. 2006, c. 46, s. 45.

### **Order for compliance**

**133 (1)** The Commission may apply to the Supreme Court of Nova Scotia for a declaration that a person or company has not complied with or is not complying with Nova Scotia securities laws.

**(1A)** The Commission is not required, before making an application under subsection (1), to hold a hearing to determine whether the person or company has not complied with or is not complying with Nova Scotia securities laws.

**(1B)** An application under this Section may be made *ex parte* if the court considers it proper in the circumstances.

**(1C)** Where the court makes a declaration under subsection (1), the court may, notwithstanding the imposition of any other penalty on the person or company and notwithstanding any order made by the Commission, make any order that the court considers appropriate against the person or company, including, without limiting the generality of the foregoing, one or more of the following orders:

1. An order that the person or company comply with Nova Scotia securities laws.

2. An order requiring the person or company to submit to a review by the Commission of his, her or its practices and procedures and to institute such changes as may be directed by the Commission.

3. An order directing that a release, report, preliminary prospectus, prospectus, return, financial statement, information circular, take-over bid circular, issuer bid circular, offering memorandum, proxy solicitation or any other document described in the order

(i) be provided by the person or company to another person or company,

(ii) not be provided by the person or company to another person or company, or

(iii) be amended by the person or company to the extent that amendment is practicable.

4. An order rescinding any transaction entered into by the person or company relating to trading in securities including the issuance of securities.

5. An order requiring the issuance, cancellation, purchase, exchange or disposition of any securities by the person or company.

6. An order prohibiting the voting or exercise of any other right attaching to securities by the person or company.

7. An order prohibiting the person from acting as officer or director or prohibiting the person or company from acting as promoter of any market participant permanently or for such period as is specified in the order.

8. An order appointing officers and directors in place of or in addition to all or any of the officers and directors of the company then in office.

9. An order directing the person or company to purchase securities of a security holder.
10. An order directing the person or company to repay to a security holder any part of the money paid by the security holder for securities.
11. An order requiring the person or company to produce to the court or an interested person financial statements in the form required by Nova Scotia securities laws or an accounting in such other form as the court may determine.
12. An order directing rectification of the registers or other records of the company.
13. An order requiring the person or company to compensate or make restitution to an aggrieved person or company.
14. An order requiring the person or company to pay general or punitive damages to any other person or company.
15. An order requiring the person or company to disgorge to the Minister any amounts obtained as a result of the non-compliance with Nova Scotia securities laws.
16. An order requiring the person or company to rectify any past non-compliance with Nova Scotia securities laws to the extent that rectification is practicable.
17. An order directing the officers and directors of the person or company to cause the person or company to comply with Nova Scotia securities laws.

(1D) On an application under this Section the court may make such interim orders as it considers appropriate.

(2) An appeal lies to the Nova Scotia Court of Appeal from an order made pursuant to subsection (1C). R.S., c. 418, s. 133; 1990, c. 15, s. 66; 2006, c. 46, s. 64; 2006, c. 46, s. 46; 2008, c. 32, s. 15.

### 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 con-travening,
  - (i) a provision of this Act or the reg-ulations,
  - (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 contained in Nova Scotia securities laws do not apply to a person or company permanently or for such period as is specified in the order;

(d) that a person

(i) resign any position that the person holds as a director or officer of an issuer, registrant or investment fund manager, and

(ii) is prohibited from becoming or acting as a director or officer of any issuer;

(e) that a registrant, issuer or investment manager

(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 or investment manager 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;

(f) that the registration of a registrant is suspended, cancelled or restricted, subject to such terms and conditions as the Commission may impose, or that terms and conditions be imposed upon a registration;

(g) that a person or company is prohibited from becoming or acting as a registrant, investment fund manager or promoter; or

(h) that a person or company be reprimanded.

**(1A)** The Commission may, after providing an opportunity to be heard, make an order under clauses (a) to (h) of subsection (1) against a person or company if the person or company

(a) has been convicted of a criminal offence arising from a transaction, business or course of action related to securities;

(b) has been found by a court inside or outside the Province to have contravened the Nova Scotia securities laws or the securities laws of another jurisdiction;

(c) has been found by a securities commission or other person or body empowered by statute to regulate trading in securities or to administer, regulate or enforce securities laws of another province of Canada to have contravened the securities laws of that province or territory; or

(d) has agreed with a securities commission or other person or body empowered by statute to regulate trading in securities or to administer or enforce securities laws of another province or territory of Canada to be subject to sanctions, conditions, restrictions or requirements.

**(1B)** The Commission may, after providing an opportunity to be heard, make an order under clauses (a) to (h) of subsection (1) against a director or officer of a company or of a person other than an individual who authorizes, permits or acquiesces in the contravention of Nova Scotia securities laws or conduct contrary to the public interest.

**(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 temporary 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 6.

(6) The Commission may make a cease trading order pursuant to clause (b) of subsection (1) notwithstanding a material change report being delivered to it on a confidential basis under the regulations. 1990, c. 15, s. 67; 2005, c. 27, s. 12; 2006, c. 46, s. 47; 2008, c. 32, s. 16.

#### **Administrative penalty**

**135** Where the Commission, after a hearing,

(a) determines that

(i) a person or company has contravened or failed to comply with any provision of Nova Scotia securities laws, or

(ii) a director or officer of a person or company or a person other than an individual authorized, permitted or acquiesced in a contravention or failure to comply with any provision of Nova Scotia securities laws by the person or company;

and

(b) considers it to be in the public interest to make the order,

the Commission may order the person or company to pay an administrative penalty of not more than one million dollars for each contravention or failure to comply. 2006, c. 46, s. 48.

#### **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.

#### **Costs of hearing**

**135B** Where the Commission, after a hearing and review of a decision, order or ruling of a self-regulatory organization, considers it to be in the public interest to make an order, the Commission may order the self-regulatory organization or the person or company which requested the hearing and review to pay the costs of or related to the hearing and review that are incurred by or on behalf of the Commission. 2008, c. 32, s. 17.

#### **Limitation period**

**136** (1) No proceedings shall be commenced in a court more than six years from the date of the occurrence of the last event upon which the proceeding is based.

(2) No proceedings under this Act shall be commenced before the Commission more than six years from the date of the occurrence of the last event upon which the proceeding is based. 2003, c. 7, s. 6.

#### **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 that is in a contractual relationship with the issuer or selling security holder on whose behalf the distribution is made;
- (c) every director of the issuer at the time the prospectus or the amendment to the prospectus was filed;
- (d) every person or company whose consent to disclosure of information in the prospectus has been filed 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, reasonable grounds to believe and did believe that such part of the prospectus or the amendment to the prospectus fairly represented his report, opinion or statement, or

(ii) on becoming aware that such part of the prospectus or the amendment to the prospectus did not fairly represent his report, opinion or statement as an expert, he forthwith advised the 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 subsection (1), the defendant is not liable for all or any portion of such damages that he proves do not represent the depreciation in value of the security as a result of the misrepresentation relied upon.

(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; 2005, c. 27, s. 14; 2006, c. 46, s. 49; revision corrected.

### **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 misrepresentation 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 misleading 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 under this Act and the regulations 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 under this Act and the regulations 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) *repealed 2006, c. 46, s. 50.*

(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; 2006, c. 46, s. 50.

### **Misrepresentation in forward-looking information**

**139A (1)** A person or company is not liable in an action under Section 137, 138 or 139 for a misrepresentation in forward-looking information if the person or company proves all of the following things:

(a) the document containing the forward-looking information contained, proximate to that information,

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

(ii) a statement of the material factors or assumptions that were applied in drawing a conclusion or making a forecast or projection set out in the forward-looking information;

(b) the person or company had a reasonable basis for drawing the conclusions or making the forecasts and projections set out in the forward-looking information.

(2) Subsection (1) does not relieve a person or company of liability respecting forward-looking information in a financial statement or forward-looking information in a document released in connection with an initial public offering. 2006, c. 46, s. 51.

### **Standard of reasonableness**

**140** In determining what constitutes reasonable investigation or reasonable grounds for belief for the purposes of Sections 137, 138 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; 2005, c. 27, s. 15.

### **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 issued by 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 this Act or the regulations 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; 2006, c. 46, s. 52.

### **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 Supreme Court of Nova Scotia 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 investment fund, a judge of the Supreme Court of Nova Scotia may, if satisfied that

(a) the Commission or the person or company has reasonable grounds for believing that the investment fund has a cause of action under subsection (3) of Section 142; and

(b) the investment 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 investment 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 the directors of a reporting issuer, the trial judge or a judge of the Supreme Court of Nova Scotia may order that the costs properly incurred by the 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 Supreme Court of Nova Scotia 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 Supreme Court of Nova Scotia 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 investment 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 investment 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 investment fund or reasonably ascertainable by the reporting issuer or investment fund relevant to such action.

