

Editorial Note: Updated on March 31, 2004

**Securities Regulations
made pursuant to Section 150 of the
Securities Act
R.S.N.S. 1989, c. 418
O.I.C. 87-1171 (September 24, 1987), N.S. Reg. 201/87
as amended up to and including O.I.C. 96-173 (Mar. 26, 1996), N.S. Reg. 51/96**

Part I - General

1 These regulations may be cited as the Securities Regulations.

Interpretation

2 Every term used in these regulations that is

- (a) defined in Section 2 of the Act or defined in these regulations for the purpose of the Act is used in these regulations as so defined unless it is otherwise defined in these regulations or the context otherwise requires;
- (b) defined in Sections of the Act for purposes of those Sections, is used as so defined in those Sections of these regulations that relate to the subject matter of those Sections; and
- (c) defined only for a Part or Section of these regulations is, unless otherwise provided, so defined only for the purposes of such Part or Section.

Clause 2(a) amended: O.I.C. 91-815, N.S. Reg. 157/91.

3 (1) For the purpose of the Act,

- (a) "insurance company" means a person or company lawfully entitled to carry on the business of insurance, as defined in the Insurance Act, in the Province;
- (b) "loan company" means a company which is a member of the Canada Deposit Insurance Corporation, or other deposit insurance plan approved by the Commission for the purpose of this definition, and
 - (i) has obtained a certificate pursuant to Section 14 of the Loan Companies Act,
 - (ii) is a company incorporated by an Act of the Legislature of the Province to which the provisions of the Loan Companies Act which are referred to in subsection 5(2) of that Act are applicable by virtue of that subsection,
 - (iii) is a company incorporated under the Loan Companies Act (Canada) or an Act which is a successor to that Act or which replaces that Act,

- (iv) is a company which by a general order of the Commission issued pursuant to clause (3)(a) is prescribed to be a loan company, or
 - (v) is a company granted the status of a loan company by an order of the Commission issued pursuant to clause (3)(b); and
- (c) "trust company" means a company which is a member of the Canada Deposit Insurance Corporation, or other deposit insurance plan approved by the Commission for the purpose of this definition, and
- (i) has obtained a certificate pursuant to Section 12 of the Trust Companies Act,
 - (ii) is a company incorporated by Act of the Legislature of the Province to which the provisions of the Trust Companies Act which are referred to in subsection 3(2) of that Act are applicable by virtue of that subsection,
 - (iii) is a company incorporated under the Trust Companies Act (Canada) or an Act which is a successor to that Act or which replaces that Act,
 - (iv) is a company which by a general order of the Commission issued pursuant to clause (3)(a) is prescribed to be a trust company, or
 - (v) is a company granted the status of a trust company by an order of the Commission issued pursuant to clause (3)(b).

(2) In these regulations

- (a) "Act" means the Securities Act, as amended;
- (b) "debt security" means any bond, debenture, note or similar instrument representing indebtedness, whether secured or unsecured;
- (c) "finance company" means an issuer, its subsidiaries and affiliates that
 - (i) either
 - (A) has issued securities with respect to which a prospectus has been filed and a receipt obtained for it under the Act, or
 - (B) distributes its securities in the Province, without filing a prospectus with respect to that distribution, in reliance on the exemption in clause 41(2)(d) of the Act as it applies by virtue of clause 78(1)(a) of the Act, and
 - (ii) is an issuer, or a subsidiary or an affiliate of an issuer, a material

business activity of which involves

- (A) purchasing, discounting or otherwise acquiring promissory notes, acceptances, accounts receivable, bills of sale, chattel mortgages, conditional sales contracts, drafts and other obligations representing part or all of the sales price of merchandise or services,
- (B) factoring or purchasing and leasing personal property as part of a hire purchase or similar business, or
- (C) making secured and unsecured loans,

but does not include

- (iii) a bank, the Federal Business Development Bank, a trust company, a loan company or an insurance company,
- (iv) a credit union,
- (v) an underwriter or dealer, or
- (vi) any issuer that, in the opinion of the Director, carries on operations making it more appropriate that the issuer be designated as an industrial company or natural resource company;

- (d) "Form" means a Form prescribed in the Appendix to these regulations or by the Commission pursuant to Section 5;
- (e) "industrial company" means an issuer designated by the Director as an industrial company;
- (f) "licensed real estate broker" means a person or company that is licensed as a broker under the Real Estate Brokers' Licensing Act;
- (g) "licensed real estate salesman" means an individual who is licensed under the Real Estate Brokers' Licensing Act as a salesman of a licensed real estate broker;
- (h) "natural resource company" means a mining, gas, oil or exploration issuer designated by the Director as a natural resource company; and
- (i) "real estate oriented securities" mean securities in or issued by any person, other than an individual, formed and operated for the primary purpose of investment in specific real property and, without restricting the generality of the foregoing, includes securities in or issued by a limited or general partnership, joint venture, trust, unincorporated association, unincorporated syndicate or other unincorporated organization but for greater certainty does not include securities in or issued by a person formed and operated for the purpose of investment in a non-specific

property or a blind pool.

(3) The Commission may

- (a) by general order published in a publication of the Commission or in the Royal Gazette prescribe that a company described in the order is a loan company or a trust company for the purpose of the Act; and
- (b) by order, on the application of a company, grant the company the status of a loan company or a trust company for the purpose of the Act where the Commission is satisfied that to do so would not be prejudicial to the public interest, and may impose terms and conditions in any such order and may revoke or amend the same from time to time.

(4) Subject to subsection (5), for the purposes of the Act and the regulations,

- (a) where the terms “generally accepted accounting principles”, “auditor’s report” and “generally accepted auditing standards” are used in reference to a financial statement to which National Instrument 52-107 *Acceptable Accounting Principles, Auditing Standards and Reporting Currencies* applies, those terms have the meanings provided for in that Instrument; and
- (b) in all other cases, where a recommendation has been made in the Handbook of the Canadian Institute of Chartered Accountants which is applicable in the circumstances, the terms “generally accepted accounting principles”, “auditor’s report” and “generally accepted auditing standards” mean the principles, report and standards, respectively, recommended in the Handbook.

Subsection 3(4) amended effective March 30, 2004: Rule 52-107.

- (5) Except as otherwise provided in National Instrument 52-107 *Acceptable Accounting Principles, Auditing Standards and Reporting Currencies* and in National Instrument 71-101 *The Multijurisdictional Disclosure System*, where an issuer is incorporated or organized in a jurisdiction other than Canada or a province or territory of Canada, “generally accepted accounting principles” may, at the option of the issuer, mean such principles as prescribed in the incorporating jurisdiction by or pursuant to applicable legislation or where a recommendation has been made by an association in that jurisdiction equivalent to the Canadian Institute of Chartered Accountants, the principles recommended by that association, but where an option is exercised under this subsection, the notes to the financial statements shall state which option has been applied in the choice of generally accepted accounting principles.

Subsection 3(5) amended effective March 30, 2004: Rule 52-107.

- (6) Where an option is exercised pursuant to subsection (5), the notes to the financial statements shall state which option has been applied in the choice of generally accepted accounting principles.

Subsection 3(6) revoked effective March 30, 2004: Rule 52-107.

- (7) The use of future-oriented financial information in respect of an issuer shall be in accordance with the published policies of the Commission from time to time.

Section 3 replaced: O.I.C. 91-815, N.S. Reg. 157/91.

3A (1) A trade is specified to be a distribution if it is a distribution pursuant to Section 131.

- (2) An issuer which distributes securities pursuant to the exemption contained in clause 127(p) is hereby specified to be a reporting issuer from and after the date it made the distribution pursuant to that exemption whether such distribution occurred before or after this subsection comes into force.

Section 3A added: O.I.C. 91-815, N.S. Reg. 157/91.

4 (1) Where the Act or these regulations require the disclosure of the number or percentage of securities beneficially owned by a person and, by virtue of subsection 2(5) of the Act, one or more companies will also have to be shown as beneficially owning the securities, a statement

- (a) disclosing all the securities beneficially owned or deemed to be beneficially owned by the person;
- (b) indicating whether the ownership is direct or indirect;
- (c) if ownership is indirect, indicating the name of the controlled company or company affiliated with the controlled company through which the securities are indirectly owned and the number or percentage of the securities so owned by the company,

is deemed to be sufficient disclosure without disclosing the name of any other company which is deemed to beneficially own the same securities.

(2) Where the Act or these regulations require the disclosure of the number or percentage of securities beneficially owned by a company and by virtue of subsection 2(6) of the Act, one or more other companies will also have to be shown as beneficially owning the securities, a statement

- (a) disclosing all securities beneficially owned or deemed to be beneficially owned by the parent company;
- (b) indicating whether the ownership is direct or indirect; and
- (c) if ownership is indirect, indicating the name of the subsidiary through which the securities are indirectly owned and the number or percentage of the securities so owned;

is deemed to be sufficient disclosure without disclosing the name of any other company which is deemed to beneficially own the same securities.

(3) A company is deemed to be another's holding company or parent company if that other is its subsidiary.

5 (1) The Commission shall have the power to amend from time to time any Form and

to prescribe new Forms to be used in circumstances designated by the Commission.

Subsection 5(1) amended: O.I.C. 91-815, N.S. Reg. 157/91.

- (2) The Director or the Commission may vary the requirements of any Form or document required to be prepared in accordance with any Form which is required to be filed with him or it, as the case may be, in any particular instance if in his or its opinion such variation is necessary in order to achieve or better achieve the purpose or objective for which the Form was designed or it is otherwise suitable that the Form be varied in the circumstances.
- (3) The Commission may prescribe alternative Forms of certificates from those set out in subsections 63(1) and (2) and 64(1) of the Act and the circumstances in which those alternative Forms of certificates may or shall be used.

Subsection 5(3) added: O.I.C. 91-815, N.S. Reg. 157/91.

- 6 (1) The oath or affirmation referred to in subsection 4(3) of the Act shall be sworn before a Nova Scotia Judge, Barrister, Solicitor, Commissioner of Oaths, Notary Public or such other person as the Minister may determine.
- (2) The oath or affirmation referred to in subsection (1) is prescribed to be as follows:

I, _____ solemnly and sincerely (swear/ affirm) that I will faithfully and honestly fulfill the duties that devolve upon me by reason of my office and that I will not, without due authority in that behalf, disclose or make known any matter that comes to my knowledge by reason of such office. (So help me God).

- 7 Where these regulations specify that the Commission has any power or duty which the Act designates to be a power or duty of the Director, these regulations shall, where so specified, constitute an assignment of the power or duty to the Commission from the Director.

Subsection 7(1) renumbered as Section 7: O.I.C. 91-815, N.S. Reg. 157/91

Subsection 7(2) repealed: O.I.C. 91-815, N.S. Reg. 157/91.

Financial statements

- 8 (1) Subject to subsections (3) and (4), the financial statements permitted or required by the Act or these regulations are to be prepared in accordance with
 - (a) generally accepted accounting principles; and
 - (b) any applicable provision of the Act or these regulations.
- (2) Every report by an auditor on a financial statement required by the Act or these regulations is to be prepared in accordance with
 - (a) generally accepted auditing standards; and
 - (b) any applicable provision of the Act or these regulations.
- (3) Where the issuer is

- (a) a bank; or
- (b) an insurance company that undertakes the transacting of life insurance;

the financial statements of the bank or insurance company are not required to comply with subsection (1) if the financial statements are prepared in accordance with

- (a) a statute incorporating, continuing or governing the bank or insurance company; and
- (b) any applicable generally accepted accounting principles.

Clause 8(3)(a) amended: O.I.C. 91-815, N.S. Reg. 157/91.

Subsection 8(3) revoked effective March 30, 2004: Rule 52-107.

- (4) Notwithstanding subsection (1), where a financial statement is not prepared in accordance with generally accepted accounting principles
 - (a) the Director may accept the financial statement for the purposes for which it is to be filed
 - (i) where the Director is satisfied that it is not reasonably practicable for the issuer to revise the presentation in the financial statement to conform to generally accepted accounting principles, or
 - (ii) where the Commission
 - (A) by its order under clause (b) has previously accepted a financial statement of the same issuer with corresponding variation from generally accepted accounting principles, and
 - (B) the Director is satisfied that there has been no material change in the circumstances on which the decision of the Commission was based; or
 - (b) the Commission may by order, accept the financial statement after giving interested parties an opportunity to be heard if the Commission is satisfied in all the circumstances of the particular case that the variation from generally accepted accounting principles is supported or justified by considerations that outweigh the desirability of uniform adherence to generally accepted accounting principles.
- (5) The Commission shall publish written reasons for any acceptance of financial statements pursuant to clause (4)(b).
- (6) Except where expressly provided otherwise in the Act or in these regulations, each financial statement prepared under a requirement of the Act or these regulations is to include an auditor's report on the statement.
- (7) It is not necessary to designate the financial statements referred to in the Act or these regulations as the income statement, statement of retained earnings,

statement of changes in financial position, balance sheet, statement of investment portfolio, statement of portfolio transactions or statement of changes in net assets.

Subsection 8(7) amended: O.I.C. 91-815, N.S. Reg. 157/91.

- (8) Notwithstanding these regulations, it is not necessary to state in a financial statement any matter that in all the circumstances is of relative insignificance.

Document execution and certification

9 Except as otherwise provided in the Act or in Sections 148, 161 or 169,

(a) every document required or permitted to be filed with the Commission or the Director by an individual that is required to be signed or certified shall

- (i) be manually signed, and
- (ii) include below the signature the name of the individual in typewritten or printed form;

(b) subject to clause (c), every document required or permitted to be filed with the Commission or the Director by a company or person, other than an individual, that is required to be signed or certified shall

- (i) be manually signed by an officer or director of the company or person or, subject to clause (d), by the attorney or agent of that person or company, and
- (ii) include below the signature, the name of the officer, director, attorney or agent in a typewritten or printed form;

(c) where a partner signs or certifies on behalf of a professional partnership, the partner is not required to sign his name but if an individual other than a partner signs or certifies

- (i) the individual shall sign his name manually, and
- (ii) the name of the individual shall be included below his signature in typewritten or printed form, and

(d) where a document required or permitted to be filed with the Commission or the Director by an individual, company or person, has been executed by an attorney or agent of the individual, company or person, a duly completed power of attorney or document of authority authorizing the signing of the document shall be filed with the document unless the Director permits the filing of the document without the power of attorney or document of authority.

Coming into force

10 These regulations come into force on the earliest day on which any part of the Act comes into force and shall be effective from that date, unless specified otherwise

herein.

Part II - Registration requirements

Interpretation

11 (1) In this Part

- (a) "active assets" means money and the market value of assets readily convertible into money;
- (b) "adjusted liabilities" means total liabilities plus, where the securities accounts of the registrant are kept on a settlement date basis, any unrecorded securities purchase commitments minus, without duplication, the sum of:
 - (i) cash,
 - (ii) money on deposit in a client's trust account,
 - (iii) any amounts deposited by the registrant pursuant to a compensation fund or contingency trust fund established pursuant to Section 27,
 - (iv) the cash surrender value of life insurance where the registrant is the beneficiary,
 - (v) the market value of any securities that the registrant owns or has contracted to purchase, and that, in either case, have a margin rate of 5% or less,
 - (vi) interest accrued to the registrant with respect to the securities mentioned in clause (v),
 - (vii) the sale price of securities for which the registrant has a sales commitment to a financial institution,
 - (viii) any debit balances with any financial institution, and
 - (ix) the market value of securities that have a margin rate of 5% or less that are
 - (A) included in non-segregated accounts of clients, partners, shareholders or dealers, or
 - (B) held as collateral for secured loans receivable,

not exceeding the debit balance of the account or the secured loan receivable;

- (c) subject to subsections (2) and 18(3), "anniversary date" means the day and month on which the current registration or renewal of registration was

granted, but where any doubt exists, such date shall be determined by the Director;

- (d) "Canadian Investment Finance Course" means a course prepared and conducted by the Canadian Securities Institute and so designated by that Institute;
- (e) "Canadian Investment Funds Course" means a course prepared and conducted by the Education Division of The Investment Funds Institute of Canada and so designated by that Institute;
- (f) "Canadian Securities Course" means a course prepared and conducted by the Canadian Securities Institute and so designated by that Institute;
- (g) "capital" means moneys raised through the issuance of shares, certificates, bonds, debentures, long-term notes or any other long-term obligation, contributed or earned surplus and reserves;
- (h) "Chartered Financial Analysts Course" means a course prepared and conducted by the Association for Investment Management and Research and so designated by that Association;

Clause 11(1)(h) replaced: O.I.C. 91-815, N.S. Reg. 157/91.