(9) An appeal lies to the Nova Scotia Court of Appeal from any order made pursuant to this Section. R.S., c. 418, s. 143; 1990, c. 15, s. 74; 2006, c. 46, s. 64; 2006, c. 46, s. 53.

### **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 sub-section (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.

### **Interpretation of Sections 146A to 146N**

**146A** In Sections 146A to 146N,

(a) “compensation” means compensation received during the twelve-month period immediately preceding the day on which the misrepresentation was made or on which the failure to make timely disclosure first occurred, together with the fair market value of all deferred compensation including, without limiting the generality of the foregoing, options, pension benefits and stock appreciation rights, granted during the same period, valued as of the date that such compensation is awarded;

(b) “core document” means

(i) a prospectus, a take-over bid circular, an issuer bid circular, a directors’ circular, a notice of change or variation in respect of a take-over bid circular, issuer bid circular or directors’ circular, a rights offering circular, management’s discussion and analysis, an annual information form, an information circular, annual financial statements and interim financial statements of the responsible issuer, where used in relation to

(A) a director of a responsible issuer who is not also an officer of the responsible issuer,

(B) an influential person, other than an officer of the responsible issuer or an investment fund manager if the responsible issuer is an investment fund, or

(C) a director or officer of an influential person who is not also an officer of the responsible issuer, other than an officer of an investment fund manager,

(ii) a prospectus, a take-over bid circular, an issuer bid circular, a directors' circular, a notice of change or variation in respect of a take-over bid circular, issuer bid circular or directors' circular, a rights offering circular, management's discussion and analysis, an annual information form, an information circular, annual financial statements, interim financial statements and a material change report required by this Act or the regulations of the responsible issuer, where used in relation to

(A) a responsible issuer or an officer of the responsible issuer,

(B) an investment fund manager, where the responsible issuer is an investment fund, or

(C) an officer of an investment fund manager, if the responsible issuer is an investment fund, or

(iii) such other documents as may be prescribed by the regulations for the purpose of this definition;

(c) "court" means the Supreme Court of Nova Scotia;

(d) "document" means any written communication, including a communication prepared and transmitted only in electronic form,

(i) that is required to be filed with the Commission, or

(ii) that is not required to be filed with the Commission and that

(A) is filed with the Commission,

(B) is filed or required to be filed with a government or an agency of a government under applicable securities or corporate law or with any stock exchange or quotation and trade reporting system under its by-laws, rules or regulations, or

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

(e) "expert" means a person or company whose profession gives authority to a statement made in a professional capacity by the person or company including, without limitation, an accountant, actuary, appraiser, auditor, engineer, financial analyst, geologist or lawyer, but not including an entity that is an approved rating organization for the purposes of National Instrument 44-101 of the Canadian Securities Administrators;

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

(g) "influential person" means, in respect of a responsible issuer,

(i) a control person,

(ii) a promoter,

(iii) an insider who is not a director or officer of the responsible issuer,

or

(iv) an investment fund manager, if the responsible issuer is an

investment fund;

security (h) “issuer’s security” means a security of a responsible issuer and includes a

(i) the market price or value of which, or payment obligations under which, are derived from or based on a security of the responsible issuer, and

(ii) which is created by a person or company on behalf of the responsible issuer or is guaranteed by the responsible issuer;

(i) “liability limit” means

(i) in the case of a responsible issuer, the greater of

(A) five per cent of its market capitalization, as such term is defined in the regulations, and

(B) one million dollars,

(ii) in the case of a director or officer of a responsible issuer, the greater of

(A) twenty-five thousand dollars, and

(B) fifty per cent of the aggregate of the director’s or officer’s compensation from the responsible issuer and its affiliates,

(iii) in the case of an influential person who is not an individual, the greater of

(A) five per cent of its market capitalization, as defined in the regulations, and

(B) one million dollars,

(iv) in the case of an influential person who is an individual, the greater of

(A) twenty-five thousand dollars, and

(B) fifty per cent of the aggregate of the influential person’s compensation from the responsible issuer and its affiliates,

(v) in the case of a director or officer of an influential person, the greater of

(A) twenty-five thousand dollars, and

(B) fifty per cent of the aggregate of the director’s or officer’s compensation from the influential person and its affiliates,

(vi) in the case of an expert, the greater of

(A) one million dollars, and

(B) the revenue that the expert and the affiliates of the expert have earned from the responsible issuer and its affiliates during the twelve months preceding the misrepresentation, and

(vii) in the case of each person who made a public oral statement, other than an individual referred to in subclause (iv), (v) or (vi), the greater of

(A) twenty-five thousand dollars, and

(B) fifty per cent of the aggregate of the person’s compensation from the responsible issuer and its affiliates;

(j) “management’s discussion and analysis” means the section of an annual information form, annual report or other document that contains management’s discussion and analysis of the financial condition and results of operations of a responsible issuer as required under Nova Scotia securities laws;

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

(l) “release” means, with respect to information or a document, file with the Commission or any other securities regulatory authority in Canada or a stock exchange or to otherwise make available to the public;

(m) “responsible issuer” means

- (i) a reporting issuer or a reporting issuer under the laws of another province of Canada, or
- (ii) any other issuer with a real and substantial connection to the Province, any securities of which are publicly traded;

(n) “trading day” means a day during which the principal market, as defined in the regulations, for the security is open for trading. 2006, c. 46, s. 55.

### Exceptions

**146B** Sections 146A to 146N do not apply to

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

(b) the acquisition of an issuer’s security pursuant to a distribution that is exempt from Section 58 or 67, except as may be prescribed by the regulations;

(c) the acquisition or disposition of an issuer’s security in connection with or pursuant to a take-over bid or issuer bid, except as may be prescribed by the regulations; or

(d) such other transactions or class of transactions as may be prescribed by the regulations. 2006, c. 46, s. 55.

### Right of action for misrepresentation

**146C (1)** Where a responsible issuer or a person or company with actual, implied or apparent authority to act on behalf of a responsible issuer releases a document that contains a misrepresentation, a person or company who acquires or disposes of the issuer’s security during the period between the time when the document was released and the time when the misrepresentation contained in the document was publicly corrected has, without regard to whether the person or company relied on the misrepresentation, a right of action for damages against

(a) the responsible issuer;

(b) each director of the responsible issuer at the time the document was released;

(c) each officer of the responsible issuer who authorized, permitted or acquiesced in the release of the document;

(d) each influential person, and each director and officer of an influential person, who knowingly influenced

(i) the responsible issuer or any person or company acting on behalf of the responsible issuer to release the document, or

(ii) a director or officer of the responsible issuer to authorize, permit or acquiesce in the release of the document; and

(e) each expert where

(i) the misrepresentation is also contained in a report, statement or opinion made by the expert,

(ii) the document includes, summarizes or quotes from the report, statement or opinion of the expert, and

(iii) where the document was released by a person or company other than the expert, the expert consented in writing to the use of the report, statement or opinion in the document.

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

- (a) the responsible issuer;
- (b) the person who made the public oral statement;
- (c) each director and officer of the responsible issuer who authorized, permitted or acquiesced in the making of the public oral statement;
- (d) each influential person, and each director and officer of the influential person, who knowingly influenced,
  - (i) the person who made the public oral statement to make the public oral statement, or
  - (ii) a director or officer of the responsible issuer to authorize, permit or acquiesce in the making of the public oral statement; and
- (e) each expert where
  - (i) the misrepresentation is also contained in a report, statement or opinion made by the expert,
  - (ii) the person making the public oral statement includes, summarizes or quotes from the report, statement or opinion of the expert, and
  - (iii) if the public oral statement was made by a person other than the expert, the expert consented in writing to the use of the report, statement or opinion in the public oral statement.

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

- (a) the responsible issuer, if a director or officer of the responsible issuer or, where the responsible issuer is an investment fund, the investment fund manager, authorized, permitted or acquiesced in the release of the document or the making of the public oral statement;
- (b) the person who made the public oral statement;
- (c) each director and officer of the responsible issuer who authorized, permitted or acquiesced in the release of the document or the making of the public oral statement;
- (d) the influential person;
- (e) each director and officer of the influential person who authorized, permitted or acquiesced in the release of the document or the making of the public oral statement; and
- (f) each expert where
  - (i) the misrepresentation is also contained in a report, statement or opinion made by the expert,

(ii) the document or public oral statement includes, summarizes or quotes from the report, statement or opinion of the expert, and

(iii) if the document was released or the public oral statement was made by a person other than the expert, the expert consented in writing to the use of the report, statement or opinion in the document or public oral statement.

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

(a) the responsible issuer;

(b) each director and officer of the responsible issuer who authorized, permitted or acquiesced in the failure to make timely disclosure; and

(c) each influential person, and each director and officer of an influential person, who knowingly influenced

(i) the responsible issuer or any person or company acting on behalf of the responsible issuer in the failure to make timely disclosure, or

(ii) a director or officer of the responsible issuer to authorize, permit or acquiesce in the failure to make timely disclosure.

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

(6) In an action under this Section,

(a) multiple misrepresentations having common subject-matter or content may, in the discretion of the court, be treated as a single misrepresentation; and

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

(7) In an action under subsection (2) or (3), where the person who made the public oral statement had apparent authority, but not implied or actual authority, to speak on behalf of the issuer, no other person is liable with respect to any of the responsible issuer's securities that were acquired or disposed of before that other person became, or should reasonably have become, aware of the misrepresentation. 2006, c. 46, s. 55.

### **Proof required**

**146D (1)** In an action under Section 146C in relation to a misrepresentation in a document that is not a core document, or a misrepresentation in a public oral statement, a person or company is not liable, subject to subsection (2), unless the plaintiff proves that the person or company

(a) knew, at the time that the document was released or public oral statement was made, that the document or public oral statement contained the misrepresentation;

(b) at or before the time that the document was released or public oral statement was made, deliberately avoided acquiring knowledge that the document or public oral statement contained the misrepresentation; or

(c) was, through action or failure to act, guilty of gross misconduct in connection with the release of the document or the making of the public oral statement that contained the misrepresentation.

(2) A plaintiff is not required to prove any of the matters set out in subsection (1) in an action under Section 146C in relation to an expert.

(3) In an action under Section 146C in relation to a failure to make timely disclosure, a person or company is not liable, subject to subsection (4), unless the plaintiff proves that the person or company

(a) knew, at the time that the failure to make timely disclosure first occurred, of the change and that the change was a material change;

(b) at the time or before the failure to make timely disclosure first occurred, deliberately avoided acquiring knowledge of the change or that the change was a material change; or

(c) was, through action or failure to act, guilty of gross misconduct in connection with the failure to make timely disclosure.

(4) A plaintiff is not required to prove any of the matters set out in subsection (3) in an action under Section 146C in relation to

(a) a responsible issuer;

(b) an officer of a responsible issuer;

(c) an investment fund manager; or

(d) an officer of an investment fund manager.

(5) A person or company is not liable in an action under Section 146C in relation to a misrepresentation or a failure to make timely disclosure if that person or company proves that the plaintiff acquired or disposed of the issuer's security

(a) with knowledge that the document or public oral statement contained a misrepresentation; or

(b) with knowledge of the material change.

(6) A person or company is not liable in an action under Section 146C in relation to

(a) a misrepresentation, if that person or company proves that

(i) before the release of the document or the making of the public oral statement containing the misrepresentation, the person or company conducted or caused to be conducted a reasonable investigation, and

(ii) at the time of the release of the document or the making of the public oral statement, the person or company had no reasonable grounds to believe that the document or public oral statement contained the misrepresentation; or

(b) a failure to make timely disclosure, if that person or company proves that

(i) before the failure to make timely disclosure first occurred, the person or company conducted or caused to be conducted a reasonable investigation, and

(ii) the person or company had no reasonable grounds to believe that the failure to make timely disclosure would occur.

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

(a) the nature of the responsible issuer;

(b) the knowledge, experience and function of the person or company;

(c) the office held, if the person was an officer;

(d) the presence or absence of another relationship with the responsible issuer, if the person was a director;

(e) the existence, if any, and the nature of any system designed to ensure that the responsible issuer meets its continuous disclosure obligations;

(f) the reasonableness of reliance by the person or company on the responsible issuer's disclosure compliance system and on the responsible issuer's officers, employees and others whose duties would in the ordinary course have given them knowledge of the relevant facts;

(g) the period within which disclosure was required to be made under the applicable law;

(h) in respect of a report, statement or opinion of an expert, any professional standards applicable to the expert;

(i) the extent to which the person or company knew, or should reasonably have known, the content and medium of dissemination of the document or public oral statement;

(j) in the case of a misrepresentation, the role and responsibility of the person or company in the preparation and release of the document or the making of the public oral statement containing the misrepresentation or the ascertaining of the facts contained in that document or public oral statement; and

(k) in the case of a failure to make timely disclosure, the role and responsibility of the person or company involved in a decision not to disclose the material change.

**(8)** A person or company is not liable in an action under Section 146C in respect of a failure to make timely disclosure if

(a) the person or company proves that the material change was disclosed by the responsible issuer in a report filed on a confidential basis with the Commission under this Act or the regulations;

(b) the responsible issuer had a reasonable basis for making the disclosure on a confidential basis;

(c) where the information contained in the report filed on a confidential basis remains material, disclosure of the material change was made public promptly when the basis for confidentiality ceased to exist;

(d) the person or company or responsible issuer did not release a document or make a public oral statement that, due to the undisclosed material change, contained a misrepresentation; and

(e) where the material change became publicly known in a manner other than the manner required under this Act or the regulations, the responsible issuer promptly disclosed the material change in the manner required under this Act or the regulations.

**(9)** A person or company is not liable in an action under Section 146C for a misrepresentation in forward-looking information if the person or company proves all of the following things:

(a) the document or public oral statement containing the forward-looking information contained, proximate to that information,

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

(ii) a statement of the material factors or assumptions that were applied in drawing a conclusion or making a forecast or projection set out in the forward-looking information;

(b) the person or company had a reasonable basis for drawing the conclusions or making the forecasts and projections set out in the forward-looking information.

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

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

(b) stated that

(i) the actual results could differ materially from a conclusion, forecast or projection in the forward-looking information, and

(ii) certain material factors or assumptions were applied in drawing a conclusion or making a forecast or projection as reflected in the forward-looking information; and

(c) stated that additional information about

(i) the material factors that could cause actual results to differ materially from the conclusion, forecast or projection in the forward-looking information, and

(ii) the material factors or assumptions that were applied in drawing a conclusion or making a forecast or projection as reflected in the forward-looking information,

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

**(11)** For the purpose of clause (c) of subsection (10), a document filed with the Commission or otherwise generally disclosed is deemed to be readily available.

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

**(13)** A person or company, other than an expert, is not liable in an action under Section 146C with respect to any part of a document or public oral statement that includes, summarizes or quotes from a report, statement or opinion made by the expert in respect of which the responsible issuer obtained the written consent of the expert to the use of the report, statement or opinion, if the consent had not been withdrawn in writing before the document was released or the public oral statement was made, if the person or company proves that

(a) the person or company did not know and had no reasonable grounds to believe that there had been a misrepresentation in the part of the document or public oral statement made on the authority of the expert; and

(b) the part of the document or oral public statement fairly represented the report, statement or opinion made by the expert.

**(14)** An expert is not liable in an action under Section 146C with respect to any part of a document or public oral statement that includes, summarizes or quotes from a report, statement or opinion made by the expert, if the expert proves that the written consent previously provided was withdrawn, in writing, before the document was released or the public oral statement was made.

(15) A person or company is not liable in an action under Section 146C in respect of a misrepresentation in a document, other than a document required to be filed with the Commission, if the person or company proves that, at the time of release of the document, the person or company did not know and had no reasonable grounds to believe that the document would be released.

(16) A person or company is not liable in an action under Section 146C for a misrepresentation in a document or a public oral statement, if the person or company proves that

(a) the misrepresentation was also contained in a document filed by or on behalf of another person or company, other than the responsible issuer, with the Commission or any other securities regulatory authority in Canada or a stock exchange and was not corrected in another document filed by or on behalf of that other person or company with the Commission or that other securities regulatory authority in Canada or stock exchange before the release of the document or the public oral statement made by or on behalf of the responsible issuer;

(b) the document or public oral statement contained a reference identifying the document that was the source of the misrepresentation; and

(c) when the document was released or the public oral statement was made, the person or company did not know and had no reasonable grounds to believe that the document or public oral statement contained a misrepresentation.

(17) A person or company, other than the responsible issuer, is not liable in an action under Section 146C if the misrepresentation or failure to make timely disclosure was made without the knowledge or consent of the person or company and if, after the person or company became aware of the misrepresentation before it was corrected, or the failure to make timely disclosure before it was disclosed in the manner required under this Act or the regulations,

(a) the person or company promptly notified the board of directors of the responsible issuer or other persons acting in a similar capacity of the misrepresentation or the failure to make timely disclosure; and

(b) where no correction of the misrepresentation or no subsequent disclosure of the material change in the manner required under this Act or the regulations was made by the responsible issuer within two business days after the notification under clause (a), the person or company, unless prohibited by law or by professional confidentiality rules, promptly and in writing notified the Commission of the misrepresentation or failure to make timely disclosure. 2006, c. 46, s. 55.