- (i) "client's trust account" means a trust account maintained by a registrant with
 - (i) a bank to which the Bank Act (Canada) applies, or
 - (ii) a trust company,and designated as a client's trust account;
- (j) "financial institution" means
 - (i) the Government of Canada, the government of any province or territory of Canada, any municipal corporation, Crown corporation, Crown agency or public board or commission in Canada,
 - (ii) the Bank of Canada, a bank to which the Bank Act (Canada) applies, any Quebec Savings bank and the pension funds of those banks,
 - (iii) a trust company, a loan company or an insurance company if the company
 - (A) is licensed to do business in Canada, and
 - (B) has a minimum paid up capital and surplus of \$5,000,000;

and the pension funds of those corporations or companies provided that for the purpose of this subclause a company which does not carry on business in Nova Scotia and would be a trust company, a loan company or an insurance company if it were registered under the Corporations Registration Act, shall be deemed to be a trust company, loan company or insurance company, as the case may be,

- (iv) a credit union with a minimum paid up capital and surplus of \$5,000,000,
- (v) a mutual fund with net assets of \$5,000,000, and
- (vi) a company, other than a dealer, that
 - (A) has a minimum net worth of \$25,000,000 on the last audited balance sheet, and
 - (B) whose balance sheet is available for inspection by the Commission,

and any trusteed pension plan of that company;

- (k) "free credit balances" includes moneys received from, or held for the account of, clients by a registrant
 - (i) for investment pending the investment and payment for securities purchased by the clients from or through the registrant where
 - (A) the registrant does not own those securities at the time of purchase, or
 - (B) has not purchased them on behalf of the client, pending the purchase of them by the registrant, and
 - (ii) as proceeds of securities purchased from clients or sold by the registrant for the account of clients where securities have been delivered to the registrant but payment has not been made pending payment of those proceeds to the clients;
- (l) "liquid capital" means the amount by which active assets exceed the sum of
 - (i) total liabilities, and
 - (ii) where the securities accounts of the registrant are recorded on a settlement date basis, any net loss on offsetting future purchase and sales commitments of securities,

and the amount of liquid capital may be increased by adding

- (iii) the loan value of any securities delivered pursuant to a subordinated loan agreement in the form prescribed by the Commission that are not included in the accounts,
- (iv) non-current liabilities fully secured by mortgages on real estate owned by the registrant, and
- (v) obligations for outstanding instalments due to natural resource

companies whose securities the registrant is in the process of distributing under a prospectus filed in accordance with the Act;

- (m) "loan value" means the market value of securities less the applicable margin requirements;
- (n) "margin", "margin agreement", "margin deficiency", "margin rate" and "margin requirements" mean,
 - (i) subject to subclause (ii), the provisions in that regard determined pursuant to the by-laws of The Toronto Stock Exchange, or
 - (ii) where used with respect to commodity futures contracts or cash commodities, the provisions in that regard prescribed from time to time under the Commodity Futures Act of Ontario;
- (o) "market value", where used with respect to
 - (i) a commodity futures contract, means the settlement price on the relevant date or last trading day prior to the relevant date,
 - (ii) a security means,
 - (A) where the security is listed and posted for trading on a stock exchange,
 - (I) the bid price, or
 - (II) if the security is sold short, the ask price,

as shown on the exchange quotation sheets as of the close of business on the relevant date or last trading date prior to the relevant date, as the case may be, subject to an appropriate adjustment where an unusually large or unusually small quantity of securities is being valued, or

- (B) where the security is not listed and posted for trading on a stock exchange, a value determined in accordance with Section 12;
- (p) "material change in ownership", with respect to a registrant, includes any material change in beneficial ownership of
 - (i) the registrant, or
 - (ii) any person or company that directly or indirectly controls capital of the registrant;
- (q) "minimum free capital" means the applicable amount determined in accordance with Section 23;
- (r) "net free capital" means liquid capital after deducting
 - (i) the amount required to provide full margin for

- (A) cash commodities, other than with respect to securities, owned by the registrant,
 - (B) firm commodity futures trading accounts, and
 - (C) securities owned by the registrant and securities sold short by the registrant,
- (ii) the amount sufficient to provide for any margin deficiencies on
- (A) secured loans receivable,
 - (B) clients' accounts with respect to commodity futures,
 - (C) joint accounts after excluding any interest of any member of the Toronto Stock Exchange, Montreal Exchange, the Investment Dealers' Association of Canada and any financial institution,
 - (D) accounts of partners and shareholders,
 - (E) accounts of clients and dealers, except
 - (I) bona fide cash settlement accounts with any member of the Toronto Stock Exchange, the Montreal Exchange, the Vancouver Stock Exchange, the Alberta Stock Exchange, the New York Stock Exchange, the American Stock Exchange and the Investment Dealer's Association of Canada,
 - (II) accounts with a financial institution, and
 - (III) bona fide cash settlement accounts,

that have not been outstanding more than ten days past the normal settlement date, where the shares have been available for delivery, and not more than twenty-one days past the normal settlement date in any other case,

- (F) secured loans payable by the registrant if the collateral is held by other than the registrant or a financial institution,
 - (G) where the securities accounts of the registrant are kept on a settlement date basis, future purchase and sales commitments not included in the calculation of liquid capital, and
 - (H) any other liquid capital items;
- (s) "Partners', Directors', and Senior Officers' Qualifying Examination" means an examination prepared and conducted by the Canadian Securities Institute and so designated by that Institute;

Clause 11(1)(t) repealed: O.I.C. 91-815, N.S. Reg. 157/91.

- (u) "Registered Representative Examination" means an examination based on the Manual for Registered Representatives that has been prepared and conducted by the Canadian Securities Institute and so designated by that Institute;
 - (v) "total liabilities" means all liabilities including
 - (i) adequate provision for income taxes, and
 - (ii) other accruals,but excluding
 - (iii) debts the payment of which is postponed in favour of other creditors pursuant to a subordination agreement in a form approved by the Commission, and
 - (iv) deferred income taxes relating to non-active assets; and
 - (w) "working capital" means the excess of current assets over current liabilities.
- (2) Every registration referred to in subsection 152(1) of the Act shall be deemed to have been made or issued under the Act on the day on which it was made or issued pursuant to Chapter 418 of the Revised Statutes of Nova Scotia, 1989, the Securities Act.
- 12 (1)** Subject to subsections (2) to (4), the market value of a security not listed and posted for trading on a stock exchange shall be determined by assigning a reasonable value on the basis of values shown on
- (a) published market reports; or
 - (b) inter-dealer quotation sheets;

on the relevant date or last trading day prior to the relevant date.

- (2) The registrant may vary a value from that shown on published market reports or inter-dealer quotation sheets where, in light of all the circumstances, some other value would be more appropriate.
- (3) The Director may require that a different value from that determined under subsection (1) or (2) be assigned, where in light of all the circumstances and in his opinion, some other value would be more appropriate.
- (4) Where no published market report or inter-dealer quotation sheet exists with respect to the security, the security shall be assigned a market value of zero unless the Director agrees otherwise.

Categories of registration - dealers

- 13** Every registrant who is a dealer shall be classified into one or more of the following categories:

- (a) a broker, being a person or company that
 - (i) is registered to trade in securities in the capacity of an agent or principal, and
 - (ii) is a member of a stock exchange recognized by the Commission for the purpose;
- (b) an investment dealer, being a person or company that
 - (i) is a member, branch office member or associate member of the Atlantic District of the Investment Dealer's Association of Canada, and
 - (ii) engages either for the whole or part of his or its time in the business of trading in securities in the capacity of an agent or principal;
- (c) a mutual fund dealer, being a person or company registered exclusively for the purpose of trading in the shares or units of mutual funds;
- (d) a scholarship plan dealer, being a person or company registered exclusively for the purpose of trading in the securities of a scholarship or educational plan or trust;
- (e) a real estate securities dealer, being a person or company that
 - (i) is registered exclusively for the purpose of trading in real estate oriented securities, and
 - (ii) engages either for the whole or part of his or its time in the business of trading in such securities in the capacity of an agent or principal;
- (f) a securities dealer, being a person or company that
 - (i) is registered for trading in securities, and
 - (ii) engages either for the whole or part of his or its time in the business of trading in securities in the capacity of an agent or principal;
- (g) a security issuer, being an issuer registered for trading in securities for the purpose of distributing securities of its own issue exclusively for its own account.

Categories of registration - advisers

14 Every registrant who is an adviser shall be classified into one or more of the following categories:

- (a) an investment counsel, being a person or company that
 - (i) engages in or holds himself or itself out as engaging in the business of advising others as to the investing in or the buying or selling of specific securities, or

- (ii) is primarily engaged in giving continuous advice as to the investment of funds on the basis of the particular objectives of each client;
- (b) a portfolio manager, being a person or company registered for the purpose of managing the investment portfolio of clients through discretionary authority granted by one or more clients;
- (c) a securities adviser, being a person or company that holds himself or itself out as
 - (i) engaging in the business of advising others, either through direct advice or through publications or writings, as to the investing in or the buying or selling of specific securities, and
 - (ii) not purporting to tailor his or its advice to the needs of specific clients.

Restrictions on registrant entitlement

- 15 (1)** Without restricting the Director's discretion to impose further terms and conditions pursuant to subsection 32(2) of the Act and subject as otherwise provided in these regulations,
- (a) a registrant registered as a mutual fund dealer, a scholarship plan dealer, a real estate securities dealer or a security issuer shall, by virtue of such registration, secure only the right to trade in the securities or class of securities in respect of which the registrant is registered; and
 - (b) a registrant registered as an adviser shall, by virtue of such registration, secure only the right to engage in the business or activity referred to in the category in Section 14 in respect of which he or it is registered.
- (2)** For greater certainty, notwithstanding any other provision of these regulations but subject to any terms or conditions which may be imposed by the Director pursuant to subsection 32(2) of the Act, a registrant who is a broker, an investment dealer or a securities dealer is deemed to also be registered for the purpose of trading in securities in which a mutual fund dealer, a scholarship plan dealer and a real estate securities dealer are entitled to trade.

Deemed registration

Underwriter, security issuer and adviser

- 16 (1)** Every person or company granted registration as a broker, an investment dealer or a securities dealer is deemed to have been granted registration as an underwriter.
- (2)** Subject to subsection (4), every person or company granted registration as a real estate securities dealer is deemed to have been granted registration as an underwriter in connection with the distribution of real estate oriented securities.

- (3) Subject to subsection (4), every person, other than an individual, granted registration as a real estate securities dealer is deemed to be registered as a security issuer for the purpose of distributing real estate oriented securities of its own issue.
 - (4) If a registered real estate securities dealer intends to rely and as often as he or it intends to rely on subsection (2) or (3) he or it shall give the Director thirty days prior written notice of the proposed distribution in respect of which he or it intends to place such reliance and prior to commencing such distribution
 - (a) shall provide the Director with such information with respect to the proposed distribution as the Director may require; and
 - (b) satisfy such terms and conditions with respect to the proposed distribution as the Director may impose pursuant to subsection 32(2) of the Act, including, without limiting the generality of the foregoing,
 - (i) the period within which such distribution must occur,
 - (ii) if a minimum level of proceeds is required to be generated by the distribution in order to reasonably achieve the purpose of the distribution or if the Director is of the opinion that a minimum level of proceeds is required to be generated by the distribution in order to reasonably achieve the purpose of the distribution, then in either such event, trust arrangements satisfactory to the Director are adhered to, and
 - (iii) the nature and type of disclosure of any relationship between the issuer of the securities and the real estate securities dealer which shall be required to be made to the customers and clients of the real estate securities dealer.
 - (5) Subject to such terms and conditions as the Director may impose pursuant to subsection 32(2) of the Act at the time of granting registration, every person granted registration as a real estate securities dealer is deemed to have been granted registration as an investment counsel but only with respect to advising others as to the investing in or the buying or selling of real estate oriented securities.
- 17 (1)** Where Section 77 is applicable and the provisions of that Section have been complied with, the provisions of this Part as they relate to a portfolio manager do not apply to an investment dealer acting as a portfolio manager.

- (2) Subject to subsection (1), the provisions of this Part which apply to an investment counsel shall also apply to a portfolio manager.

Subsection 17(2) replaced; Subsection 17(3) repealed: O.I.C. 89-968, N.S. Reg. 167/89.

Conditions of registration

General

- 18 (1)** Subject to subsection (3), no registration or renewal of registration shall be

granted unless the applicant has complied with the applicable requirements of this Part at the time of the granting of the registration or renewal of registration.

- (2) Each registrant shall comply with the applicable requirements of this Part and the Commission shall take into consideration any failure to do so in any proceedings under Section 33 of the Act.
- (3) If the anniversary date of a registration referred to in subsection 152(1) of the Act occurs, by virtue of subsection 11(2) or this subsection as it applied on October 15, 1987, whichever is applicable, prior to the 15th day of October, 1988, the Director may, if he is satisfied that to do so would not be prejudicial to the public interest, grant, from time to time, subject to such terms and conditions as he may impose, an extension or extensions of such registration for a period which expires not later than the 31st day of December, 1988, or such later date which the Commission may specify in a publication published by it or in the Royal Gazette in which event the day following the last day of the period for which the latest extension was granted shall thereafter be deemed to be the anniversary date of the registration.

Subsection 18(3) replaced: O.I.C. 88-1022, N.S. Reg. 201/88.

- (4) Every registrant shall be and remain registered and in good standing under the Corporations Registration Act or the Partnerships and Business Names Registration Act, as applicable.
- 19** (1) No registrant or partner, officer or associate of a registrant shall have a direct or indirect interest in any other registrant without the approval of the Director.
- (2) For the purposes of subsection (1), affiliated companies shall be treated as one company.
- 20** (1) The Commission may prescribe conditions of registration for a person or company or group of persons or companies that are in lieu of some or all of the conditions of registration prescribed in this Part where it
- (a) gives prior notice of the proposed conditions to registrants affected;
 - (b) affords the registrants an opportunity to be heard; and
 - (c) publishes notice in a publication published by the Commission or in the Royal Gazette of each instance when it so prescribes.
- (2) The Commission may, upon the application of a person or company, rule that a person or company is not subject to some or all of the conditions of registration prescribed in this Part where it is satisfied that to do so would not be prejudicial to the public interest, and may impose such terms and conditions as it considers necessary.

Section 20 replaced: O.I.C. 91-815, N.S. Reg. 157/91.

- 21** Every registered dealer that is a reporting issuer shall comply with the applicable conditions of registration under the Act and these regulations.
- 22** (1) Subject to subsections (3) to (5), every person or company registered as a dealer, underwriter or adviser shall establish and maintain a business office in Nova

Scotia.

- (2) The manager of the business office referred to in subsection (1) shall be
 - (a) a permanent resident of Nova Scotia; and
 - (b) approved by the Director.
- (3) When registration is restricted to dealing with institutional clients, a person or company may be registered as an investment counsel and is not required to
 - (a) maintain a business office in Nova Scotia; or
 - (b) have a manager who is a permanent resident of Nova Scotia.
- (4) When registration is restricted to dealing with clients only through a registered dealer, a person or company may be registered as a portfolio manager and is not required to
 - (a) maintain a business office in Nova Scotia; or
 - (b) have a manager who is a permanent resident of Nova Scotia.
- (5) A real estate securities dealer that shares office premises with a licensed real estate broker which is an associate or affiliate of the real estate securities dealer is deemed to comply with subsection (1) if
 - (a) an area of the shared premises is set aside for the securities business; and
 - (b) the securities records are maintained separately from the records of the licensed real estate broker in a manner which is convenient for auditing.