## **Damages**

**146E (1)** Damages shall be assessed in favour of a person or company that acquired an issuer's securities after the release of a document or the making of a public oral statement containing a misrepresentation or after a failure to make timely disclosure as follows:

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

(b) in respect of any of the securities of the responsible issuer that the person or company subsequently disposed of after the tenth trading day after the public correction of the misrepresentation or the disclosure of the material change in the manner required under this Act or the regulations, assessed damages shall equal the lesser of

(i) an amount equal to the difference between the average price paid for those securities, including any commissions paid in respect thereof, and the price received upon the disposition of those securities, without deducting any commissions

paid in respect of the disposition, calculated taking into account the result of hedging or other risk limitation transactions, and

(ii) an amount equal to the number of securities that the person disposed of, multiplied by the difference between the average price per security paid for those securities, including any commissions paid in respect thereof determined on a per security basis, and

(A) where the issuer's securities trade on a published market, the trading price of the issuer's securities on the principal market, as those terms are defined in the regulations, for the ten trading days following the public correction of the misrepresentation or the disclosure of the material change in the manner required under this Act or the regulations, or

(B) where there is no published market, the amount that the court considers just;

(c) in respect of any of the securities of the responsible issuer that the person or company has not disposed of, assessed damages shall equal the number of securities acquired, multiplied by the difference between the average price per security paid for those securities, including any commissions paid in respect thereof determined on a per security basis, and

(i) where the issuer's securities trade on a published market, the trading price of the issuer's securities on the principal market, as those terms are defined in the regulations, for the ten trading days following the public correction of the misrepresentation or the disclosure of the material change in the manner required under this Act or the regulations, or

(ii) where there is no published market, the amount that the court considers just.

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

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

(b) in respect of any of the securities of the responsible issuer that the person or company subsequently acquired after the tenth trading day after the public correction of the misrepresentation or the disclosure of the material change in the manner required under this Act or the regulations, assessed damages shall equal the lesser of

(i) an amount equal to the difference between the average price received upon the disposition of those securities, deducting any commissions paid in respect of the disposition, and the price paid for those securities, without including any commissions paid in respect thereof, calculated taking into account the result of hedging or other risk limitation transactions, and

(ii) an amount equal to the number of securities that the person disposed of, multiplied by the difference between the average price per security received upon the disposition of those securities, deducting any commissions paid in respect of the disposition determined on a per security basis, and

(A) where the issuer's securities trade on a published market, the trading price of the issuer's securities on the principal market, as those terms are defined in the regulations, for the ten trading days following the

public correction of the misrepresentation or the disclosure of the material change in the manner required under this Act or the regulations, or

(B) where there is no published market, the amount that the court considers just;

(c) in respect of any of the securities of the responsible issuer that the person or company has not acquired, assessed damages shall equal the number of securities that the person or company disposed of, multiplied by the difference between the average price per security received upon the disposition of those securities, deducting any commissions paid in respect of the disposition determined on a per security basis, and

(i) where the issuer's securities trade on a published market, the trading price of the issuer's securities on the principal market, as such terms are defined in the regulations, for the ten trading days following the public correction of the misrepresentation or the disclosure of the material change in the manner required under this Act and the regulations, or

(ii) where there is no published market, the amount that the court considers just.

(3) Notwithstanding subsections (1) and (2), assessed damages do not include any amount that the defendant proves is attributable to a change in the market price of securities that is unrelated to the misrepresentation or the failure to make timely disclosure. 2006, c. 46, s. 55.

#### **Apportionment of liability**

**146F (1)** In an action under Section 146C, the court shall determine, in respect of each defendant found liable in the action, the defendant's responsibility for the damages assessed in favour of all plaintiffs in the action, and each such defendant is liable, subject to the limits set out in subsection (1) of Section 146G, to the plaintiffs for only that portion of the aggregate amount of damages assessed in favour of the plaintiffs that corresponds to that defendant's responsibility for the damages.

(2) Notwithstanding subsection (1), where, in an action under Section 146C in respect of a misrepresentation or a failure to make timely disclosure, a court determines that a particular defendant, other than the responsible issuer, authorized, permitted or acquiesced in the making of the misrepresentation or the failure to make timely disclosure while knowing it to be a misrepresentation or a failure to make timely disclosure, the whole amount of the damages assessed in the action may be recovered from that defendant.

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

(4) Any defendant against whom recovery is obtained under subsection (2) is entitled to claim contribution from any other defendant who is found liable in the action. 2006, c. 46, s. 55.

#### **Damages payable**

**146G (1)** Notwithstanding Section 146E, the damages payable by a person or company in an action under Section 146C is the lesser of

(a) the aggregate damages assessed against the person or company in the action; and

(b) the liability limit for the person or company less the aggregate of all damages assessed after appeals, if any, against the person or company in all other actions brought under Section 146C, and under comparable legislation in other provinces of Canada in respect of that misrepresentation or failure to make timely disclosure, and less any amount paid in settlement of any such actions.

(2) Subsection (1) does not apply to a person or company, other than the responsible issuer, if the plaintiff proves that the person or company authorized, permitted or acquiesced in the making of the misrepresentation or the failure to make timely disclosure while knowing that it was a misrepresentation or a failure to make timely disclosure, or influenced the making of the misrepresentation or the failure to make timely disclosure while knowing that it was a misrepresentation or a failure to make timely disclosure. 2006, c. 46, s. 55.

#### **Leave of court**

**146H (1)** No action may be commenced under Section 146C without leave of the court granted upon motion with notice to each defendant and the court shall grant leave only where it is satisfied that

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

(2) Upon an application under this Section, the plaintiff and each defendant shall serve and file one or more affidavits setting forth the material facts upon which each intends to rely.

(3) The maker of such an affidavit may be examined on it in accordance with the *Civil Procedure Rules*.

(4) A copy of the application for leave to proceed and any affidavits filed with the court shall be sent to the Commission when filed. 2006, c. 46, s. 55.

#### **Requirements on leave being granted**

**146I** A person or company that has been granted leave to commence an action under Section 146C shall

- (a) promptly issue a news release disclosing that leave has been granted to commence an action under Section 146C;
- (b) send a written notice to the Commission within seven days, together with a copy of the news release; and
- (c) send a copy of the statement of claim or other originating document to the Commission when filed. 2006, c. 46, s. 55.

#### **Approval of court required**

**146J** An action under Section 146C shall not be discontinued, abandoned or settled without the approval of the court given on such terms as the court thinks fit including, without limitation, terms as to costs, and in determining whether to approve the settlement of the action, the court shall consider, among other things, whether there are any other actions outstanding under Section 146C or under comparable legislation in other provinces of Canada in respect of the same misrepresentation or failure to make timely disclosure. 2006, c. 46, s. 55.

#### **Costs**

**146K** The prevailing party in an action under Section 146C is entitled to costs determined by a court in accordance with the *Civil Procedure Rules*. 2006, c. 46, s. 55.

#### **Intervention by Commission**

**146L** The Commission may intervene in an action under Section 146C and in an application for leave under Section 146H. 2006, c. 46, s. 55.

#### **No derogation**

**146M** The right of action for damages and the defences to an action under Section 146C are in addition to, and without derogation from, any other rights or defences the plaintiff or defendant may have in an action brought otherwise than under Sections 146A to 146N. 2006, c. 46, s. 55.

### **Commencement of action**

**146N** No action shall be commenced under Section 146C

- (a) in the case of misrepresentation in a document, later than the earlier of
  - (i) three years after the date on which the document containing the misrepresentation was first released, and
  - (ii) six months after the issuance of a news release disclosing that leave has been granted to commence an action under Section 146C or under comparable legislation in the other provinces of Canada in respect of the same misrepresentation;
- (b) in the case of a misrepresentation in a public oral statement, later than the earlier of
  - (i) three years after the date on which the public oral statement containing the misrepresentation was made, and
  - (ii) six months after the issuance of a news release disclosing that leave has been granted to commence an action under Section 146C or under comparable legislation in another province of Canada in respect of the same misrepresentation; and
- (c) in the case of a failure to make timely disclosure, later than the earlier of
  - (i) three years after the date on which the requisite disclosure was required to be made, and
  - (ii) six months after the issuance of a news release disclosing that leave has been granted to commence an action under Section 146C or under comparable legislation in another province of Canada in respect of the same failure to make timely disclosure. 2006, c. 46, s. 55.

### **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 Nova Scotia securities laws 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 sub-section (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 Nova Scotia securities laws 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* and the *Personal Information International Disclosure Protection 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; 2005, c. 27, s. 16; 2006, c. 46, s. 56.

## 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.

## Interpretation of Sections 149A to 150

**149A (1)** In this Section and in Sections 149B to 150,

(a) “extra-provincial authority” means any power, function or duty of an extra-provincial securities commission that is, or is intended to be, performed or exercised by that commission under the extra-provincial securities laws under which that commission operates;

(b) “extra-provincial securities commission” means a body empowered by the laws of a province of Canada other than the Province to regulate trading in securities or to administer or enforce laws respecting trading in securities;

(c) “extra-provincial securities laws” means the laws of another province of Canada that, with respect to that province, deals with the regulation of securities markets and the trading in securities and exchange contracts in that province;

(d) *repealed 2006, c. 46, s. 57.*

(e) “Nova Scotia authority” means any power, function or duty of the Commission or of the Director that is, or is intended to be, performed or exercised by the Commission or the Director under Nova Scotia securities laws.