Capital requirements

- 23** (1) Every dealer, other than a securities issuer, shall maintain a minimum free capital equal to the aggregate of
- (a) the maximum amount, if any, that is deductible under any clause of the bonding or insurance policy required under Section 24 plus the greater of
 - (i) \$25,000, and
 - (ii) an amount equal to the sum of
 - (A) 10% of the first \$2,500,000 of adjusted liabilities,
 - (B) 8% of the next \$2,500,000 of adjusted liabilities,
 - (C) 7% of the next \$2,500,000 of adjusted liabilities,
 - (D) 6% of the next \$2,500,000 of adjusted liabilities, and
 - (E) 5% of adjusted liabilities in excess of \$10,000,000.
- (2) Every adviser shall maintain a minimum free capital equal to the aggregate of
- (a) the maximum amount, if any, that is deductible under any clause of the bonding or insurance policy required under Section 24; and

- (b) either
 - (i) \$5,000 of working capital calculated in accordance with generally accepted accounting principles, or
 - (ii) any greater amount that the Director considers necessary where the adviser exercises control over clients' funds or securities, except [that] this subsection does not apply to an adviser who provides written or published advice if the adviser exercises no control over clients' funds or securities and does not give investment advice or purport to give investment advice tailored to the needs of specific clients.
- (3) Every underwriter shall maintain a minimum free capital equal to the aggregate of
 - (a) the maximum amount, if any, that is deductible under any clause of the bonding or insurance policy required under Section 24; plus
 - (b) \$10,000 of the net free capital calculated in accordance with Form 9.
- (4) In clause (1)(a), \$25,000 means,
 - (a) where it applies to a mutual fund dealer, a scholarship plan dealer or a real estate securities dealer, \$25,000 of working capital calculated in accordance with generally accepted accounting principles; and
 - (b) where it applies to any other category of dealer other than a securities issuer, \$25,000 of net free capital calculated in accordance with Form 9.
- (5) The Director may require, as a condition of registration or renewal of registration of a securities dealer or real estate securities dealer that the manager or other officer of the dealer resident in Nova Scotia
 - (a) has contributed by way of share capital, contributed surplus, partners' capital or subordinated loan to the dealer an amount which is not less than 51% of the required minimum free capital of the dealer, and
 - (b) if the dealer is incorporated, beneficially holds voting securities of the dealer which carry more than 50% of the votes for the election of directors or if the dealer is not incorporated, has the right to appoint the senior management of the dealer.

Bonding

- 24 (1)** Except where the Director is satisfied in a particular case that reduced or no coverage would not be prejudicial to the public interest, every dealer, other than a mutual fund dealer and a security issuer, shall maintain bonding or insurance, by means of a broker's blanket bond on terms acceptable to the Director, in an amount of not less than
- (a) \$200,000; or

- (b) any larger amount that is indicated to be necessary by the resolution mentioned in subsection (4).
- (2) Every mutual fund dealer shall maintain bonding or insurance, on terms acceptable to the Director,
 - (a) for employees, in an amount not less than
 - (i) \$50,000 for each employee, or
 - (ii) any larger amount that is indicated to be necessary by the resolution mentioned in subsection (4); and
 - (b) for the mutual fund dealer, in an amount to be determined by the Director.
- (3) Except where the Director is satisfied in a particular case that reduced or no coverage would not be prejudicial to the public interest, every security issuer, every adviser and every underwriter shall maintain bonding or insurance, on terms acceptable to the Director, in an amount of not less than
 - (a) \$10,000; or
 - (b) any larger amount that is indicated to be necessary by the resolution mentioned in subsection (4).
- (4) Every person or company applying for registration or renewal of registration as a dealer, adviser or underwriter shall deliver to the Director, with the application, a certified copy of a resolution of its directors stating that full consideration has been given to the amount of bonding or insurance necessary to cover insurable risks in the business of the applicant and that either
 - (a) the minimum amount of coverage required by these regulations is sufficient; or
 - (b) the minimum amount of coverage required by these regulations is not sufficient but that an indicated amount of coverage would be sufficient.
- (5) The Director shall not grant a registration or renewal of registration where in his opinion
 - (a) the minimum amount of bonding or insurance required by these regulations; or
 - (b) where a larger amount is indicated in a certified copy of a resolution referred to in subsection (4), the amount stated in the resolution,

is not sufficient.

- (6) The Director may exempt registrants who are members of
 - (a) the Atlantic District of the Investment Dealers' Association of Canada; or
 - (b) any stock exchange in Canada recognized by the Commission for the purpose,

from compliance with subsection (4) where the Director is satisfied that the registrant is

subject to requirements imposed by one of those organizations that provide protection for clients that is at least equal to that under subsection (4).

25 Every registrant shall immediately notify the Director in writing of

- (a) any change in; or
- (b) claim made under,

the provisions of any bond or insurance policy maintained pursuant to the requirements of this Part.

26 (1) A bond maintained pursuant to the requirements of this Part which is payable to the Minister of Finance for the Province of Nova Scotia shall be forfeited and the amount of it shall become due and owing by the person or company bound by it as a debt to Her Majesty in right of the Province of Nova Scotia where

- (a) any person or company or any partner in case of a partnership, or any officer or employee of any of them, with respect to whose conduct the bond is conditioned has been convicted of an offence
 - (i) under the Act or these regulations,
 - (ii) involving fraud or theft or conspiracy to commit an offence involving fraud or theft under the Criminal Code, or
 - (iii) in connection with a transaction relating to securities under the Criminal Code;
- (b) a judgment based on a finding of fraud is given against any person or company or any partner in the case of a partnership, registrant or any officer or employee of them, with respect to whose conduct the bond is conditioned; or
- (c) any person or company or any partner in the case of a partnership or any officer or employee of any of them, with respect to whose conduct the bond is conditioned makes an assignment under the Bankruptcy Act (Canada), is subject to a receiving order under the Bankruptcy Act (Canada), makes a proposal under the Bankruptcy Act (Canada) or, in the case of a company, is subject to a winding-up order under the Companies Winding-Up Act or Winding-up Act (Canada),

and that conviction, judgment or in the case of clause (c), where the event therein described is an order, that order has become final by reason of the lapse of time or is confirmed by the highest court to which an appeal may be taken.

- (2) A bond referred to in subsection (1) may be cancelled by any person bound under it by giving to the Director at least three months notice in writing of intention to cancel.
- (3) Subject to subsection (4), a bond referred to in subsection (2) is deemed to be cancelled on the date stated in the notice, which date shall be not less than three

months after the receipt of the notice by the Director.

- (4) A bond referred to in subsection (1) shall continue in force and be subject to enforcement and realization with respect to acts or omissions which occurred prior to the cancellation of the bond for a period of two years after
- (a) the lapse or cancellation of the registration to which it relates; or
 - (b) the cancellation of the bond,

whichever occurs first and any collateral security posted in support of the bond shall remain on deposit for a similar period of time.

- (5) Where a bond referred to in subsection (1) is secured by the deposit of collateral security with the Minister of Finance and is forfeited, the Governor in Council may, but shall not be obligated to, direct the Minister of Finance to sell the collateral security at the market value thereof by private contract or public sale.
- (6) Where by virtue of this section a debt becomes due and owing to Her Majesty in right of the Province of Nova Scotia, the Commission may, on behalf of Her Majesty in the right of the Province of Nova Scotia, take any legal proceedings to recover the debt that it considers fit including proceedings under
- (a) the Bankruptcy Act (Canada);
 - (b) the Judicature Act;
 - (c) the Companies Winding-up Act; or
 - (d) the Winding-up Act (Canada),

or any other statute of Canada, Nova Scotia or any other province of Canada which the Commission considers appropriate for appointment of an interim receiver, custodian, trustee, receiver, liquidator or similar official, as the case may be.

- (7) The Governor in Council may direct the Minister of Finance
- (a) to assign any bond referred to in subclause [subsection] (1) which is forfeited and transfer any collateral security posted in support thereof;
 - (b) to pay over any moneys recovered under that bond; and
 - (c) to pay over any moneys realized from the sale of the collateral security pursuant to subsection (5);

to

- (d) the local Prothonotary of the Supreme Court, Trial Division in trust for those persons and companies that may become judgment creditors of the person or company with respect to whose conduct the bond is conditioned; or
- (e) any trustee, custodian, interim receiver, receiver, liquidator or similar official of the person or company with respect to whose conduct the bond is conditioned,

as the case may be.

- (8) An assignment or payment over directed pursuant to subsection (7) shall be in accordance with and on conditions set forth in any order of the Governor in Council.
- (9) Where
 - (a) a bond referred to in subsection (1) has been forfeited by reason of a conviction or judgment referred to in clause (1)(a) or (b); and
 - (b) the Commission has not received notice in writing of any claim against the proceeds of the bond or any collateral security posted in support of the bond or of those portions of such proceeds that remain in the possession of the Minister of Finance within two years after
 - (i) the conviction or judgment having become final, or
 - (ii) the registrant with respect to whom the bond was furnished ceasing to carry on business,

the Governor in Council may direct the Minister of Finance to pay those proceeds or portion of them to any person or company or to any person who on forfeiture of the bond made any payments under it, after first deducting the amount of any expenses that have been incurred by the Commission or the Province of Nova Scotia in connection with any investigation or any expenses otherwise relating to that person or company.

- (10) If the Director finds acceptable the terms of a bond which is payable to the Minister of Finance for the Province of Nova Scotia which are inconsistent with the provisions of subsections (1), (2), (3) or (4) then the terms of the bond shall apply to the extent that they are inconsistent with those subsections.

Contingency fund

- 27** (1) Every dealer, other than a security issuer, shall participate in a compensation fund or contingency trust fund that is
- (a) approved by the Commission; and
 - (b) established by
 - (i) a stock exchange recognized by the Commission for the purpose,
 - (ii) the Investment Dealers' Association of Canada, or
 - (iii) a trust company.
- (2) The Commission may vary the amount required to be contributed to the fund referred to in subsection (1) by any participant where in its opinion it would not be prejudicial to the public interest to do so, but only where the variation is published by the Commission in a publication published by it or in the Royal Gazette prior to the variation taking effect.

- 28** At the request of the Commission, a registrant shall enter into a subordination agreement in the form required by the Commission.
- 29** The financial statement and reports required pursuant to Sections 52 to 55 inclusive shall be reported on by a person who is
- (a) acceptable to the Commission; and
 - (b) the auditor of the registrant or an accountant eligible for appointment as the auditor of the registrant.

Record keeping

- 30 (1)** Every registrant shall maintain books and records necessary to record properly its business transactions and financial affairs.
- (2)** All records may be kept by means of mechanical, electronic or other devices that are not prohibited under other applicable legislation where the registrant
- (a) takes adequate precautions, appropriate to the means used, to guard against the risk of falsification of the information recorded; and
 - (b) provides a means for making the information available in an accurate and intelligible form within a reasonable time to any person lawfully entitled to examine the records.
- (3)** Without restricting the generality of subsection (1), a registrant shall maintain each of the following books and records that, in the opinion of the Director, are appropriate to its business:
- (a) blotters, or other records of original entry, containing an itemized daily record of
 - (i) all purchases and sales of securities,
 - (ii) all receipts and deliveries of securities including certificate numbers,
 - (iii) all receipts and disbursements of cash,
 - (iv) all other debits and credits,
 - (v) the account for which each transaction was effected,
 - (vi) the name of the securities purchased or sold and with respect to each trade,
 - (A) the class or designation of the securities,
 - (B) the number or value of the securities,
 - (C) the unit and aggregate purchase or sale price, if any,
 - (D) the trade date, and
 - (E) the name or other designation of the person from whom the securities were purchased or received or to whom they were sold or delivered;
 - (b) ledgers or other records maintained in detail reflecting all the
 - (i) assets and liabilities,

- (ii) income and expenses, and
 - (iii) capital accounts;
- (c) ledger accounts or other records itemizing separately for each cash and margin account of every client
 - (i) all purchases, sales, receipts and deliveries of securities and commodities for the account, and
 - (ii) all other debits and credits to the account;
- (d) ledger or other records reflecting
 - (i) securities in transfer,
 - (ii) dividends and interest received,
 - (iii) securities borrowed and securities loaned,
 - (iv) moneys borrowed and moneys loaned, together with a record of the collateral for them and any substitutions in the collateral, and
 - (v) securities which the registrant has failed to receive and failed to deliver;
- (e) a securities record or ledger showing separately for each security as of the trade date or settlement date
 - (i) all long and short positions, including securities in safekeeping, carried for the registrant's account or for the account of clients,
 - (ii) the location of all securities sold long and the position offsetting securities sold short, and
 - (iii) in all cases, the name or designation of the account in which each position is carried;
- (f) an adequate record of each order and of any other instruction, which may be a copy of the order or instruction, given or received for the purchase or sale of securities, whether executed or unexecuted, showing
 - (i) the terms and conditions of the order or instruction and of any modification or cancellation of the order or instruction,
 - (ii) the account to which the order or instruction relates,
 - (iii) where the order or instruction is placed by an individual other than
 - (A) the person in whose name the account is operated, or
 - (B) an individual duly authorized to place orders or instructions on behalf of a customer that is a company,

the name, sales number or designation of the individual placing the order or instruction,

- (iv) the time of the entry of the order or instruction, and, where the order is entered pursuant to the exercise of discretionary power of a registrant or any employee of a registrant, a statement to that effect,
 - (v) the price at which the order or instruction was executed, and
 - (vi) to the extent feasible, the time of execution or cancellation;
- (g) copies of
- (i) confirmation or other records of all purchases and sales of securities required by Section 42 of the Act, and
 - (ii) notices or copies of all other debits and credits of securities, cash and other items for the accounts of clients;
- (h) subject to subsection 31(4) a client record with respect to each cash and margin account containing
- (i) the name and address of the beneficial owner and the guarantor, if any, of the account,
 - (ii) where trading instructions are accepted from a person or company other than the client, written authorization or ratification from the client naming the person or company, and
 - (iii) in the case of a margin account, a properly executed margin agreement containing
 - (A) the signature of the owner and the guarantor, if any, and
 - (B) the additional information obtained pursuant to the requirements of Sections 31 and 32

but, in the case of a joint account or an account of a corporation, those records are required only with respect to the person or persons authorized to transact business for the account;

- (i) a record of all puts, calls, spreads, straddles and other options
 - (i) in which the registrant has any direct or indirect interest, or
 - (ii) which the registrant has granted or guaranteed,containing at least
 - (iii) an identification of the security and the underlying security, and
 - (iv) the number of underlying securities to which the put, call, spread, straddle or other option relates; and
- (j) a record of

- (i) the proof of money balances of all ledger accounts in the form of trial balances, and
 - (ii) a reasonable calculation of minimum free capital, adjusted liabilities and capital required,

prepared for each month within a reasonable time after the month end.
- (4) Unless otherwise required by applicable legislation to be maintained for a longer period of time,
 - (a) records relating to
 - (i) unexecuted orders or instructions as prescribed in clause (3)(f), and
 - (ii) confirmations as prescribed in clause (3)(g),

shall be maintained for a period of at least two years; and
 - (b) documents relating to executed orders or instructions as prescribed in clause (3)(f), shall be
 - (i) maintained for a period of at least five years, and
 - (ii) retained in a readily accessible location for the first two years of that five year period.
- (5) Subject to subsection (6), every registrant shall maintain its books and records at a location in Nova Scotia.
- (6) Where the head office of the registrant is not in Nova Scotia, the registrant shall maintain in Nova Scotia those books and records that are necessary to record properly its business transactions and financial affairs in Nova Scotia.

New Accounts and Supervision

- 31 (1)** Every registered dealer and adviser shall
- (a) establish procedures for dealing with its clients that
 - (i) conform with prudent business practice, and
 - (ii) enable it to service its clients adequately; and
 - (b) take whatever steps are necessary or appropriate to supervise those procedures properly.
- (2) Brokers and investment dealers may comply with this Section by following the guidelines published from time to time by
- (a) the stock exchange recognized by the Commission for the purpose and of which the broker is a member; and

- (b) the Investment Dealers' Association of Canada, respectively, unless and until the Commission has published notice to the contrary in a publication published by it or in the Royal Gazette.
- (3) The procedures mentioned in subsection (1) shall be in writing and designate
- (a) a partner or officer; or
 - (b) in the case of a branch office which is not managed by the designated partner or officer, a manager reporting directly to the designated partner or officer,

who shall be responsible for approving the opening of new accounts and the supervision of trades made for or to that client.

Subsection 31(3) replaced: O.I.C. 91-815, N.S. Reg. 157/91.

- (4) For the purposes of subsection (1), but without limiting the requirements of that subsection and subject to subsection (7), each dealer, investment counsel and portfolio manager shall make those enquiries that
- (a) will enable him to establish
 - (i) the identity and, where applicable, the credit worthiness of each client, and
 - (ii) the reputation of the client if information known to the dealer, investment counsel or portfolio manager causes doubt as to whether the client is of good reputation; and
 - (b) subject to subsection (5), are appropriate in view of the nature of the client's investment and of the type of transaction being effected for its account, in order to determine
 - (i) the general investment needs and objectives of each client, and
 - (ii) the suitability of a proposed purchase or sale for that client.