(2) A reference to an extra-provincial securities commission includes, unless otherwise provided,

(a) its delegate; and

(b) any person or company who in respect of that extra-provincial securities commission exercises a power or performs a duty or function that is substantially similar to

a power, duty or function exercised or performed by the Director under this Act. 2005, c. 26, s. 3; 2006, c. 46, s. 57.

### **Extra-provincial delegation**

**149B (1)** Subject to any regulations made under Section 150, the Commission may, by order, for the purpose of Sections 149B to 149K,

- (a) delegate any Nova Scotia authority to an extra-provincial securities commission; and
- (b) accept a delegation or other transfer of any extra-provincial authority from an extra-provincial securities commission.

(2) The Commission shall not delegate any power, function or duty of the Commission or of the Director that is, or is intended to be, performed or exercised by the Commission or the Director under Sections 3 to 26, Sections 149B to 149K or Section 150 or 150A. 2006, c. 46, s. 58.

### **Subdelegation**

**149C (1)** Subject to any restrictions or conditions imposed by an extra-provincial securities commission with respect to a delegation of extra-provincial authority to the Commission, the Commission may subdelegate that extra-provincial authority in the manner and to the extent that the Commission or the Director, as the case may be, may delegate any Nova Scotia authority under the Nova Scotia securities laws.

(2) Subject to any restrictions or conditions imposed by the Commission with respect to a delegation of Nova Scotia authority to an extra-provincial securities commission, nothing in Sections 149B to 149K is to be construed as prohibiting the extra-provincial securities commission from sub-delegating that Nova Scotia authority in the manner and to the extent that the extra-provincial securities commission can delegate its authority under the extra-provincial securities laws under which it operates. 2005, c. 26, s. 3.

### **Adoption of extra-provincial securities laws**

**149D (1)** Subject to any regulations made under Section 150, the Commission may, by order, adopt or incorporate by reference as Nova Scotia securities laws all or any provisions of any extra-provincial securities laws of a jurisdiction to be applied to

- (a) a person or company or class of persons or companies whose primary jurisdiction is that extra-provincial jurisdiction; or
- (b) trades or other activities involving a person or company or a class of persons or companies referred to in clause (a).

(2) Where the Commission adopts or incorporates by reference an extra-provincial securities law under subsection (1), it may adopt or incorporate it by reference as amended from time to time, whether before or after the adoption or incorporation by reference, and with the necessary changes. 2006, c. 46, s. 59.

### **Exemption from Nova Scotia securities laws**

**149E** Subject to any regulations made under Section 150, the Commission may, by order, exempt a person, company, security or trade or class of persons, companies, securities or trades from all or any requirements of Nova Scotia securities laws if the person, company, security or trade or class of persons, companies, securities or trades, as the case may be, satisfies the conditions set out in the order. 2006, c. 46, s. 60.

### **Similar decision**

**149F (1)** Subject to any regulations made under Section 150, where the Commission or Director is empowered to make a decision regarding a person, company, trade or security, the Commission or the Director may make a decision on the basis that the Commission or the Director, as the case may be, considers that an extra-provincial securities commission has made a substantially similar decision regarding the person, company, trade or security.

(2) Subject to any regulations made under Section 150 and notwithstanding any provision of this Act, the Commission or Director may make a decision referred to in subsection (1) without giving the person or company affected by the decision an opportunity to be heard. 2006, c. 46, s. 60.

**149G** *repealed 2006, c. 46, s. 60.*

**No action lies re delegated Nova Scotia authority**

**149H (1)** In this Section,

(a) “Commission” includes the Director and any member, officer, employee, appointee or agent of the Commission;

(b) “securities regulatory authority” means

(i) an extra-provincial securities commission referred to in subsection (2) and includes any member, officer, employee, appointee or agent of that commission,

(ii) any person referred to in clause (b) of subsection (2),

(iii) any exchange, quotation and trade reporting system or self-regulatory organization referred to in clause (c) of subsection (2).

(2) This Section applies only with respect to a Nova Scotia authority that

(a) has been delegated by the Commission to an extra-provincial securities commission;

(b) is being, or intended to be, exercised by a person where that Nova Scotia authority has been subdelegated to that person by an extra-provincial securities commission and includes a subdelegate of that person but does not include an exchange, a quotation and trade reporting system or a self-regulatory organization recognized or authorized by that extra-provincial securities commission; or

(c) is being, or intended to be, exercised by an exchange, a quotation and trade reporting system or a self-regulatory organization recognized or authorized by an extra-provincial securities commission to carry on business where that Nova Scotia authority has been subdelegated to it by an extra-provincial securities commission.

(3) No action or other proceeding for damages may be instituted against the Commission or a securities regulatory authority for

(a) any act done in good faith in the performance or exercise, or the intended performance or exercise of

(i) any Nova Scotia authority, or

(ii) a delegation, or the acceptance of a delegation, of any Nova Scotia authority; or

(b) any neglect or default in the performance or exercise in good faith of

(i) any Nova Scotia authority, or

(ii) a delegation, or the acceptance of a delegation, of any Nova Scotia authority. 2005, c. 26, s. 3.

**No action lies re delegated extra-provincial authority**

**149I (1)** In this Section,

(a) “Commission” includes the Director and any member, officer, employee, appointee or agent of the Commission;

(b) “securities regulatory authority” means

(i) any person referred to in clause (b) of subsection (2),

(ii) any exchange, quotation and trade reporting system or self-regulatory organization referred to in clause (c) of subsection (2).

(2) This Section applies only with respect to an extra-provincial authority that

(a) has been delegated by an extra-provincial securities commission to the Commission;

(b) is being, or intended to be, exercised by a person where that extra-provincial authority has been subdelegated to that person by the Commission and includes a subdelegate of that person but does not include a recognized exchange, a recognized quotation and trade reporting system or a recognized self-regulatory organization; or

(c) is being, or intended to be, exercised by a recognized exchange, a recognized quotation and trade reporting system or a recognized self-regulatory organization where that extra-provincial authority has been subdelegated to it by the Commission.

(3) No action or other proceeding for damages may be instituted against the Commission or a securities regulatory authority for

(a) any act done in good faith in the performance or exercise, or the intended performance or exercise of

(i) any extra-provincial authority, or

(ii) a delegation, or the acceptance of a delegation, of any extra-provincial authority; or

(b) any neglect or default in the performance or exercise in good faith of

(i) any extra-provincial authority, or

(ii) a delegation, or acceptance of a delegation, of any extra-provincial authority. 2005, c. 26, s. 3.

### **Appeal of extra-provincial decision**

**149J (1)** In this Section, “extra-provincial decision” means a decision of an extra-provincial securities commission made under a Nova Scotia authority delegated to that extra-provincial securities commission by the Commission.

(2) A person or company that is directly affected by an extra-provincial decision may appeal that extra-provincial decision to the Supreme Court of Nova Scotia.

(3) An appeal under this Section shall be commenced by a notice of appeal filed with the Supreme Court of Nova Scotia within thirty days from the day that the extra-provincial securities commission serves the notice of its decision on the person or company appealing the decision.

(4) The practice and procedure in the Supreme Court of Nova Scotia in respect of an appeal under this Section shall, with any necessary modification that the Court considers appropriate, be the same as on an application to the Court in an action.

(5) The Supreme Court of Nova Scotia may, with respect to an appeal under this Section,

(a) make any order or direction that it considers appropriate with respect to the commencement or conduct of, or any matter relating to, the appeal;

(b) confirm, vary or reject the extra-provincial decision;

(c) make any decision that the extra-provincial securities commission could have made and substitute the Court's decision for that of the extra-provincial securities commission.

(6) The extra-provincial securities commission is the respondent to an appeal under this Section.

(7) A copy of the notice of appeal and supporting documents shall, within the thirty day period referred to in subsection (3), be served on

(a) the respondent; and

(b) the secretary to the Commission.

(8) Notwithstanding that the Commission is not a respondent to an appeal under this Section, the Commission is entitled to be represented at the appeal and to make representations in respect of any matter before the Supreme Court of Nova Scotia that is related to the appeal.

(9) Notwithstanding that an appeal is commenced under this Section, the extra-provincial decision being appealed takes effect immediately, unless the extra-provincial securities commission, the Commission or the Supreme Court of Nova Scotia grants a stay pending disposition of the appeal.

(10) In this Section, a reference to an extra-provincial securities commission is a reference to the extra-provincial securities commission that made the extra-provincial decision that is being appealed under this Section. 2005, c. 26, s. 3.

#### **Appeal of decision pursuant to delegated authority**

**149K (1)** In this Section, "delegated authority" means any extra-provincial authority that is delegated to and accepted by the Commission under Section 149B.

(2) A person or company that is directly affected by

(a) a decision of the Commission made pursuant to a delegated authority; or

(b) *repealed 2008, c. 32, s. 19.*

may appeal that decision to the Nova Scotia Court of Appeal.

(3) Subsections (2) to (6) of Section 26 apply to an appeal made under this Section.

(4) A person or company that has a right to appeal a decision under this Section may, subject to any direction of the Nova Scotia Court of Appeal, exercise that right of appeal whether or not that person or company may have a right to appeal that decision to a court in another jurisdiction.

(5) Notwithstanding subsection (4), if a decision referred to in subsection (2) is being appealed to a court in another jurisdiction, the Nova Scotia Court of Appeal may stay an appeal under this Section pending the determination of the appeal in the other jurisdiction. 2005, c. 26, s. 3; 2008, c. 32, s. 19.

#### **Regulations and rules**

**150** The Governor in Council may make regulations and the Commission may make rules

(a) and (b) *repealed 2006, c. 46, s. 61.*

(c) *repealed 1990, c. 15, s. 78.*

- (d) to (h) *repealed 2006, c. 46, s. 61.*
- (ha) respecting the delegation of any Nova Scotia authority to an extra-provincial securities commission;
- (hb) respecting the acceptance by the Commission of any delegation of an extra-provincial authority from an extra-provincial securities commission;
- (hc) respecting any amendments to, or the revocation of any delegation or acceptance of a delegation referred to in clause (ha) or (hb);
- (hd) respecting the adoption or incorporation of extra-provincial securities laws under Section 149D, including the administration of those laws once adopted or incorporated.
- (he) respecting the administration of exemptions from Nova Scotia securities laws under Section 149E;
- (hf) respecting the adoption of decisions of extra-provincial securities commissions under Section 149G, including the administration or those decisions once adopted;
- (hg) respecting the administration of extra-provincial securities laws arising from or as a result of any matters described in clauses (ha) to (hf);
- (i) to (s) *repealed 2006, c. 46, s. 61.*
- (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) *repealed 2006, c. 46, s. 61.*
- (v) prescribing trades or securities, referred to in Nova Scotia securities laws in respect of which there shall cease to be exemption from registration;
- (w) and (x) *repealed 2006, c. 46, s. 61.*
- (y) *repealed 1990, c. 15, s. 78.*
- (z) to (ae) *repealed 2006, c. 46, s. 61.*
- (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) to (al) *repealed 2006, c. 46, s. 61.*
- (am) assigning to the Commission such powers and duties of the Director and re-assigning any such powers and duties to the Commission;
- (an) and (ao) *repealed 2006, c. 46, s. 61.*
- (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) *repealed 2006, c. 46, s. 61.*
- (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) *repealed 2006, c. 46, s. 61.*
- (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 offer-ing memoranda;

(ax) modifying the application of subsection (15) of Section 77 with respect to a reporting issuer or class of reporting issuers;

(ay) to (aad) *repealed 2006, c. 46, s. 61.*

(aae) authorizing the Commission, where per-mitted 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 Com-mission 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 Commis-sion;

(aag) describing persons or companies who are deemed to be holders of securities of an issuer whose latest address is in the Province;

(aah) to (aam) *repealed 2006, c. 46, s. 61.*

(aan) varying the application of this Act to permit or require, and establishing requirements for and pro-cedures 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 docu-ments 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 com-panies permitted or required to file, deliver or deposit documents or information with the Dir-ector 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 respons-ibilities 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 Com-mission 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 and the regulations 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) and (aax) *repealed 2006, c. 46, s. 61.*

(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) enabling a person or company that is required to be registered to appoint an individual to perform on its behalf a prescribed function or duty and prescribing that function or duty;

(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;

(bae) *repealed 2006, c. 46, s. 61.*

(baf) requiring evaluations of reporting issuers' internal control over financial reporting and requiring reporting issuers to obtain audits of their internal control over financial reporting, including their management's evaluation;

(bag) exempting a class of persons, companies, trades or securities from one or more of the provisions of Nova Scotia securities laws or varying the provisions as they apply to any person, company, trade or security;

(bah) prescribing circumstances and conditions for the purposes of an exemption under clause (bag), including

(i) conditions relating to the laws of another jurisdiction of Canada or relating to an exemption from those laws granted by a body empowered by the laws of that jurisdiction to regulate trading in securities or to administer or enforce laws respecting trading in securities in that jurisdiction, or

(ii) conditions that refer to a person or company or to a class of persons or companies designated by the Commission;

(bai) governing registration and, without limiting the generality of the foregoing, prescribing circumstances in which

(i) a person or company or a class of persons or companies is not required to be registered under Section 31, or

(ii) a person or company or a class of persons or companies is deemed to be registered for the purpose of this Act or the regulations,

including the circumstance in which a person or company or a class of persons or companies is registered under the laws of another jurisdiction respecting trading in securities;

(baj) governing annual information forms, annual reports, preliminary prospectuses, prospectuses, *pro forma* prospectuses, short form prospectuses, *pro forma* short form prospectuses, exchange offering prospectuses, simplified prospectuses, risk disclosure statements, offering memoranda or any other disclosure documents and, without limiting the generality of the foregoing, prescribing procedures and requirements with respect to and providing for exemptions from circumstances in which

(i) Section 58 does not apply to a person or company or a class of persons or companies, or

(ii) a receipt is deemed to have been issued for the purpose of this Act,

including the circumstance in which a receipt has been issued for a preliminary prospectus or prospectus under the laws of another jurisdiction respecting trading in securities;

(bak) prescribing circumstances in which a person or company or a class of persons or companies is prohibited from trading or purchasing securities, or a particular security, including the circumstances in which a body empowered by the laws of another jurisdiction to regulate trading in securities or to administer or enforce securities laws in that jurisdiction, has ordered that

(i) a person is prohibited from trading or purchasing securities, or a particular security, or

(ii) trades or purchases of a particular security be prohibited;

(bal) prescribing requirements in respect of applications for registration and the renewal, amendment, expiration or surrender of registration and in respect of suspension, cancellation or reinstatement of registration;

(bam) prescribing categories or sub-categories of registrants, classifying registrants into categories or sub-categories and prescribing the conditions of registration or other requirements for registrants or any category or sub-category, including

(i) standards of practice and business conduct of registrants in dealing with their customers and clients and prospective customers and clients,

(ii) requirements that are advisable for the prevention or regulation of conflicts of interest, and

(iii) requirements in respect of membership in a self-regulatory organization;

(ban) extending any requirements prescribed under clause (bam) to unregistered directors, partners, salespersons and officers of registrants;

(bao) prescribing requirements in respect of the residence in the Province or Canada of registrants;

(bap) prescribing requirements in respect of notification by a registrant or other person or company in respect of a proposed change in beneficial ownership of, or control or direction over, securities of the registrant and authorizing the Commission to make an order that a proposed change may not be effected before a decision by the Commission as to whether it will exercise its powers under clause (f) of subsection (1) of Section 134 as a result of the proposed change;

(baq) prescribing requirements for persons and companies in respect of calling at or telephoning to residences for the purpose of trading in securities;

(bar) prescribing requirements in respect of the disclosure or furnishing of information to the public or the Commission by registrants, unregistered directors, unregistered partners, unregistered salespersons, unregistered officers and control persons of registrants or providing for exemptions from or varying the requirements under this Act or the regulations or the regulations in respect of the disclosure or furnishing of information to the public or the Commission by registrants;

(bas) providing exemptions from or varying the registration requirements under this Act or the regulations;

(bat) providing for exemptions from the requirements of Section 47 in respect of dealers;

(bau) regulating the listing or trading of publicly traded securities, including requiring reporting of trades and quotations;

(bav) regulating recognized self-regulatory organizations, including prescribing requirements in respect of the review or approval by the Commission of any by-law, rule, regulation, policy, procedure, interpretation or practice;

(baw) regulating trading or advising in securities to prevent trading or advising that is fraudulent, manipulative, deceptive or unfairly detrimental to investors;

(bax) prescribing categories or sub-categories of issuers for purposes of the prospectus requirements under this Act or the regulations and classifying issuers into categories or sub-categories;

(bay) regulating in respect of, or varying this Act to facilitate, expedite or regulate in respect of the distribution of securities or the issuing of receipts, including

(i) establishing requirements in respect of distributions of securities by means of a prospectus incorporating other documents by reference,

(ii) establishing requirements in respect of distributions of securities by means of a simplified or summary prospectus or other form of disclosure document,

(iii) establishing requirements in respect of distributions of securities on a continuous or delayed basis,

(iv) establishing requirements in respect of pricing of distributions of securities after the issuance of a receipt for the prospectus filed in relation thereof,

(v) establishing procedures for the issuing of receipts for prospectuses after expedited or selective review thereof,

(vi) establishing provisions for the incorporation by reference of certain documents in a prospectus or other prescribed disclosure document and the effect, including from a liability and evidentiary perspective, of modifying or superseding statements,