- (5) Clause (4)(b) does not apply to a dealer who executes a trade on the instructions of
- (a) an investment counsel;
 - (b) a portfolio manager;
 - (c) another dealer;
 - (d) a bank;
 - (e) a trust company;
 - (f) a loan company; or
 - (g) an insurance company,

provided that for the purpose of this subsection, a company which does not carry on business in Nova Scotia and would be a trust company, a loan company or an insurance company if it were registered under the Corporations Registration Act shall be deemed to be a trust company, loan company or insurance company, as the case may be.

Clause 31(5)(d) amended: O.I.C. 91-815, N.S. Reg. 157/91.

- (6) For the purposes of complying with the requirements of this Section with respect to obtaining appropriate information concerning new clients, use of a form in accordance with the published requirements of the Commission in a publication published by it or in the Royal Gazette is sufficient, but other forms or procedures may be used where they are more appropriate.
- (7) Notwithstanding subsection (1) and (3), where an account is opened and traded by an investment counsel or portfolio manager on behalf of a client or clients,
- (a) if the investment counsel or portfolio manager executes orders in its own name or identifies its client or clients by means of a code or symbols, the dealer must satisfy itself as to the credit worthiness of the investment counsel or portfolio manager but does not otherwise have any responsibility for the suitability of any trade for the client or clients of the investment counsel or portfolio manager; and
 - (b) if the investment counsel or portfolio manager executes orders in the name of its client with no agreement that payment of the account is guaranteed by the investment counsel or portfolio manager, the dealer shall
 - (i) obtain full information concerning the client with a view to determining the credit worthiness of the client, or
 - (ii) obtain a letter of undertaking from the investment counsel or portfolio manager
 - (A) stating that the investment counsel or portfolio manager is familiar with applicable rules of account supervision, and
 - (B) containing a covenant to
 - (I) make the investigation contemplated by those rules, and
 - (II) advise, where known, if the client is an insider or an

employee, director or officer of a company or partner in a firm engaged in the securities business,

but the dealer does not have responsibility for determining the suitability of any trade for the client.

- 32 (1)** Every investment counsel shall
- (a) maintain standards directed to ensuring fairness in the allocation of investment opportunities among his clients;
 - (b) furnish a copy of the policies established pursuant to clause (a) to each client; and
 - (c) file a copy of the policies established pursuant to clause (a) with the Commission.
- (2)** Every investment counsel shall charge his clients directly for his services and that charge may be based on the dollar value of the client's portfolio, but not on the value or volume of the transactions initiated for the client and, except with the written agreement of the client, shall not be contingent on profits or performance.
- (3)** Subject to subsection (4), every investment counsel shall ensure that
- (a) the account of each client is supervised separate and distinct from other clients; and
 - (b) except in the case of mutual or pension funds, an order placed on behalf of one account is not pooled with that of another account.
- (4)** A portfolio manager shall ensure that the account of each client is supervised, separate and distinct from other clients but, subject to the by-laws of a stock exchange recognized by the Commission for the purpose with respect to commission rate structure, an order placed on behalf of one account may be pooled with that of another account.
- (5)** Where
- (a) there has been a material change in the ownership or control of an investment counsel; or
 - (b) it is proposed that an investment counsel sell or assign the account of a client in whole or in part to another registrant,

the investment counsel shall, prior to that sale or assignment and immediately after that material change,

- (c) give a written explanation to the client of the proposal or change; and
- (d) inform the client of the client's right to withdraw his account.

- (6) No purchase or sale of any security in which an investment counsel or any partner, officer or associate of an investment counsel has a direct or indirect beneficial interest shall be made from or to any portfolio managed or supervised by the investment counsel.

Segregation of funds and securities

- 33 (1) Securities that are held by a registrant for a client pursuant to a written safekeeping agreement and that are unencumbered shall be
 - (a) kept apart from all other securities; and
 - (b) identified as being held in safekeeping for a client in the registrant's security position record, client's ledger and statement of account.
 - (2) Securities held pursuant to subsection (1) may be released only on an instruction from the client and not solely because the client has become indebted to the registrant.
 - 34 (1) Securities held by a registrant for a client that are unencumbered and that are either fully paid for or are excess margin securities but that are not held pursuant to a written safekeeping agreement shall be
 - (a) segregated and identified as being held in trust for the client; and
 - (b) described as being held in segregation on the registrant's security position records, client's ledger and statement of account.
 - (2) Segregated securities may be used by the registrant, by sale or loan, whenever a client becomes indebted to a registrant but only to the extent reasonably necessary to cover the indebtedness.
 - (3) Bulk segregation of securities described in subsection (1) is permissible.
 - 35 Where satisfactory arrangements concerning bonding or insurance have not been made and approved by the Director or where such arrangements have been made and approved by the Director and the Director specifies as a condition of registration that this section applies, a registrant who receives clients' free credit balances shall
 - (a) deposit those free credit balances in a client's trust account; and
 - (b) properly identify them immediately on their receipt by the registrant.
- Section 35 amended: O.I.C. 91-815, N.S. Reg. 157/91.**
- 36 Subscriptions or prepayments held pending investment by mutual fund dealers, securities advisers or investment counsel shall
 - (a) be segregated in a trust account; and
 - (b) not be commingled with the assets of the dealer, adviser or counsel.
 - 37 (1) For the purposes of this Section, "free credit balance" does not include moneys in a client's securities account that are committed to be used on a specific settlement date as payment for securities where the registrant who maintains the securities

account prepares financial statements on a settlement date basis.

(2) Where

- (a) a registrant maintains a securities account and a commodity futures account for the same client; and
- (b) the securities account contains a free credit balance and the commodity futures account contains a debit balance of \$5,000 or more,

the registrant shall transfer to the commodity futures account as much of the free credit balance in the securities account as is necessary to eliminate or, if the free credit balance is less than the debit balance, to reduce to the greatest extent possible the debit balance in the commodity futures account.

(3) Subsection (2) does not apply to a registrant with respect to a client's securities and commodity futures account where the client has directed the registrant, in writing or orally, if subsequently confirmed in writing

- (a) to transfer an amount that is less than the amount otherwise required to be transferred pursuant to that subsection; or
- (b) not to transfer any amount,

from the securities account to the commodity futures account.

38 A registrant who maintains a securities account and a commodity futures account for the same client may make a transfer of any amount of a free credit balance from the securities account to the commodity futures account of the client if

- (a) the transfer is made in accordance with a written agreement between the registrant and the client; and
- (b) the transfer is not a transfer mentioned in Section 37.

39 The Director may exempt registrants who are members of

- (a) the Atlantic District of the Investment Dealers' Association of Canada; or
- (b) a stock exchange recognized by the Commission for the purpose,

from compliance with Sections 32 to 38, inclusive, where the Director is satisfied that the registrant is subject to requirements imposed by one or both of those organizations that provide protection for clients at least equal to that provided under those Sections.

Statements of account and portfolio

40 (1) Subject to subsection (5), a dealer shall send a statement of account to each client at the end of each month in which the client has effected a transaction where there is a debit or credit balance or securities held.

- (2) Subject to subsection (5), where a client has not effected a transaction but there are either funds or securities held by the dealer on a continuing basis, the dealer shall forward a statement of account to the client showing**

- (a) any debit or credit balance; and
 - (b) the details of any securities held or owned, not less than once every three months.
- (3) The Director may vary the requirements of subsections (1) and (2) as they apply to any dealer.
- (4) The statements required by subsections (1) and (2) shall
 - (a) list the securities held for the client; and
 - (b) indicate clearly which securities are held for safekeeping or in segregation.
- (5) A mutual fund dealer is not required to comply with subsections (1) and (2) where a statement of account is sent to each client not less frequently than once every twelve months showing
 - (a) the number and market value, at the date of purchase or redemption, of securities purchased or redeemed during the period since the date of the last statement sent under this subsection; and
 - (b) the total market value of all securities of the mutual fund held by the client at the date of the statement.
- (6) Except where the client expressly directs otherwise, every portfolio manager shall send to each client, not less than once every three months, a statement of the portfolio of that client under his management.

Proficiency requirements

- 41** (1) Subject to subsections (2), (3) and (4), an individual shall not be granted registration as a salesman of a registered dealer unless the individual has
- (a) been registered previously as
 - (i) a dealer, or
 - (ii) a partner or officer of a dealer;
 - or
 - (b) has successfully completed the Canadian Securities Course.
- (2) Notwithstanding subsection (1), an individual may be granted registration as a salesman of a registered mutual fund dealer if the individual has successfully completed the Canadian Investment Funds Course.
- (3) Notwithstanding subsection (1), an individual may be granted registration as a salesman of a registered scholarship plan dealer if the individual has successfully completed a scholarship trust fund course approved by the Director.
- (4) Notwithstanding subsection (1), an individual shall not be granted registration as

a salesman of a real estate securities dealer unless the individual

- (a) is a licensed real estate salesman; and
 - (b) has either successfully completed the Canadian Securities Course or been registered previously as a salesman of a registered dealer in Nova Scotia or another province of Canada recognized by the Director for the purpose.
- (5) In addition to the requirements of subsection (1), an individual shall not be granted registration as a salesman with a broker or investment dealer unless he has
- (a) been registered previously as a salesman; or
 - (b) successfully completed the Registered Representatives Examination.
- (6) An individual shall not be granted registration as
- (a) a securities adviser; or
 - (b) a partner or officer of a registered securities adviser,

unless the individual has

- (c) successfully completed the Canadian Securities Course and the Canadian Investment Finance Course; and
 - (d) established to the satisfaction of the Director that he has performed research involving the financial analysis of investments for at least five years under the supervision of an adviser.
- (7) An individual shall not be granted registration as
- (a) an investment counsel; or
 - (b) a partner or an officer of a registered investment counsel,

unless the individual has

- (c) successfully completed the Canadian Securities Course, the Canadian Investment Finance Course and the first year of the Chartered Financial Analysts Course; and
 - (d) been employed for at least five years performing research involving the financial analysis of investments with at least three of those years under the supervision of an adviser having the responsibility for the management or supervision of investment portfolios having an aggregate value of not less than \$1,000,000.
- (8) An individual shall not be granted registration as
- (a) a broker, investment dealer or securities dealer or underwriter; or
 - (b) as a partner or an officer of the dealers described in clause (a),

unless the individual has successfully completed the Partners', Directors' and Senior

Officers' Qualifying Examination.

(9) An individual shall not be granted registration as

- (a) a real estate securities dealer; or
- (b) a partner or officer of a registered real estate securities dealer,

unless the individual is

- (c) a licensed real estate broker; and
- (d) has either successfully completed the Canadian Securities Course or been registered previously as a salesman of a registered dealer in Nova Scotia or another province of Canada recognized by the Director for the purpose and, in either case, has not less than five continuous years experience in the securities industry immediately preceding the granting of the registration.

42 (1) A person, other than an individual, or company shall not be granted registration as a partner or officer of a registered securities adviser unless

- (a) the person; or
- (b) an individual employed by the person or company and responsible for discharging the obligations of the person or company as a partner or officer of the adviser,

has

- (c) successfully completed the Canadian Securities Course and the Canadian Investment Finance Course; and
- (d) established to the satisfaction of the Director that he has performed research involving the financial analysis of investments for at least five years under the supervision of an adviser.

(2) A person, other than an individual, or company shall not be granted registration as a partner or officer of a registered investment counsel unless

- (a) the person; or
- (b) an individual employed by the person or company and responsible for discharging the obligations of the person or company as a partner or officer of the investment counsel,

has

- (c) successfully completed the Canadian Securities Course, the Canadian Investment Finance Course and the first year of the Chartered Financial Analysts Course; and
- (d) been employed for at least five years performing research involving the financial analysis of investments with at least three of those years under the

supervision of an adviser having the responsibility for the management or supervision of investment portfolios having an aggregate value of not less than \$1,000,000.

(3) A person, other than an individual, or company shall not be granted registration as

- (a) a broker, investment dealer, securities dealer or underwriter; or
- (b) a partner or officer of the dealers described in clause (a),

unless

- (d) the person; or
- (e) an individual employed by the person or company and responsible for discharging the obligations of the person or company as a partner or officer of the registered dealer

has successfully completed the Partners', Directors' and Senior Officers' Qualifying Examination.

(4) Subject to subsection (5), a person, other than an individual, or company shall not be granted registration as

- (a) a real estate securities dealer; or
- (b) a partner or officer of a real estate securities dealer,

unless

- (c) the person; or
- (d) an individual employed by the person or company and responsible for discharging the obligations of the person or company as a partner or officer of the real estate securities dealer

is

- (e) a licensed real estate broker; and
- (f) has either successfully completed the Canadian Securities Course or been registered previously as a salesman of a registered dealer in Nova Scotia or another province of Canada recognized by the Director for the purpose and, in either case, has not less than five continuous years experience in the securities industry immediately preceding the granting of the registration.

(5) Notwithstanding subsection (4), the Director may grant, if he is satisfied that to do so would not be prejudicial to the public interest, registration to a person, other than an individual, or company as a real estate securities dealer if there are two individuals who are employed by the person or company who are jointly responsible for discharging the obligations of the person or company as partners or officers of the real estate securities dealer and one of the individuals is a licensed real estate broker and the other has the qualifications referred to in

clause (4)(f) and the Director may as a term of granting such registration require that one of such individuals attain all of the qualifications required by subsection (4) within a specified period of time.

43 Notwithstanding Sections 41 and 42, where the Director is satisfied that a person or company has the educational qualifications and experience that are equivalent to what is required in those Sections, the Director may, subject to those terms and conditions as he may impose, exempt the person or company from those Sections.

44 (1) Subject to subsections (2) and (3), an individual shall not be granted registration or renewal of registration as a salesman unless he is employed full time as a salesman.

(2) Subsection (1) does not apply to an individual granted registration or renewal of registration where

- (a) the individual is a part-time student enrolled in a business, commercial or financial course;
- (b) the individual is a full-time student enrolled in a business, commercial or financial course and he satisfies the Director that he has a present intention of continuing a career in the investment business;
- (c) the individual is otherwise employed for six months or less during the calendar year and while so employed is not employed as a salesman;
- (d) the individual is carrying on a hobby, recreational or cultural activity which in the opinion of the Director will not interfere with his duties and responsibilities as a salesperson;
- (e) in the case of a salesman employed by a mutual fund dealer or scholarship plan dealer, the area in which the individual is to be employed is in the opinion of the Director so remote and sparsely populated that full-time employment as a salesman is not economically feasible;
- (f) the individual holds a valid and subsisting license as an insurance agent under the Insurance Act;
- (g) with the written consent of the dealer employing him and the Director, the individual is employed outside the normal working hours and there is no conflict of interest arising from his duties as a salesman and his outside employment;
- (h) the individual is carrying on an activity which in the opinion of the Director and the employer will not in the circumstances interfere with his duties and responsibilities as a salesman and there is no conflict of interest arising from his duties as a salesman and his outside activity;

Clause 44(2)(h) amended: O.I.C. 89-968, N.S. Reg. 167/89.

- (i) in the case of a salesman employed by a real estate securities dealer, the individual is employed full time either as a salesman of the real estate

securities dealer or as a salesman of an associate or affiliate of the dealer that is a licensed real estate broker or as a salesman of both; or

Clause 44(2)(i) amended: O.I.C. 89-968, N.S. Reg. 167/89.

- (j) the Director is of the opinion that non-compliance with subsection (1) is not prejudicial to the public interest.

Clause 44(2)(j) added: O.I.C. 89-968, N.S. Reg. 167/89.

- (3) Any activity outside the securities business may be carried on by a salesman only with the explicit approval, in writing, of the Director.

Application for Registration

45 Unless the Director permits or otherwise requires,

- (a) an applicant for registration as a dealer, adviser or underwriter, or any combination of them shall complete and deliver to the Director
 - (i) an application in Form 3, and
 - (ii) in the case of an applicant for registration as an adviser, the financial statements mentioned in clauses 147(1)(a) to (d), inclusive, made up as at a date not more than ninety days prior to the date of the application, and
 - (iii) any other supporting material that may be required by the Director; and
- (b) an applicant for registration as
 - (i) a salesman, or
 - (ii) a partner or officer of a registered dealer or a registered adviser,

shall complete and deliver to the Director an application in Form 4, unless the information required by Form 4 has previously been filed by the applicant and the information as previously filed is current and correct as of the date of the application.

Section 45 revoked effective February 21, 2003: Rule 33-109.

Renewals of Registration

- 46** (1) Every registration and renewal of registration expires on the day preceding its anniversary date in the year following the year in which it was granted.
 - (2) Every application for renewal of registration shall be filed no later than thirty days prior to the date on which the registration or renewal of registration expires.
- 47** (1) Unless the Director permits or otherwise requires and subject to subsection (2), every application for renewal of registration as a dealer, adviser or underwriter shall be by way of a letter filed with the Director requesting renewal of registration.

- (2) Subject to subsection (3), where the information filed by the applicant in his last application for registration has changed and particulars of that change have not been filed with the Director as an application for amendment or renewal of registration, an application for renewal of registration shall be completed in accordance with Form 5.
 - (3) Where the information that has changed is that required in an exhibit required by clause (b) of item 10 of Form 3 and is for a person with respect to whom a similar exhibit has been filed by the applicant with a Securities Commission or Administrator in a province or territory of Canada in which the principal office of the applicant is situate, the exhibit is not required for the person, where the full name of the person and the place that the exhibit has been so filed are stated.
- 48** (1) Unless the Director permits or requires otherwise, and subject to subsection (2), an application for renewal of registration as a salesman shall be by way of letter filed with the Director requesting renewal of registration.
- (2) Where the information filed by the applicant in his last application for registration has changed and particulars of that change have not been filed with the Director as an application for amendment or renewal of registration, an application for renewal of registration shall be prepared in accordance with Form 6.

Examination

- 49** A summons for an examination pursuant to Section 37 of the Act shall be completed in accordance with Form 8.

Amendments to Registration

- 50** Upon receipt and review of a notice to the Director under Multilateral Instrument 33-109 Registration Information, the Director may require an application for amendment of registration prepared in accordance with Form 7

Section 50 amended effective February 21, 2003; Rule 33-109.

- 51** Every notice to the Director under subsection 39(3) of the Act shall be by way of a letter filed with the Director, providing the information required by the applicable part of that subsection and signed by the salesman.

Section 51 revoked effective February 21, 2003; Rule 33-109.

Reporting to director

- 52** Every adviser, mutual fund dealer, scholarship plan dealer and real estate securities dealer shall deliver to the Director within ninety days after the end of its financial year a copy of its financial statements for the financial year.

- 53** The financial statements required to be delivered under Section 52 include

- (a) an income statement, a statement of retained earnings and a statement of changes in financial position, each for the financial year; and

- (b) a balance sheet as at the end of the financial year signed by one director of the registrant.

Section 53 replaced: O.I.C. 91-815, N.S. Reg. 157/91.

54 Every mutual fund dealer, scholarship plan dealer and real estate securities dealer shall deliver to the Director within ninety days after the end of its financial year a report completed in accordance with Statement C of Form 9.

55 (1) Every securities dealer and underwriter, other than a person or company that is an underwriter by virtue of being registered as a real estate securities dealer, that is not a member in good standing of the following self-regulatory organizations:

- (a) a stock exchange recognized by the Commission for the purpose; or
- (b) the Atlantic District of the Investment Dealers' Association of Canada,

shall deliver to the Director within ninety days after the end of its financial year a report completed in accordance with Form 9.

- (2) A real estate securities dealer shall deliver to the Director within ninety days after the end of its financial year such further information and reports as the Commission may require by notice given in a publication published by it or in the Royal Gazette.

56 Form 10 may be used as a guideline for the purpose of assisting in the auditing of the financial statements of a portfolio manager.

57 The report required by Section 55 shall be audited in accordance with generally accepted auditing standards and the requirements of these regulations.

58 (1) Every registrant that is not a member in good standing of a self-regulatory organization mentioned in Section 55 shall issue a direction to its auditor instructing the auditor to conduct any audit requested by the Commission or the Director during its registration and shall deliver a copy of the direction to the Director

- (a) with its application for registration; and
- (b) immediately after the registrant changes its auditor.

- (2) Where the Commission or the Director requests an auditor to conduct an audit of the financial affairs of a registrant in accordance with a direction mentioned in subsection (1), all fees related to the audit shall be paid by the registrant.

Part III - Conflicts of interest

Interpretation

59 (1) In this Part,

- (a) "connected issuer" has the same meaning as in section 1.1 of National Instrument 33-105 Underwriting Conflicts;

Clause 59(1)(a) amended effective May 1, 2003: Rule 33-105.

- (b) "designated institution" means
 - (a) a financial intermediary,
 - (b) the Federal Business Development Bank,
 - (c) a subsidiary of any company referred to in clause (a) or (b), where the company beneficially owns all of the voting securities of the subsidiary,
 - (d) the Government of Canada or any province or territory of Canada,
 - (e) any municipal corporation or public board or commission in Canada,
 - (f) a mutual fund, other than a private mutual fund, having net assets of at least \$5,000,000,
 - (g) a trustee pension plan or fund sponsored by an employer for the benefit of its employees and having net assets of at least \$5,000,000,
 - (h) a registered dealer,
 - (i) a company or person, other than an individual, recognized by the Director as an exempt purchaser,
 - (j) a person or company deemed to be a designated institution under subsection (5);
- (c) "financial intermediary" means
 - (a) a bank,
 - (b) a loan company or trust company,
 - (c) an insurance company,
 - (d) any other class or type of institution designated by the Commission as a financial intermediary;

Clause 59(1)(c) amended: O.I.C. 91-815, N.S. Reg. 157/91.

- (d) "influence" means, in respect of a person or company, having the power, directly or indirectly, to exercise a controlling influence over the management and policies of the company or person, other than an individual, or the activities of an individual, whether alone or in combination with one or more other persons or companies and whether through the beneficial ownership of voting securities, through one or more other persons or companies or otherwise;

Clause 59(1)(d) revoked effective May 1, 2003; Rule 33-105.

- (e) "networking arrangement" means an arrangement between a registrant and a financial intermediary (whether or not a registrant) under which the registrant

- (i) offers for sale or sells to the public a combination of securities and goods or services a portion of which consists of securities, goods or services issued or provided by the financial intermediary, or
- (ii) co-operates with the financial intermediary in the joint offering for sale or sale of securities and goods or services, including paying the financial intermediary or its employees a commission for referring to the registrant a customer or client to whom the registrant sells securities or services, but does not include trades in, or purchases of, securities of the financial intermediary by the registrant on the same basis on which the registrant trades in the securities of issuers other than financial intermediaries;

Clause 49(1)(e) revoked effective January 1, 2002: Rule 33-102.

- (f) "registrant" does not include an officer, partner or salesman of a registrant;
- (g) "related issuer" has the same meaning as in section 1.1 of National Instrument 33-105 Underwriting Conflicts;

Clause 59(1)(g) revoked effective January 1, 2002: Rule 33-105.

- (h) "security" includes, in respect of an issuer,
 - (a) a put, call, option or other right or obligation to purchase or sell securities of the issuer, and
 - (b) a security of any other issuer all or substantially all of the assets of which are securities of the issuer;
- (i) "selling group member" means, in respect of a distribution, a person or company whose interest in the distribution is limited to receiving the usual and customary distributor's or seller's commission payable by an underwriter or issuer;
- (j) "statement of policies" means, a statement of policies prepared, revised or amended, and filed with the Director, under Section 63; and
- (k) "fully registered dealer" means a registered broker, investment dealer or securities dealer.

(2) For the purposes of the definition of "connected issuer" in connection with a distribution of securities of an issuer, indebtedness of the issuer or any other relationship with the issuer is material to a prospective purchaser of the securities if

- (a) there is a likelihood that a reasonable prospective purchaser would consider the indebtedness or other relationship important under the circumstances in determining whether to purchase the securities; or
- (b) the indebtedness or other relationship under the circumstances may lead a reasonable prospective purchaser to question whether the registrant and the issuer are independent of each other, whether or not the indebtedness or

other relationship is a material fact.

Subsection 59(2) revoked effective may 1, 2003: Rule 33-105.

- (3) For the purposes of the definitions of "connected issuer" and "related issuer", an issuer is not a connected issuer of a registrant or a related issuer of a registrant only by reason of the fact that the registrant, acting as an underwriter, owns securities of the issuer in the course of a distribution and in the ordinary course of business of the registrant.
- (4) For the purposes of the definition of "influence" in respect of a company or person, other than an individual, any other person or company that, directly or indirectly and whether alone or in combination with one or more other persons or companies, beneficially owns or exercises control or direction over more than 20 per cent of any class or series of voting securities of the company or person, other than an individual, in the absence of evidence to the contrary, shall be deemed to influence the company or person.

Subsection 59(4) revoked effective May 1, 2003: Rule 33-105.

- (5) Where a portfolio manager or financial intermediary, acting as a trustee or agent for a person or company whose account is fully managed by it, purchases or sells securities on behalf of the person or company, the person or company shall be deemed to be a designated institution.
- 60** (1) The Commission may vary the provisions of this Part as they apply to a person or company by designating the person or company to be a related issuer of a registrant where, in the opinion of the Commission, it is appropriate that the person or company be so designated because of the manner in which the person or company carries on its business with the registrant or any related issuer of the registrant.
- (2) The Commission shall not make a designation under subsection (1) without first giving the registrant and the person or company affected an opportunity to be heard.

General duties

- 61** Every registrant shall deal fairly, honestly and in good faith with its customers and clients.
- 62** (1) Every officer, partner, salesman and registered director of a registrant shall deal fairly, honestly and in good faith with the customers and clients of the registrant.
- (2) No individual referred to in subsection (1) shall act on behalf of the registrant in connection with any transaction or other act of the registrant that is not in compliance with this Part.

Statement of policies

- 63** (1) Every registrant shall prepare and file with the Director a statement of policies that contains

- (a) a full and complete statement of the policies of the registrant regarding the activities in which it is prepared to engage as an adviser, dealer and underwriter in respect of securities of the registrant and related issuers of the registrant and, in the course of a distribution, of securities of connected issuers of the registrant;
- (b) a list of the related issuers of the registrant that are reporting issuers or that have distributed securities outside Nova Scotia on a basis that, if they had done so in Nova Scotia, would have made them reporting issuers;
- (c) a concise statement of the relationship between the registrant and each of the related issuers of the registrant referred to in clause (b); and
- (d) the following note, or an expanded version of it, in a conspicuous position and in bold face type not less legible than that used in the body of the statement of policies:

"The securities laws of the Province of Nova Scotia require securities dealers and advisers, when they trade in or advise with respect to their own securities or securities of certain other issuers to which they, or certain other parties related to them, are related or connected, to do so only in accordance with particular disclosure and other rules. These rules require dealers and advisers, prior to trading with or advising their customers or clients, to inform them of the relevant relationships and connections with the issuer of the securities. Clients and customers should refer to the applicable provisions of these securities laws for the particulars of these rules and their rights or consult with a legal adviser."

- (2) A registrant shall provide to each of its customers and clients, free of charge, a copy of its statement of policies at the time at which the customer or client becomes a customer or client of the registrant or by the day on which this Part becomes effective, whichever is later.
- (3) In the event of any significant change in the information required to be contained in the statement of policies of a registrant, the registrant shall
 - (a) forthwith prepare and file with the Director a revised version of, or amendment to, the statement of policies; and
 - (b) provide to each of its customers and clients a copy of the revised version or amendment, as the case may be, either
 - (i) within forty-five days of the filing, or
 - (ii) promptly after the first trade by the registrant with or on behalf of the customer or client or the first time at which the registrant acts as an adviser to the client, as the case may be, whichever is earlier.
- (4) Notwithstanding subsection (1), a registrant that does not engage in activities as an adviser, dealer or underwriter in respect of securities of the registrant or of related issuers of the registrant or, in the course of a distribution, in respect of the

securities of connected issuers of the registrant, is not required to prepare or file a statement of policies if it files with the Director a statement that it does not engage in such activities and an undertaking that it will not engage in such activities except in compliance with this Part.

Limitations on Underwriting

- 64 (1)** No registrant shall act as an underwriter or selling group member in connection with a distribution of securities of the registrant or a related issuer or connected issuer of the registrant unless
- (a) the distribution is made by means of a prospectus prepared and filed in accordance with the Act or other document that contains the information required by items 5, 29a and 29b of Form 12; and
 - (b) in the case of a distribution made by means of a prospectus prepared and filed in accordance with the Act, the portion of the distribution underwritten by at least one other registrant in respect of which the issuer is not a related issuer or connected issuer is not less than the aggregate of the portions of the distribution underwritten by the registrant and each other registrant in respect of which the issuer is a related issuer or connected issuer.
- (2)** Clause (1)(a) does not apply in the case of
- (a) a distribution, otherwise than by means of a prospectus prepared and filed in accordance with the Act, in which all of the purchasers are related issuers of the registrant purchasing as principal but not as underwriter; or
 - (b) a distribution as referred to in clause 77(11)(b) of the Act.
- (3)** Clause (1)(b) does not apply to a distribution in which all of the purchasers are related issuers of the registrant purchasing as principal but not as underwriter.

Limitations on trading

- 65 (1)** No registrant, as principal or agent, shall
- (a) trade in securities of the registrant or of any related issuer of the registrant with or on behalf of any customer of the registrant; or
 - (b) purchase securities of the registrant or of any related issuer of the registrant from or on behalf of any customer of the registrant.
- (2)** Subsection (1) does not apply if,
- (a) before entering into a contract for the sale or purchase of the securities and before accepting payment or receiving any security or other consideration under or in anticipation of any such contract, the registrant makes to the customer a concise statement, either orally or in writing, of the relationship between the registrant and the issuer of the securities;

- (b) the customer is
 - (i) a fully registered dealer that is trading or purchasing as principal, or
 - (ii) a related issuer of the registrant that is trading or purchasing as principal; or
- (c) the trade is a distribution other than as referred to in clause 77(11)(b) of the Act.

Confirmation and reporting of trades

- 66 (1)** The written confirmation required by subsection 42(1) of the Act to be sent by a registrant in connection with a sale or a purchase of securities shall, in the case of a sale or a purchase of securities of the registrant or a related issuer of the registrant, or, in the course of a distribution of securities of a connected issuer of the registrant, state that the securities are securities of the registrant, a related issuer of the registrant or a connected issuer of the registrant, as the case may be.
- (2)** If a registrant sends or delivers to a customer or client any report, other than the written confirmation referred to in subsection (1), of any trades in securities that the registrant has made with or on behalf of the customer or client, including any report of trades made by or at the direction of a registrant acting as a portfolio manager, such report shall, in respect of trades in securities of the registrant or a related issuer of the registrant, or, in the course of a distribution, in respect of securities of a connected issuer of the registrant, state that the securities are securities of the registrant, a related issuer of the registrant or a connected issuer of the registrant, as the case may be.

Limitations on Advising

- 67 (1)** No registrant shall act as an adviser in respect of securities of the registrant or of a related issuer of the registrant or, in the course of a distribution, in respect of securities of a connected issuer of the registrant.
- (2)** Subsection (1) does not apply
- (a) in the case of a registrant, acting otherwise than as a portfolio manager, if the registrant, before advising the client, makes to the client a concise statement, either orally or in writing, of the relationship or connection between the registrant and the issuer of the securities;
 - (b) in the case of a registrant acting as a portfolio manager, if the registrant, before acquiring discretionary authority in respect of the securities and once within each twelve month period thereafter,
 - (i) provides the client with the statement of policies of the registrant, and
 - (ii) secures the specific and informed written consent of the client to the exercise of the discretionary authority in respect of the securities; or

- (c) if the client is a fully registered dealer or related issuer of the registrant.
- (3) For the purposes of subclause (2)(b)(ii),
- (a) a general power to invest in the discretion of the portfolio manager does not constitute specific consent; and
 - (b) consent is only informed if the portfolio manager believes and has reasonable grounds for believing that it is informed.