(vii) establishing requirements in respect of the form, and execution by persons or companies, of certificates relating to a preliminary prospectus, prospectus and an amendment to a preliminary prospectus or prospectus, and conferring on the Director the discretion to require the execution by a person or company of a certificate relating to a preliminary prospectus or prospectus in a form required by other persons or companies under a rule with modifications or lessen the scope of the certificate,

(viii) establishing provisions for eligibility requirements to file a prospectus or obtain a receipt for, or distribute under, a particular form of prospectus and the loss of that eligibility,

(ix) prescribing the circumstances in which a distribution may continue after the lapse date, and the circumstances in which a purchaser may cancel a purchase after the lapse date, and

- (x) prescribing a minimum interval of time between the issuance of a receipt for a preliminary prospectus and the issuance of a receipt for a prospectus;
- (baz) prescribing circumstances in which a person that purchases a security under a distribution may cancel the purchase, including
  - (i) prescribing the period in which the purchaser may cancel the purchase,
  - (ii) prescribing the principles for determining the amount of the refund if the purchaser cancels the purchase,
  - (iii) specifying the persons responsible for making and administering the payment of the refund and prescribing the period in which the refund must be paid, and
  - (iv) prescribing different circumstances, periods, principles or persons for different classes of securities, issuers or purchasers;
- (ca) prescribing requirements for the escrow of securities in connection with distributions;
- (cb) designating activities, including the use of documents or advertising, in which registrants or issuers are permitted to engage or are prohibited from engaging in connection with the trading or distribution of securities;
- (cc) prescribing which distributions and trading in relation to the distributions are distributions and trading outside the Province;
- (cd) providing for exemptions from the prospectus requirements under this Act;
- (ce) prescribing the circumstances in which the Director must refuse to issue a receipt for a prospectus and prohibiting the Director from issuing a receipt in those circumstances;
- (cf) conferring discretion on the Director to impose terms and conditions which must be satisfied before the Director will issue a receipt for a prospectus;
- (cg) prescribing requirements in respect of the preparation and dissemination and other use by reporting issuers of documents providing for continuous disclosure, including requirements in respect of
  - (i) financial statements,
  - (ii) supplemental analysis of financial statements,
  - (iii) an annual report,
  - (iv) a business acquisition report, and
  - (v) an annual information form;
- (ch) regulating the disclosure or furnishing of information to the public or the Commission by reporting issuers;
- (ci) prescribing requirements with respect to the disclosure by reporting issuers of material changes, including
  - (i) prescribing the time period within which a reporting issuer must make disclosure of a material change, and
  - (ii) prescribing the manner in which a reporting issuer must make disclosure of a material change;
- (cj) exempting reporting issuers from any requirement of Section 81 and the related regulations
  - (i) if the requirement conflicts with a requirement of the laws of the jurisdiction under which the reporting issuers are incorporated, organized or continued,

(ii) if the reporting issuers ordinarily distribute financial or other information to holders of their securities in a form, or at times, different from those required by a rule made under clauses (cg) to (ci),

(iii) under circumstances that the Commission considers justify the exemption;

(ck) requiring issuers or other persons and companies to comply, in whole or in part, with Section 81, or rules made under clauses (cg) to (ci);

(cl) prescribing requirements in respect of financial accounting, reporting and auditing for the purpose of this Act or the regulations, including

(i) defining accounting principles and auditing standards acceptable to the Commission,

(ii) financial reporting requirements for the preparation and dissemination of future-oriented financial information and *pro forma* financial statements,

(iii) standards of independence and other qualifications for auditors,

(iv) requirements respecting a change in auditors by a reporting issuer or a registrant,

(v) requirements respecting a change in the financial year of an issuer or in an issuer's status as a reporting issuer under this Act, and

(vi) defining auditing standards for attesting to and reporting on a reporting issuer's internal controls;

(cm) prescribing requirements for the validity and solicitation of proxies;

(cn) providing for the application of Sections 81, 90 and 93 and the related regulations in respect of registered holders or beneficial owners of voting securities or equity securities of reporting issuers or other persons or companies on behalf of whom the securities are held, including requirements for reporting issuers, registered holders, registrants and other persons or companies who hold securities on behalf of persons or companies but who are not the registered holders;

(co) regulating take-over bids, issuer bids, insider bids, going-private transactions, business combinations and related party transactions, including

(i) prescribing requirements relating to the conduct or management of the affairs of any person or company and their directors and officers before, during or after an offer to acquire, acquisition, offer to redeem, redemption, going-private transaction, business combination or related party transaction,

(ii) prescribing requirements for disclosure, valuations, review by independent committees of boards of directors and approval by minority security holders,

(iii) prescribing requirements respecting defensive tactics in connection with take-over bids,

(iv) prohibiting a person or company from purchasing or trading a security before, during or after an offer to acquire, acquisition, offer to redeem, redemption, going-private transaction, business combination or related party transaction,

(v) prescribing types or classes of securities, percentages, disclosure requirements and prohibitions for the purpose of Section 114,

(vi) prescribing exemptions from the requirements of Sections 95 to 99;

(cp) providing for exemptions from any requirement of Section 82 or from liability under Section 142 and prescribing standards or criteria for determining when a material fact or material change has been generally disclosed;

128; (cq) varying or providing for exemptions from any requirement of Sections 112 to

(cr) regulating the disclosure or furnishing of information to the public or the Commission by insiders, including

(i) prescribing requirements respecting the reporting by insiders of any direct or indirect beneficial ownership of, or control or direction over, securities of a reporting issuer or changes in ownership, control or direction,

(ii) prescribing requirements respecting the reporting by insiders of any interest in or right or obligation associated with a related financial instrument or changes in such interests, rights or obligations,

(iii) prescribing requirements respecting the reporting by insiders of any agreement, arrangement or understanding which alters, directly or indirectly, an insider's economic interest in a security or an insider's economic exposure to a reporting issuer or changes in such agreements, arrangements or understandings, and

(iv) prescribing the circumstances when a person or company is deemed to have been an insider;

(cs) extending any requirements prescribed under clause (cr) to other persons or companies;

(ct) regulating investment funds and the distribution and trading of the securities of investment funds, including

(i) prescribing disclosure requirements in respect of investment funds and requiring or permitting the use of particular forms or types of additional offering or other documents in connection with the funds,

(ii) prescribing permitted investment policy and investment practices for investment funds and prohibiting or restricting certain investments or investment practices for investment funds,

(iii) prescribing requirements governing the custodianship of assets of investment funds,

(iv) prescribing minimum initial capital requirements for investment funds making a distribution and prohibiting or restricting the reimbursement of costs in connection with the organization of a fund,

(v) prescribing matters affecting investment funds that require the approval of security holders of the fund, the Commission or the Director, including, in the case of security holders, the level of approval,

(vi) prescribing requirements in respect of the calculation of the net asset value of investment funds,

(vii) prescribing requirements in respect of the content and use of sales literature, sales communications or advertising relating to investment funds or the securities of investment funds,

(viii) designating mutual funds as private mutual funds and prescribing requirements for private mutual funds,

(ix) respecting sales charges imposed by a distribution company or contractual plan service company under a contractual plan on purchasers of shares or units of an investment fund, and commissions or sales incentives to be paid to registrants in connection with the securities of an investment fund,

(x) prescribing the circumstances in which a planholder under a contractual plan has the right to withdraw from the contractual plan,

(xi) prescribing procedures applicable to investment funds, registrants and any other person or company in respect of sales and redemptions of investment fund securities and payments for sales and redemptions,

(xii) prescribing requirements in respect of, or in relation to, promoters, advisers or persons and companies who administer or participate in the administration of the affairs of investment funds, and

(xiii) regulating conflicts of interest between the interests of the investment fund and those of the investment fund manager;

(cu) respecting fees payable by an issuer to an adviser as consideration for investment advice, alone or together with administrative or management services provided to an investment fund;

(cv) prescribing requirements relating to the qualification of a registrant to act as an adviser to an investment fund;

(cw) regulating commodity pools, including

(i) prescribing disclosure requirements in respect of commodity pools and requiring or permitting the use of particular forms or types of offering or other documents in connection with commodity pools,

(ii) prescribing requirements in respect of, or in relation to, promoters, advisers, persons and companies who administer or participate in the administration of the affairs of commodity pools,

(iii) prescribing standards in relation to the suitability of investors in commodity pools,

(iv) prohibiting or restricting the payment of fees, commissions or compensation by commodity pools or holders of securities of commodity pools and restricting the reimbursement of costs in connection with the organization of commodity pools,

(v) prescribing requirements with respect to the voting rights of security holders, and

(vi) prescribing requirements in respect of the redemption of securities of a commodity pool;

(cx) relating or varying this Act in respect of derivatives, including

(i) providing exemptions from any requirement of this Act or the regulations,

(ii) prescribing disclosure requirements and requiring or prohibiting the use of particular forms or types of offering documents or other documents, and

(iii) prescribing requirements that apply to investment funds, commodity pools or other issuers;