Limitations on recommendations

- 68 (1) No registrant shall in any medium of communication recommend or co-operate with any other person in the making of a recommendation, that securities of the registrant or a related issuer of the registrant or, in the course of a distribution, that securities of a connected issuer of the registrant, be purchased, sold or held.
- (2) Subsection (1) does not apply to a recommendation in a circular, pamphlet or similar publication that
- (a) is published, issued or sent by the registrant and is of a type distributed with reasonable regularity in the ordinary course of its business;
 - (b) includes in a conspicuous position, in type not less legible than that used in the body of such publication, a full and complete statement of the relationship or connection between the registrant and the issuer of the securities and of the obligations of the registrant under subsection (1) and this subsection;
 - (c) includes information similar to that set forth in respect of the issuer of the securities in respect of a substantial number of the other persons or companies that are in the industry or business of the issuer of the securities; and
 - (d) does not give materially greater space or prominence to the information set forth in respect of the issuer of the securities than to the information set forth in respect of any other person or company described therein.
- (3) No registrant shall publish, issue or send any advertisement, notice or other similar publication in respect of securities of a related issuer of the registrant or, in the course of a distribution, in respect of securities of a connected issuer of the registrant, unless the publication states in a conspicuous position in bold face, twelve point type, or such larger type as is required to ensure its prominence in such publication, that the issuer of the securities is a related issuer of the registrant or a connected issuer of the registrant, as the case may be.

Limitations on networking

- 69 (1) A registrant that proposes to enter a networking arrangement with a financial intermediary, at least thirty days before entering the arrangement, shall give

written notice to the Director providing all relevant facts to permit the Director to determine if the arrangement makes use of a means of offering for sale or selling securities, goods or services that is inconsistent with an adequate level of investor protection, or if the arrangement

- (a) is likely to give rise to conflicts of interest; or
- (b) is likely to hinder a registrant in complying with the conditions of registration applicable to it.

(2) If, within thirty days of receipt of a notice under subsection (1), the Director gives a written notice of objection to the registrant, the registrant shall not enter the networking arrangement until the Director approves it.

(3) The registrant, following receipt of a notice of objection under subsection (2), may request the Director to hold a hearing on the matter.

Section 69 revoked effective January 1, 2002: Rule 33-102

Exceptions

70 This Part, other than Sections 61 and 62, does not apply to any trading, purchasing of or advising with respect to, securities referred to in subsection 41(2) of the Act, so long as registration is not required to trade in the securities.

71 The Commission may make an order, either on its own motion or on the motion of a registrant, exempting in whole or in part a person or company, class of persons or companies, class of registrants or class of transactions from the requirements of this Part.

72 A registrant shall file with the Director such reports as to its activities in respect of its securities and of the securities of related issuers and connected issuers of the registrant as the Commission from time to time may require.

73 The obligations imposed by Sections 61 and 62 on a registrant or any officer, partner, salesman or director of a registrant are not necessarily satisfied solely by virtue of compliance with the other applicable provisions of this Part.

74 The Commission may exempt a registrant from the requirements of any provision of this Part where it is satisfied that to do so would not be prejudicial to the public interest and in granting such exemption the Commission may impose such terms and conditions as are considered necessary.

75 This Part, other than this Section and Sections 61 and 62, shall not become effective until a date specified in a notice given by the Commission in a publication published by it or in the Royal Gazette which date shall not be earlier than sixty days following the date of such publication and any such notice may specify that particular Sections or subsections in this Part are effective whereas others are not.

Section 75 amended: O.I.C. 91-815, N.S. Reg. 157/91.

See Notices No. 19 and 33-701 and Blanket Order No. 33-501 for sections that are in effect and delegations to the Director.

Part IV - Registration exemptions and exemption restrictions

- 76 (1) Every escrow agreement referred to in clause 41(2)(n) of the Act shall be prepared as required by Section 114.
- (2) Every transferee of shares that are subject to the escrow agreement mentioned in subsection (1) shall be subject to the requirements of Section 114.
- 77 Unless and until the Commission has published notice to the contrary in a publication published by it or in the Royal Gazette, registration is not required as an adviser by an investment dealer acting as a portfolio manager where the Investment Dealers' Association of Canada has passed by-laws or regulations that
- (a) govern the activities of its members as portfolio managers; and
 - (b) impose standards and conditions applicable to all members managing the investment portfolios of clients.

- 78 (1) An applicant for recognition as an exempt purchaser or for renewal of recognition as an exempt purchaser shall complete, execute and file Form 11.
- (2) No person or company shall be granted
- (a) recognition as an exempt purchaser; or
 - (b) renewal of recognition as an exempt purchaser,

for a period of more than one year.

Subsection 78(2) amended: O.I.C. 91-815, N.S. Reg. 157/91.

- (3) Every application for renewal of recognition as an exempt purchaser shall be filed not later than thirty days prior to the date on which the then current recognition as an exempt purchaser expires.
- 79 For the purposes of subclause 41(2)(a)(v) of the Act, the Asian Development Bank and the Inter-American Development Bank shall
- (a) file with the Director copies of its annual report to its Board of Governors and copies of its charter documents and any material modifications and amendments to them; and
 - (b) file with the Director, prior to the initial trade by it of its securities in Nova Scotia, and thereafter, the material that it would be required to file with the Securities and Exchange Commission of the United States of America if all trades of those securities made by it in Nova Scotia had been made in the United States of America; and
 - (c) advise the Director in writing if its
 - (i) filing requirements with, or
 - (ii) exemptions from legislation administered by,the Securities and Exchange Commission of the United States of America are suspended, revoked or substantially amended.

80 Registration is not required in respect of a trade described in Section 127, whether or not the trade is a distribution.

Section 80 replaced: O.I.C. 91-815, N.S. Reg. 157/91.

81 For the purposes of subclauses 41(1)(v)(iv) and (vi) of the Act, subclauses 41(1)(ac)(iv) and (vi) of the Act and clause 41(1)(am) of the Act, the exemption contained in clause 127(p) as it applies by virtue of Section 80, is hereby specified.

Section 81 replaced: O.I.C. 91-815, N.S. Reg. 157/91.

82 Registration is not required to act as an underwriter in respect of

- (a) a trade referred to in subsection 41(1) of the Act;
- (b) a trade in a security referred to in subsection 41(2) of the Act; or
- (c) a trade referred to in Section 80.

Clause 82(c) amended: O.I.C. 91-815, N.S. Reg. 157/91.

83 (1) Subsection 41(1) of the Act, other than clauses (i) and (j) thereof, and Section 80, shall not apply to a trade in the course of a distribution of real estate oriented securities unless the Director, upon the application of an interested person or company or having regard to the circumstances of the trade, is satisfied that to permit the trade would not be prejudicial to the public interest.

Section 83(1) amended: O.I.C. 91-815, N.S. Reg. 157/91.

- (2) The Director may impose such terms as he considers necessary in the public interest as a condition of permitting a trade pursuant to subsection (1).

84 Section 41 of the Act shall only apply

- (a) to a trade made by an issuer in a share or share and warrant of its own issue which is or is part of a specified securities issue, within the meaning of the Nova Scotia Stock Savings Plan Act and regulations made thereunder, in respect of which a certificate of eligibility has been issued pursuant to that Act where the trade is a distribution by virtue of subclause 2(1)(1)(i) of the Act if Sections 58 or 67 of the Act apply to the trade and there has been compliance therewith or clause 78(1)(b) of the Act applies to the trade and there has been compliance therewith; and
- (b) to a trade made by an issuer in a share of its own issue which is issued pursuant to the exercise of a warrant referred to in clause (a) if Sections 58 or 67 of the Act apply to the trade and there has been compliance therewith or clause 78(1)(b) of the Act applies to the trade and there has been compliance therewith or the application of subsection 77(1) of the Act is not precluded by virtue of clause 129(1)(b).

84A (1) Every report filed under clause 41(1B)(a) of the Act shall be filed in duplicate and prepared in accordance with Form 22A.

- (2) Clause 41(1B)(a) of the Act shall not apply to a co-operative in respect of a calendar year if the co-operative has filed a report under clause 77(1B)(a) of the Act in respect of that calendar year which

contains the same information which a report required to be filed by the co-operative under clause 41(1B)(a) of the Act in respect of the same calendar year would contain.

Subsections 84A (1) and (2) added effective December 4, 2002: Rule GSR-1

Part V - Initial disclosure

Prospectus distribution

85 (1) In this Section

- (a) "trustee" means any person or company named as trustee under the terms of a trust indenture, whether or not the person or company is a trust company;
- (b) "trust indenture" means any deed, indenture or document, including any supplement or amendment to any deed, indenture or document by the terms of which a person or company issues securities and in which a trustee is named as trustee for the holders of the securities issued thereunder; and
- (c) "underwriter" means an underwriter that has signed a certificate included in a prospectus under Section 64 of the Act.

(2) Subject to subsection (3), the following general rules apply to prospectuses:

- (a) a receipt for a prospectus will not be issued if the Director is aware that the issuer is in default in filing any document required to be filed by it under
 - (i) the Act or these regulations; or
 - (ii) the statute under which it is incorporated or organized;
- (b) where a receipt for a prospectus is not issued within seventy-five days after the date of a receipt for a preliminary prospectus due to the inaction of the person or company filing that preliminary prospectus, no final receipt shall be issued for that prospectus;
- (c) where an escrow agreement is required for an industrial company before a receipt for a prospectus is issued, the promoters may receive, free of escrow, that number of shares whose value at the offering price is equivalent to the aggregate of
 - (i) the cash, and
 - (ii) the fair market value of those tangible assets that are acceptable to the Director, that they have transferred to the issuer;
- (d) where
 - (i) a preliminary prospectus names an underwriter of the issue who proposes to act as underwriter in Nova Scotia and who is not a

registrant, or

- (ii) the distribution is to be effected by the issuer and the issuer is not a registrant;

the receipt for the preliminary prospectus shall not issue [be issued] until an application for registration has been received and the receipt for the prospectus shall only be issued concurrently with or after the granting of registration;

Clause 85(2)(d) amended: O.I.C. 91-815, N.S. Reg. 157/91.

- (e) the receipt for a prospectus relating to securities underwritten on a firm commitment basis, other than securities to be distributed continuously, shall not be issued unless the prospectus indicates that the securities are to be taken up by the underwriter, if at all, on or before a date not later than six weeks after the date of the final receipt;
 - (f) where there is no trading market for the securities offered, and none is expected to develop as a consequence of the distribution, except for mutual funds, a notice to this effect must be included on the cover page of the prospectus together with a statement that purchasers may not be able to resell securities purchased pursuant to the prospectus;
 - (g) where a minimum amount of funds are required by an issuer, the receipt for a prospectus relating to securities proposed to be distributed on a best efforts basis, other than securities to be distributed continuously, shall not issue [be issued] unless the prospectus indicates that the offering may not continue for more than sixty days where the minimum amount of funds are not subscribed within sixty days, without the consent of the Director and those persons who or companies that subscribed within that sixty days.
- (3) Where the Director is satisfied that there is sufficient justification, he may permit or require that the provisions of subsection (2) be varied or waived.
 - (4) No receipt shall be issued for a prospectus of a finance company relating to a debt security not issued under a trust indenture unless it is clearly stated on the outside front cover page of the prospectus that the debt security is not issued under a trust indenture.
- 86**
- (1) The prospectus of an industrial company shall be prepared in accordance with Form 12.
 - (2) The prospectus of a finance company shall be prepared in accordance with Form 13.
 - (3) The prospectus of a natural resource company shall be prepared in accordance with Form 14.
 - (4) Except as otherwise provided in National Instrument 81-101 Mutual Fund Prospectus Disclosure, the prospectus of a mutual fund shall be prepared in accordance with Form 15.

Subsection 86(4) amended effective May 10, 2004: Rule 81-101 (Amendment).

- (5) The summary statement of a mutual fund shall be prepared in accordance with Form 15A.
 - (6) The prospectus of a bank, trust company, loan company or insurance company shall be in such form as is satisfactory to the Director having regard to the prescribed Forms of prospectus for an industrial company and finance company.
 - (7) A prospectus in connection with an issue with respect to which a certificate of eligibility has been issued under the Nova Scotia Stock Savings Plan Act shall contain such disclosure and information with respect to that Act and the income tax consequences to the purchaser and the issuer as the Director may require.
- 87** Where the disclosure called for by a prospectus Form or an item in any prospectus Form could, in the opinion of the Director, properly be made applicable to an issuer, the Director may require the issuer to comply with the prospectus Form or the item.
- 88** (1) Unless the Director otherwise permits or requires
- (a) subject to clause (b), the body of a printed prospectus shall be in roman type at least as large as 10-point modern type;
 - (b) to the extent necessary for convenient presentation, financial statements and other statistical or tabular data and the notes to them may be in roman type at least as large as 8-point modern type; and
 - (c) the type in a printed prospectus shall be leaded at least 2-points.
- (2) Unless the Director determines that to permit the inclusion of specific graphs, photographs or maps would be misleading or detract from the readability of the prospectus, the prospectus may contain
- (a) graphs that are relevant to matters dealt with in the text of the prospectus;
 - (b) photographs, if they include only the product of the issuer; and
 - (c) maps for the purpose of indicating the locations of property or operations, present and proposed, of the issuer.
- 89** No reference need be made in a prospectus to inapplicable items contained in the Forms and negative answers to any items contained in the Forms may be omitted.
- 90** No inference shall be drawn from the items of disclosure called for by the various prospectus Forms that in any way qualifies or limits
- (a) the discretion granted to the Director or the Commission by the Act or these regulations; or
 - (b) the obligation to provide full, true and plain disclosure of all material facts relating to the securities issued or proposed to be distributed, as the case

may be.

91 The information required to be disclosed in answer to any item of a prospectus Form or any part of it may be omitted if that information is, in the opinion of the Director, immaterial.

92 (1) The information contained in a prospectus shall be presented in narrative form.
Subsection 92(1) amended effective May 10, 2004: Rule 81-101 (Amendment).

(1A) Except as otherwise provided in National Instrument 81-101 Mutual Fund Prospectus Disclosure, the information contained in a prospectus need not follow the order of the items contained in the Forms and may be expressed in a condensed or summarized manner if it does not obscure any of the required information or any information necessary to keep the required information from being incomplete or misleading.

Subsection 92(1A) added effective May 10, 2004: Rule 81-101(Amendment).

(2) Where information is required to be presented in a prospectus in tabular form, it shall be substantially presented in the tabular form specified.

(3) Except as otherwise provided in National Instrument 81-101 Mutual Fund Prospectus Disclosure, all information contained in a prospectus shall be set out under appropriate headings or captions reasonably indicative of the principal subject matter set out thereunder.

Subsection 92(3) amended effective May 10, 2004: Rule 81-101(Amendment).

(4) Except as otherwise provided in National Instrument 81-101 Mutual Fund Prospectus Disclosure, every prospectus shall contain a reasonably detailed table of contents.

Subsection 92(4) amended effective May 10, 2004: Rule 81-101(Amendment).

(5) Except as otherwise provided in National Instrument 81-101 Mutual Fund Prospectus Disclosure, information required by more than one applicable item of a prospectus form need not be repeated.

Subsection 92(5) amended effective May 10, 2004: Rule 81-101(Amendment).

93 Every preliminary prospectus shall have printed in red ink on the outside front cover page the following statement or any variation of it that the Director may permit:

This is a preliminary prospectus relating to these securities, a copy of which has been filed with the Nova Scotia Securities Commission but which has not yet become final for the purpose of a distribution to the public. Information contained herein is subject to completion or amendment. These securities may not be sold nor may offers to buy be accepted prior to the time a receipt is obtained from the Nova Scotia Securities Commission for the final prospectus.

94 Every preliminary prospectus, prospectus or summary statement, as the case may be, shall have printed on the outside front cover page the following statement:

No securities commission or similar authority in Canada has in any way passed upon

the merits of the securities offered hereunder and any representation to the contrary is an offence.

- 95 (1)** Subject to subsection (2), and except as otherwise provided in National Instrument 81-101 Mutual Fund Prospectus Disclosure, every pro forma prospectus shall substantially comply with the requirements of the Act and these regulations relating to the form and content of a prospectus.
- (2)** Except as otherwise provided in National Instrument 81-101 Mutual Fund Prospectus Disclosure, any certificate required by Section 63 or 64 of the Act and any report of an auditor otherwise required by these regulations may be omitted from a pro forma prospectus.

Section 95 amended effective May 10, 2004: Rule 81-101(Amendment).

- 96 (1)** Where any solicitor, auditor, accountant, engineer, appraiser or any other person or company whose profession gives authority to a statement made by him is named as having prepared or certified
- (a) any part of a prospectus, a summary statement or documents prepared in connection with a summary statement; or
 - (b) a report or valuation used in or in connection with a prospectus or summary statement,

the written consent of the person or company to being so named and to the use of the report or valuation shall be filed not later than the time the prospectus is filed.