(cy) varying this Act with respect to foreign issuers to facilitate distributions, compliance with requirements applicable or relating to reporting issuers and the making of take-over bids, issuer bids, insider bids, going-private transactions, business combinations and related party transactions where the foreign issuers are subject to requirements of the laws of other jurisdictions that the Commission considers are adequate in light of the purposes and principles of this Act;

(cz) prescribing requirements in respect of reverse take-overs including requirements for disclosure that are substantially equivalent to that provided by a prospectus;

(da) requiring or respecting the media, format, preparation, form, content, execution, certification, delivery, dissemination and other use, filing and review of all documents and information required under or governed by this Act or the regulations and all documents and information determined by the regulations to be ancillary to the documents and information, including

(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;
- (db) governing the approval of any document described in clause (da);
  - (dc) prescribing the circumstances in which persons or companies are deemed to have delivered or sent documents or information required under or governed by this Act or the regulations;
  - (dd) respecting the designation or recognition of any person, company or jurisdiction, if advisable, for the purpose of this Act, including
    - (i) recognizing stock exchanges, self-regulatory organizations and clearing agencies, and
    - (ii) designating a person or company for the purpose of the definitions of "insider", "mutual fund", "non-redeemable investment fund", or "reporting issuer" to be, or not to be, an insider, mutual fund, non-redeemable investment fund or reporting issuer;
  - (de) respecting the conduct of the Commission and its employees in relation to duties and responsibilities and discretionary powers under this Act, including
    - (i) the conduct of investigations and examinations carried out under Sections 27 to 29F, and
    - (ii) the conduct of hearings;
  - (df) prescribing the fees payable to the Commission, including those for filing, for applications for registration or exemptions, for trades in securities, in respect of audits made by the Commission, and in connection with the administration of Nova Scotia securities laws;
  - (dg) providing for electronic signatures for the signing of documents and prescribing the circumstances in which persons or companies are deemed to have signed or certified documents on an electronic or computer-based system for any purpose of this Act or the regulations;
  - (dh) regulating scholarship plans and the distribution and trading of the securities of scholarship plans;
  - (di) specifying the conditions under which any particular type of trade that would not otherwise be a distribution is a distribution;
  - (dj) permitting, requiring or varying this Act to permit or require methods of filing or delivery, to or by the Commission, issuers, registrants, security holders or others, of documents, information, notices, books, records, things, reports, orders, authorizations or other communications required under or governed by Nova Scotia securities laws;
  - (dk) providing for exemptions from or varying the requirements set out in Sections 137 to 146;
  - (dl) providing for exemptions from or varying the requirements of Section 67 or 70;
  - (dm) prescribing requirements in respect of amendments to prospectuses or preliminary prospectuses, including
    - (i) prescribing the circumstances in which an amendment to a preliminary prospectus or prospectus must be filed and delivered, and
    - (ii) establishing requirements to obtain a receipt for an amendment to a preliminary prospectus or prospectus;
  - (dn) prescribing requirements in connection with the first trade of securities previously acquired under an exemption from the prospectus requirement under this Act;

(do) prescribing documents for the purpose of the definition of “core document” in Section 146A;

(dp) providing for the application of Sections 146A to 146N to the acquisition of an issuer’s security pursuant to a distribution that is exempt from Section 58 or 67 and to the acquisition or disposition of an issuer’s security in connection with or pursuant to a take-over bid or issuer bid;

(dq) prescribing transactions or classes of transactions for the purpose of clause (d) of Section 146B;

(dr) prescribing, providing for exemptions from or varying any or all of the time periods in this Act or the regulations;

(ds) prescribing requirements with respect to the governance of reporting issuers for the purpose of Section 127C;

(dt) requiring reporting issuers to appoint audit committees and prescribing requirements relating to the functioning and responsibilities of audit committees, including requirements in respect of

(i) the standard of review to be applied by audit committees in their review of documents filed under Nova Scotia securities laws,

(ii) the certification or other evidence of review by audit committees,

(iii) the scope and content of an audit committee’s review, and

(iv) the composition of audit committees and the qualifications of audit committee members, including independence requirements;

(du) requiring reporting issuers to devise and maintain a system of internal controls related to the effectiveness and efficiency of their operations, including financial reporting and asset control, sufficient to provide reasonable assurances that

(i) transactions are executed in accordance with management’s general or specific authorization,

(ii) transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles or any other criteria applicable to those statements,

(iii) transactions are recorded as necessary to maintain accountability for assets,

(iv) access to assets is permitted only in accordance with management’s general or specific authorization, and

(v) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences;

(dv) requiring reporting issuers to devise and maintain disclosure controls and procedures sufficient to provide reasonable assurances that

(i) information required to be disclosed under Nova Scotia securities laws is recorded, processed, summarized and reported, within the time periods specified under Nova Scotia securities laws, and

(ii) information required to be disclosed under Nova Scotia securities laws is accumulated and communicated to the reporting issuer’s management, including its chief executive and financial officers, as appropriate, to allow timely decisions regarding required disclosure;

(dw) requiring chief executive officers and chief financial officers of reporting issuers, or persons performing similar functions, to provide a certification that addresses the reporting issuer’s internal controls, including a certification that addresses

(i) the establishment and maintenance of the internal controls,

- (ii) the design of the internal controls, and
  - (iii) the evaluation of the effectiveness of the internal controls;
- (dx) requiring chief executive officers and chief financial officers of reporting issuers, or persons performing similar functions, to provide a certification that addresses the reporting issuer's disclosure controls and procedures, including a certification that addresses
  - (i) the establishment and maintenance of the disclosure controls and procedures,
  - (ii) the design of the disclosure controls and procedures, and
  - (iii) the evaluation of the effectiveness of the disclosure controls and procedures;
- (dy) requiring investment funds to establish and maintain a body for the purpose described in Section 127D, prescribing its powers and duties and prescribing requirements relating to
  - (i) the mandate and functioning of the body,
  - (ii) the composition of the body and qualifications for membership on the body, including matters respecting the independence of members and the process for selecting the members,
  - (iii) the standard of care that applies to members of the body when exercising their powers, performing their duties and carrying out their responsibilities,
  - (iv) the disclosure of information to security holders of the investment fund, to the investment fund manager and to the Commission, and
  - (v) matters affecting the investment fund that require review by the body or the approval of the body;
- (dz) prescribing requirements for the certification of prospectuses by persons and companies in relation to the following:
  - (i) where the issuer is a trust, requiring individuals who perform functions for the issuer similar to those performed by a chief executive officer or chief financial officer of an issuer to certify the prospectus,
  - (ii) where the issuer is a trust and its business or a material part of its business is conducted through a person or company other than the issuer, requiring a director and the chief executive officer and the chief financial officer of the person or company, or individuals who perform functions for the person or company similar to those performed by a chief executive officer or chief financial officer, to certify the prospectus,
  - (iii) where the issuer is a limited partnership, requiring the general partner of the issuer and individuals who perform functions for the issuer similar to those performed by a chief executive officer or a chief financial officer of an issuer to certify the prospectus, and
  - (iv) where the issuer is not organized as a company, trust or limited partnership, requiring persons or companies that perform functions similar to those performed by persons or companies described in subclause (i), (ii) or (iii) or Section 63 to certify the prospectus;
- (ea) respecting the preparation, form and content requirements applicable to the public dissemination of forward-looking information by reporting issuers where the dissemination is not part of a required filing;
- (eb) in relation to those matters for which this Act refers to the regulations, prescribed matters or requirements or designations;
- (ec) 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; 2005, c. 26, s. 4; 2006, c. 46, s. 61; 2008, c. 32, s. 20.

## 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 Minister 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 Minister; and

(b) publish in the Royal Gazette, or on a website maintained by the Commission or in such other manner as the Commission deems appropriate, 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 Minister notifies the Commission that the Minister has disapproved the rule or if the Minister returns the rule to the Commission for further consideration, the rule is not effective until approved by the Minister.

(4) With the approval of the Minister, the time limit for the effective date of a rule may be abridged and the rule becomes effective on the date specified by the Minister.

(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; 2006, c. 46, s. 62; 2008, c. 32, s. 21.

## 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.

## Requirements of Minister

**150C** The Minister may, in writing, require the Commission to

- (a) provide such information about its activities and operations as requested by the Minister;
- (b) study and make recommendations in respect of any matter of a general nature or affecting this Act or the regulations; and
- (c) consider making a rule in respect of a matter specified by the Minister. 2006, c. 46, s. 63.

## Deemed licence fees

**150D** Any fees paid under the authority of this Act, the regulations or the rules for applications to the Commission or accompanying materials filed with the Commission before or after the coming into force of this Section are deemed to be licence fees for the purpose of raising a revenue for the Province as authorized by subsection 92(9) of the *Constitution Act, 1867*. 2007, c. 9, s. 40.

## 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 subsection (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 - July 15, 1991  
or repealed and re-enacted

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