- (2)** The Director may dispense with the filing of a consent required by subsection (1) if, in his opinion, the filing is impracticable or involves undue hardship.
- (3)** The consent of the auditor or accountant mentioned in subsection (1) shall
 - (a) refer to his report stating the date of it and the dates of the financial statements on which the reports are made; and
 - (b) contain a statement that
 - (i) he has read the prospectus, and
 - (ii) he has no reason to believe that there are any misrepresentations in the information contained in the prospectus that is
 - (A) derived from the financial statements on which he reported, or
 - (B) within his knowledge as a result of his audit of those financial statements.
- (4)** Where a solicitor, auditor, accountant, engineer, appraiser or other person or company mentioned in subsection (1)
 - (a) has received or expects to receive any interest, whether direct or indirect, in the property of the issuer or any associate or affiliate of the issuer; or

- (b) beneficially owns, directly or indirectly, any securities of the issuer or any associate or affiliate of the issuer,

the interest or ownership shall be disclosed in the prospectus.

- (5) Where a person or company mentioned in subsection (1) is or is expected to be elected, appointed or employed as a director, officer or employee of the issuer or any associate or affiliate of the issuer, the fact or expectation shall be disclosed in the prospectus.

97 Where any change is proposed to be made in a preliminary prospectus or prospectus that in the opinion of the Director materially affects any consent required by Section 96, the Director may require that a further consent be filed before an amendment to the preliminary prospectus or prospectus is accepted.

98 (1) For the purposes of the reports required under this Section and for references to the property of an issuer contained in Form 14, where the report or reference relates to the property of a natural resource company,

- (a) "commercial production" means output from a well of such quantity of crude oil, liquid hydrocarbons, natural gas and natural gas liquids that, having regard to

- (i) the cost of drilling and production, and
- (ii) the price, kind and quality of that production,

would justify from a commercial and economic standpoint the drilling of a similar well in the immediate surroundings;

- (b) "crude oil" means a mixture that

- (i) consists mainly of pentanes and heavier hydrocarbons,
- (ii) may contain sulphur compounds,
- (iii) is recoverable at a well from an underground reservoir, and
- (iv) is liquid at the conditions under which its volume is measured or estimated,

and includes all other liquid hydrocarbons so recoverable except natural gas liquids;

- (c) "indicated ore" has the same meaning as "probable ore";

- (d) "inferred ore" has the same meaning as "possible ore";

- (e) "measured ore" has the same meaning as "proven ore";

- (f) "natural gas" means a mixture that

- (i) consists principally of hydrocarbons that may contain non-hydrocarbon gases such as carbon dioxide, hydrogen sulphide,

nitrogen or other elements,

- (ii) is recoverable from an underground reservoir, and
 - (iii) is in the gaseous phase or in solution with crude oil in the reservoir;
- (g) "natural gas liquids" means the hydrocarbon components, propane, butanes, and pentanes plus, or a combination of them, which are subject to recovery from raw gas as liquids by the processes of condensation or absorption, which recovery takes place in field separators, scrubbers, gas processing and reprocessing plants or cycling plants;
- (h) "ore" means a natural aggregate of one or more minerals that, at a specified time and place, may be mined and sold at a profit or from which some part may be profitably separated;
- (i) "possible ore" means that material for which quantitative estimates are based largely on broad knowledge of the geologic character of the deposit and for which there are few, if any, samples or measurements and for which the estimates are based on an assumed continuity or repetition for which there are reasonable geological indications, which indications may include comparison with deposits of similar type and bodies that are completely concealed if there is specific evidence of their presence, and
- (i) estimates of possible ore shall include a statement of conditions within which the possible material occurs, and
 - (ii) a statement of how samples were taken shall be given and where mineralization is erratic, the method of treating erratic values shall be given in the narrative of the report;
- (j) "probable additional reserves", with respect to crude oil, natural gas and natural gas liquids, means an estimate of reserves not included in an estimate of the proven reserves that may be recovered from the known reservoir or from that portion underlying the properties, provided
- (i) the estimates of probable additional reserves are as realistic as can be determined on the basis of the information available,
 - (ii) the reserve considered probable additional shall be
 - (A) the estimated ultimate recoverable content of
 - (I) the reservoir less the proven reserve, or
 - (II) the portion underlying the properties, and
 - (B) based on a realistic interpretation of the geological, geophysical and well test data available at the time the estimate is made,
 - (iii) probable additional reserves to be obtained by the application of enhanced recovery processes will be the increased recovery over and

above that recognized in the proven category that can be realistically estimated to be ultimately economically recovered from the pool or those portions that underlay properties;

- (k) "probable ore" means that material for which tonnage and grade are computed partly from specific measurements partly from
 - (i) either or both sample data or production data, and
 - (ii) projections for a reasonable distance on geologic evidence and for which the sites available for inspection, measurement and sampling are too widely or otherwise inappropriately spaced to outline the material completely or to establish its grade throughout;
- (l) "proven developed reserves" means those proven reserves that will be produced from existing wells or facilities;
- (m) "proven ore" means that material for which
 - (i) tonnage is computed from dimensions revealed in outcrops or trenches or underground workings or drill holes,
 - (ii) the grade is computed from the results of adequate sampling,
 - (iii) the sites for inspection, sampling and measurement are so spaced and the geological character so well defined that the size, shape and mineral content are established,
 - (iv) the computed tonnage and grade are judged to be accurate within limits that shall be stated, and
 - (v) a statement is made as to whether the tonnage and grade of proven ore or measured ore are in situ or extractable, with dilution factors shown and reasons for the use of these dilution factors clearly explained;
- (n) "proven reserves underlying a property" means the estimated economically recoverable quantities of crude oil, natural gas and natural gas liquids, including the reserves to be obtained by enhanced recovery processes demonstrated to be successful, from that portion of an area that
 - (i) is delineated by gas-oil or oil-water or gas-water contacts in drilled wells, or
 - (ii) can be reasonably evaluated as economically productive, on the basis of drilling, geological, geophysical and engineering data,but does not include reserves in undrilled prospects;
- (o) "proven undeveloped reserves" means proven reserves that are not recoverable from

- (i) existing wells or facilities, or
- (ii) those zones in existing wells that have been cased off,

but which can be recovered through the drilling of additional wells.

(2) A natural resource company shall file at the time of the filing of

- (a) a preliminary prospectus; or
- (b) a prospectus under Section 67 of the Act;

as the case may be, a full and up-to-date report that is acceptable to the Director on

- (c) the property of the natural resource company referred to in paragraph (b) or (c) of item 9 in Form 14; and
- (d) the development of the property mentioned in clause (c),

made by an individual who is a mining engineer, geologist or other qualified individual acceptable to the Director.

(3) Where a natural resource issuer files a report in accordance with subsection (2), the report shall be accompanied by a certificate on the report which shall state

- (a) the address and occupation of the individual;
- (b) the qualifications of the individual;
- (c) whether or not the report is based on personal examination;
- (d) the date of any personal examination mentioned in clause (c);
- (e) where the report is not based on personal examination, the source of the information contained in the report; and
- (f) whether or not the individual
 - (i) has, directly or indirectly, received or expects to receive any interest, direct or indirect, in the property of the person or company or any associate or affiliate of the person or company, or
 - (ii) beneficially owns, directly or indirectly, any securities of the person or company or any associate or affiliate of the person or company

and, if so, the particulars of the interest or beneficial ownership.

Section 98 revoked effective May 6, 2002: Rule 43-101.

99 (1) Every prospectus of an issuer, other than a mutual fund, shall contain

- (a) an income statement of the issuer for
 - (i) each of the last five financial years or any shorter period that the Director permits or requires, and

- (ii) any part of a subsequent financial year to the date at which the balance sheet required by clause (d) is made up;
- (b) a statement of surplus of the issuer for
 - (i) each of the financial years or shorter period, and
 - (ii) any part of a subsequent financial year,covered by the income statement mentioned in clause (a);
- (c) subject to subsection (3), a statement of changes in financial position of the issuer for
 - (i) each of the financial years or shorter period, and
 - (ii) any part of a subsequent financial year,covered by the income statement mentioned in clause (a); and
- (d) a balance sheet of the issuer
 - (i) as at
 - (A) a date not more than one hundred and twenty days prior to the date of the issuance of a receipt for the preliminary prospectus or the date of a new prospectus mentioned in Section 67 of the Act, as the case may be, or
 - (B) any date, other than the date mentioned in paragraph (A), that the Director may permit or require, and
 - (ii) subject to subsection (2), as at the corresponding date of the previous financial year.
- (2)** Where the balance sheet included under subclause (1)(d)(i) is as at a date other than a financial year end, the balance sheet mentioned in subclause (1)(d)(ii) may be omitted if the prospectus contains a balance sheet as at
 - (a) the most recent financial year end; and
 - (b) the immediately preceding financial year end.
- (3)** Every prospectus of an issuer engaged primarily in the business of investing shall include a statement of changes in net assets in lieu of a statement of changes in financial position.
- (4)** Where the securities to which a prospectus relates are debt securities and the payment of principal or interest is guaranteed, the prospectus shall contain, with respect to the guarantor, the financial statements required by subsection (1).
- (5)** Where the financial statements required by subsection (1) relate to part of a financial year, the prospectus shall contain

- (a) an income statement;
- (b) a statement of surplus; and
- (c) a statement of changes in financial position,

for the comparable period in the preceding financial year.

- (6) Where the Director is satisfied that there is sufficient justification, he may permit the omission of any financial statement required by this Section.

100 (1) Every prospectus of a mutual fund and every summary statement of a mutual fund shall contain

- (a) an income statement;
- (b) a balance sheet;
- (c) a statement of investment portfolio;
- (d) subject to Section 162, a statement of portfolio transactions; and
- (e) a statement of changes in net assets,

of the mutual fund, each for or as at the end of, as appropriate, its last financial year or for any period or periods permitted or required by the Director.

- (2) Notwithstanding subsection (1) but subject to subsections (3) and (4), where a summary statement of a mutual fund is filed together with a prospectus, the financial statements described in subsection (1) may be omitted from the prospectus of the mutual fund and from the summary statement if a copy of the financial statements that would otherwise be required to be included therein
 - (a) is filed concurrently with the filing of the prospectus of the mutual fund and summary statement; or
 - (b) has previously been filed pursuant to Section 84 of the Act.
- (3) Where, under subsection (2), a prospectus of a mutual fund and a summary statement do not contain the financial statements described in subsection (1), a prospectus or a summary statement sent or delivered to a purchaser of securities pursuant to Section 76 or subsection 68(5) of the Act shall be accompanied by
 - (a) a copy of the financial statements that would otherwise be required to be included in the prospectus or summary statement; and
 - (b) where one or more financial statements for periods subsequent to those covered by the financial statements described in clause (a) have been filed with the Director under Sections 83 or 84 of the Act, a copy of the financial statements that were filed most recently before the day the prospectus or summary statement is sent or delivered.
- (4) Where the financial statements described in subsection (1) are omitted from a prospectus of a mutual fund and from a summary statement of a mutual fund under subsection (2), the prospectus and the summary statement shall each have printed on the outside cover page the following statement:

The information contained herein must be accompanied by the annual financial statements of the Fund for the last financial year completed before the date of the current prospectus of the Fund and the auditors' report thereon, which statements and report are considered to form part of this document. As well, if subsequent financial statements, whether semi-annual or annual, have been filed with the Securities Commission, a copy of the most recent of such subsequent statements must also accompany this document.

101 The Director may permit or require a prospectus to contain as a part of the financial statements a pro forma balance sheet of the issuer and unless the Director otherwise directs, of all its subsidiaries, as at the date at which the balance sheet required by subclause 99(1)(d)(i) is made up, giving effect to

- (a) the issue and sale or redemption or other retirement of securities issued or to be issued by the issuer; and
- (b) any other transactions that the Director may permit or require.

102 (1) Where the proceeds of the securities offered by a prospectus are to be applied in whole or in part, directly or indirectly, to finance the acquisition of a business by a purchase of assets or shares, the Director may permit or require the inclusion in the prospectus of

- (a) financial statements of the acquired business which shall be
 - (i) one or more of the financial statements mentioned in clauses 99(1)(a), (b) and (c) and subclause 99(1)(d)(i) and for the periods or as at the date referred to in those provisions, and
 - (ii) the financial statements mentioned in subsection 99(5) for the period mentioned in that subsection; and
- (b) a pro forma balance sheet combining the assets and liabilities of the issuer and the business as shown by their respective balance sheets each as at the date mentioned in subclause 99(1)(d)(i) or at any other date that the Director may permit or require,

and where the Director is satisfied that to do so would be meaningful to investors and that the information is necessary for full, true and plain disclosure of the material facts relating to the securities, he

- (c) shall require for a period not more than one year immediately preceding the date mentioned in subclause 99(1)(d)(i); and
- (d) may permit for a period not greater than five years immediately preceding the date mentioned in subclause 99(1)(d)(i);

the inclusion in the prospectus of pro forma statements combining, year by year

- (e) the income or losses of the business with the income or losses of the issuer; and
- (f) the changes in financial position of the business with the changes in

financial position of the issuer.

- (2) An auditor's report prepared in connection with the pro forma financial statements mentioned in clauses (1)(b), (e) and (f) need only be concerned with the manner in which the statements have been compiled.

103 Where a prospectus contains financial statements of

- (a) an issuer incorporated or organized other than in Canada or a province or territory of Canada; and
- (b) prepared in accordance with generally accepted accounting principles as permitted by subsection 3(5),

the notes to the financial statements shall explain and quantify any significant differences between the principles applied and the principles mentioned in subsection 3(7).

Clause 103(b) amended: O.I.C. 91-815, N.S. Reg. 157/91.

104 The option under subsection 3(5) shall be exercised with respect to financial statements included in a prospectus only with

- (a) the consent of the Director; and
- (b) subject to any conditions the Director may impose.

Section 104 revoked effective March 30, 2004: Rule 52-107.

- 105** (1) Subject to subsection (2), a prospectus relating to an issue of
- (a) debt securities having a term to maturity in excess of one year; or
 - (b) preferred shares,

shall contain statements of asset coverage and earnings coverage in a form satisfactory to the Director.

- (2) The requirements of this Section do not apply to a prospectus relating to securities of
- (a) a newly-organized issuer; or
 - (b) any other issuer with respect to which the Director permits or requires that the disclosure not be made.

Section 106 repealed: O.I.C. 91-815, N.S. Reg. 157/91.

107 Where pursuant to Section 102, the Director permits or requires one or more of the financial statements of an acquired business to be included in a prospectus, Sections 103 to [105] inclusive apply, with necessary modifications, to the financial statements of the business acquired.

108 The Director may direct that separate financial statements of a subsidiary of an issuer be included in a prospectus of the issuer, whether or not the financial statements of the subsidiary are consolidated with the financial statements of the issuer contained in the prospectus.

- 109** The Director may permit unconsolidated financial statements to be included in a prospectus as supplementary information.
- 110** (1) Every financial statement of a person or company contained in a prospectus shall, prior to its approval by the board of directors, be submitted for review to the audit committee of its board of directors, where it has or is required to have an audit committee.
- (2) The approval of the financial statements by the board of directors shall be evidenced by the manual signatures of two directors duly authorized to signify approval.
- 111** (1) Any financial statement included in a prospectus that relates to any part of a financial year subsequent to the last audited financial year of the issuer need not be reported on by an auditor where
- (a) that part of a financial year ended
- (i) not more than ninety days before the date of the issuance of a receipt for the preliminary prospectus, or
- (ii) any longer period of time that the Director may permit but not more than one year after the last audited financial year or any longer period of time that the Director may permit; and
- (b) a balance sheet of the issuer as at the end of the latest audited financial year of the issuer is included in the prospectus.
- (2) Every
- (a) balance sheet mentioned in subclause 99(1)(d)(ii); and
- (b) income statement, statement of surplus and statement of changes in financial position required by subsection 99(5),

and those financial statements for the same period for an acquired business mentioned in Section 99 may, but need not, be reported on by an auditor.

- (3) Where, pursuant to this Section, a financial statement contained in a prospectus is not reported on by the auditor, there shall be filed with the Director
- (a) that advice from the auditor that is suggested for these circumstances by the Handbook of The Canadian Institute of Chartered Accountants; or
- (b) any other advice that may reasonably be required by the Director for the purpose of assisting him in discharging his responsibilities and the advice may include a statement to that effect.
- 112** (1) Subject to subsection (2), where a preliminary prospectus does not contain a report of the auditor of the issuer, there shall be filed, at the time the preliminary

prospectus is filed, a letter addressed to the Director and signed by the auditor of the issuer,

- (a) in which he shall make such statement with respect to his examination that may be appropriate in the circumstances; and
- (b) a statement that
 - (i) on the basis of the information then available to him, he has no reason to believe that the financial statements included in the preliminary prospectus that are being audited by him do not provide a fair representation of the financial position and earnings of the issuer, and
 - (ii) specifies dates and years or periods of the financial statements.

(2) If the examination of the accounts of the issuer by the auditor has not progressed to the point where the auditor can properly make the statements mentioned in subsection (1), in lieu of those statements the auditor may make any statements that the circumstances require and that are acceptable to the Director.

113 A mutual fund may file a summary statement as a separate document, which shall be prepared in accordance with the Form prescribed by subsection 86(5), together with a prospectus filed under Section 58 or 67 of the Act.

114 (1) Every escrow agreement referred to in clause 41(2)(n) of the Act shall be prepared

- (a) in accordance with Form 16 for a natural resource company;
- (b) in accordance with Form 17 for any other type of issuer.

(2) Every transferee of securities that are subject to the escrow agreement shall

- (a) sign an acknowledgement in accordance with Form 18; and
- (b) file the acknowledgement mentioned in clause (a) within ten days after the date of the Commission's consent to a transfer within escrow.

115 (1) Subject to subsection (2), if more than three underwriters have signed or caused to be signed the certificate referred to in Section 64 of the Act,

- (a) the final prospectus filed with the Director shall be accompanied or preceded by a certificate duly executed by a person who certifies that he
 - (i) is a representative of the underwriter or underwriters, and
 - (ii) has knowledge of the matters referred to; and
- (b) the certificate mentioned in clause (a)
 - (i) shall briefly identify the transaction to which the certificate relates, and
 - (ii) shall

- (A) set out the total public offering price represented by the portion of the distribution underwritten by each underwriter who has signed or caused to be signed the certificate referred to in Section 64 of the Act, or
 - (B) if the nature of the underwriting arrangements is such that the information described in paragraph (A) is not available when the final prospectus is filed, describe the nature of those arrangements and include an undertaking to file a further certificate setting out the information immediately after the information becomes available.
- (2) The certificate mentioned in subsection (1) need not be filed if the information required by clause (1)(b) is included in the prospectus, as to each of the underwriters referred to in the prospectus.

116 (1) Every preliminary prospectus and prospectus including every prospectus referred to in subsection 58(2) of the Act shall comply with the relevant provisions of this Part except as otherwise provided in the following Rules entitled:

- (a) National Instrument 81-101 Mutual Fund Prospectus Disclosure.
- (b) National Instrument 44-101 Short Form Prospectus Distributions.
- (c) National Instrument 44-102 Shelf Distributions.
- (d) National Instrument 71-101 The Multijurisdictional Disclosure System.

(2) Despite subsection (1), the Director may permit a variation from the relevant provisions of this Part where, in his opinion, the variation will not detract from full, true and plain disclosure and may require any variation from those provisions that he considers necessary for full disclosure of material facts.

Section 116 amended effective May 10, 2004: Rule 81-101(Amendment).

117 (1) No receipt shall be issued for a prospectus of an issuer, other than a trust company, doing business primarily as

- (a) an industrial company;
- (b) a natural resource company; or
- (c) a mutual fund,

if the issuer has as part of its name any of the words "Acceptance", "Credit", "Finance", "Loan" or "Trust".

(2) Subsection (1) does not apply to

- (a) an issuer that had the words "investment trust" as part of its name before the first day of July, 1968; or
- (b) an issuer that includes on the outside front cover page of the prospectus a statement, satisfactory to the Director, indicating the nature of the business actually carried on by the issuer.

Statement of Material Facts

- 118** (1) Every statement of material facts referred to in clause 78(1)(b) of the Act shall be prepared in accordance with Form 24.
- (2) Every statement of material facts shall provide full, true and plain disclosure of all material facts relating to the security proposed to be offered.
- (3) Where an issuer other than a natural resource company files a statement of material facts, the Director may permit that Form 24 be adapted as appropriate.
- 119** Sections 90 and 91, subsection 92(5), Sections 96 and 97, subsections 98(2) and (3), Sections 103 to [105] inclusive, and Sections 108 to 112 inclusive, apply, with necessary modifications, to a statement of material facts.
- 120** (1) Every statement of material facts of an issuer shall contain
- (a) an income statement of the issuer for
 - (i) each of the last three financial years or any shorter period that the Director permits or requires, and
 - (ii) any part of a subsequent financial year to the date at which the balance sheet required by clause (d) is made up;
 - (b) a statement of surplus of the issuer for each of the financial years or shorter period and any part of a subsequent financial year covered by the income statement mentioned in clause (a);
 - (c) subject to subsection (2), a statement of changes in the financial position of the issuer for each of the financial years or shorter period and any part of a subsequent financial year covered by the income statement mentioned in clause (a); and
 - (d) a balance sheet of the issuer as at
 - (i) a date not more than ninety days prior to the date of the filing of the statement of material facts, or
 - (ii) any other date that the Director may permit or require.
- (2) Every statement of material facts of an issuer engaged in the business of investing shall include a statement of changes in net assets in lieu of a statement of changes in financial position.
- (3) Where
- (a) the securities to which a statement of material facts relates are debt securities; and
 - (b) the payment of principal or interest is guaranteed,

the statement of material facts shall contain, with respect to the guarantor, the financial statements required by subsection (1).

- (4) Where the financial statements required by subsection (1) relate to part of a financial year, the statement of material facts shall also contain
 - (a) an income statement;
 - (b) a statement of surplus; and
 - (c) a statement of changes in financial position,

for the comparable period in the preceding financial year.

- (5) Where the Director is satisfied that there is sufficient justification and is of the opinion that to do so will not be unduly prejudicial to the public interest, he may permit the omission of any financial statement required by this Section.

121 (1) Subject to subsections (3) and (4), every statement of material facts shall contain a certificate in the form prescribed in subsection (2), signed by

- (a) the chief executive officer;
- (b) the chief financial officer;
- (c) on behalf of the board of directors, by any two directors of the issuer, other than those described in clauses (a) and (b) duly authorized to sign; and
- (d) by any person or company who is a promoter of the issuer.

- (2) The certificate mentioned in subsection (1) shall state:

The foregoing constitutes full, true and plain disclosure of all material facts relating to the securities offered by this statement of material facts.

- (3) Where the board of directors consists of fewer than four persons, the statement of material facts may be signed on behalf of the board of directors by any two directors of the issuer duly authorized to sign.
- (4) Where the Director is satisfied on evidence or submissions made to him that either or both of the chief executive officer or chief financial officer of the issuer for adequate cause is not available to sign a certificate in a statement of material facts, the Director may permit the certificate to be signed by any other responsible officer or officers of the issuer in lieu of either or both of the chief executive officer or chief financial officer.
- (5) With the consent of the Director
 - (a) a promoter need not sign a certificate in a statement of material facts; or
 - (b) a promoter may sign a certificate in a statement of material facts by his agent duly authorized in writing.

122 (1) For the purposes of this Section, "underwriter" means an underwriter who, with

respect to the securities offered by a statement of material facts, is in a contractual relationship with the issuer of the securities.

- (2) Where there is an underwriter, a statement of material facts shall contain a certificate in the following form, signed by the underwriter or underwriters:

To the best of our knowledge, information and belief, the foregoing constitutes full, true and plain disclosure of all material facts relating to the securities offered by this statement of material facts.

- (3) With the consent of the Director, an underwriter may sign a certificate in a statement of material facts by his agent duly authorized in writing.

123 Where a material change occurs after a statement of material facts has been filed with and accepted by the Director but prior to the completion of the distribution under that statement of material facts, the issuer shall

- (a) notify the Director immediately of the change; and
- (b) file an amendment to the statement of material facts as soon as practicable after the date the change occurs and in any event within ten days after the date the change occurs.

124 If the Director is satisfied that all reasonable efforts have been made to comply with the provisions of the Act and these regulations with respect to a statement of material facts and is of the opinion that it is not unduly prejudicial to the public interest to do so, he may relieve any person or company from compliance with the provisions of the Act or these regulations with respect to which reasonable efforts have been made to effect compliance.

125 The Director may require any document, report or other material to be filed with a statement of material facts.

Offering memorandum

126 (1) Subject to subsection (7), every offering memorandum sent or delivered to a purchaser with respect to a trade to which Sections 58 and 67 of the Act do not apply by virtue of clause 127(p), shall contain at least

- (a) the name and address of the issuer and the underwriter, if any, through which the issuer is effecting the distribution;
- (b) a statement that the distribution is being made in reliance upon the exemption contained in clause 127(p) and as a consequence thereof the issuer will not, following the distribution, be required to comply with certain provisions of the Act and regulations designed to protect investors which the issuer would have been required to comply with if it had filed a prospectus in respect of the distribution and obtained a receipt therefor under the Act;
- (c) the information referred to in subclause 127(p)(i);

- (d) a statement that each prospective purchaser is entitled to have access to substantially the same information concerning the issuer that a prospectus filed under the Act would provide and that the information supplied or to be supplied by or on behalf of the issuer constitutes full, true and plain disclosure of all material facts relating to the securities offered;
- (e) to the extent that the information referred to in clause (d) is not contained in the offering memorandum, a statement explaining where, when and how a prospective purchaser may obtain such information;
- (f) a statement that each purchaser, other than purchasers referred to in paragraph 127(p)(ii)(B), is required to be an investor who by virtue of his or its net worth and investment experience or by virtue of the consultation referred to in paragraph 127(p)(ii)(A) is able to evaluate the prospective investment on the basis of the information presented to him or it by or on behalf of the issuer;
- (g) a statement that each purchaser must purchase as principal;
- (h) a statement that there are restrictions imposed by the Act and these regulations on the resale of the securities by the purchaser and a description of the general nature of those restrictions;
- (i) where there is no bona fide trading market for the securities offered [and] one is not expected to develop as a consequence of the distribution, a statement to that effect in bold face type on the cover page of the offering memorandum and a statement that the purchaser may not be able to resell the securities being offered;
- (j) a statement in the following form:

No Securities Commission or similar authority in Canada has in any way passed upon the adequacy of this offering memorandum or upon the merits of the securities offered hereunder and any representation to the contrary is an offence. The satisfaction of the Director with respect to this offering memorandum or the failure of the Director to object to the offering memorandum indicates only that the Director is satisfied that the form hereof complies with the applicable regulations under the Securities Act of Nova Scotia.;

- (k) the statement required by subsection 65(3) of the Act and a statement of the withdrawal right referred to in subclause 127(p)(iii) and the manner in which it may be exercised;

Clause 126(1)(k) replaced: O.I.C. 91-815, N.S. Reg. 157/91.

- (l) a general summary of the income tax consequences to a purchaser who purchases the securities;
- (m) details of the certificate of eligibility issued pursuant to the Nova Scotia Stock Savings Plan Act with respect to the specified securities issue and a general statement of the consequences of

- (i) the failure of any of the securities to be subscribed within ninety days following the date of the certificate, and
 - (ii) the revocation of the certificate of eligibility
- to the issuer and to a purchaser including to a purchaser who purchases after a revocation of the certificate of eligibility;
- (n) a statement of the means by which a prospective purchaser can obtain information from the Nova Scotia Department of Finance on the status of the certificate of eligibility referred to in clause (m);
 - (o) a general statement of the proposed application and use of the proceeds of the issue by the issuer of the securities and any minimum level of proceeds that are required to be generated by the distribution in order to reasonably achieve the purpose of the distribution;
 - (p) where a minimum level of proceeds is required to be generated by the distribution, a statement that the offering of the securities will not continue for more than sixty days if the minimum level is not achieved within the sixty days without the consent of the Director and those persons and companies that subscribed within that sixty days;
 - (q) where a minimum number of subscribers for the securities offered is required to qualify the issue as being offered for sale in the manner prescribed in the regulations made pursuant to the Nova Scotia Stock Savings Plan Act, a statement of the minimum number of subscribers so required and a statement as to the number of days during which the securities will be offered in an effort to achieve that minimum number and a statement that any subscriber may withdraw his or its subscription if such minimum number is not achieved within such stated number of days; and
 - (r) a statement of the commissions to be paid to dealers or underwriters in connection with the issue and the consideration paid or to be paid for promotional purposes by the issuer in connection with the issue;
 - (s) a statement of
 - (i) the number, class and characteristics of the securities being offered for sale, and
 - (ii) the aggregate of the maximum subscription prices for the maximum number of securities that may be issued by the issuer pursuant to the specified securities issue;
 - (t) the share and loan capital structure of the issuer furnished in substantially the tabular form required in Item 7 of Form 12 completed in accordance with the instructions applicable to such Item to the extent that those instructions are applicable or may reasonably be varied to be made applicable to the circumstances; and

- (u) such other information as the Director or Minister of Finance for the Province of Nova Scotia may require.
- (2) The information required by subsection (1)
- (a) is not required to be presented in the order set out in that subsection;
 - (b) except as required by that subsection or the Director, shall be presented in the same size type; and
 - (c) is not necessarily satisfactorily presented by simply quoting Sections of the Act or regulations or referring thereto.
- (3) Every offering memorandum referred to in subsection (1) shall be signed by the issuer and contain the following certificates at the end thereof:
- (a) A certificate signed by the persons referred to in subsection 63(1) of the Act in the following form:

The foregoing and the information which will be supplied by or on behalf of the issuer on request of a purchaser constitutes full, true and plain disclosure of all material facts relating to the securities offered by this offering memorandum.
 - (b) A certificate signed by the underwriter, if any, through which the issuer is effecting the distribution in the following form:

To the best of our information, knowledge and belief, the foregoing and the information which will be supplied by or on behalf of the issuer on request of a purchaser constitutes full, true and plain disclosure of all material facts relating to the securities offered by this offering memorandum.
- (4) Where a material adverse change occurs after an offering memorandum referred to in subsection (1) has been given to the Director pursuant to clause 127(p), the issuer shall
- (a) notify the Director immediately of the change;
 - (b) cease to distribute the offering memorandum and cease to trade in the securities with respect to which the offering memorandum was prepared;
 - (c) file with the Director an amended offering memorandum reflecting the material change as soon as practical after the change occurs and in any event within ten days after the day on which the change occurs;
 - (d) make, in a timely manner, all changes to the amended offering memorandum that the Director may require;
 - (e) not distribute the amended offering memorandum and not recommence trading in the securities with respect to which the offering memorandum

was prepared until the Director has given his approval to the amended offering memorandum; and

- (f) send or deliver the amended offering memorandum to every person or company that was sent or delivered the offering memorandum, forthwith following the Director giving his approval to the amended offering memorandum.
- (5) Where a statement referred to in clause (1)(p) or (q) is included in an offering memorandum, the Director may require, as a condition of not objecting to the proposed trade pursuant to paragraph 127(p)(iv)(A), that trust arrangements satisfactory to him are adhered to.
- (6) The Director may require or order that a distribution under an offering memorandum shall
 - (a) not continue beyond a date specified by the Director before the distribution commences; or
 - (b) cease at any time during the course of distribution if he is satisfied that to do so is in the public interest provided that the Director provides the issuer with an opportunity to be heard.
- (7) Where the Director is satisfied that to do so is either justified or necessary in the public interest, he may permit the information required to be included in an offering memorandum pursuant to subsection (1) to be varied or omitted.
- (8) The Director shall object to a proposed offering memorandum if it appears to him that any of the circumstances referred to in clauses 66(2) (b) to (g), inclusive, of the Act or clause 66(2)(i) of the Act exist and for this purpose those clauses shall be read as if the references therein to "prospectus" were a reference to the "proposed offering memorandum".
- (9) An offering memorandum referred to in this Section is not, for the purpose of subclause 2(1)(ab)(ii) of the Act, a document the content of which is prescribed by statute or regulation.

Subsection 126(9) added: O.I.C. 91-815, N.S. Reg. 157/91.

Part VI - Prospectus exemptions and exemption restrictions

Exemptions from prospectus requirements

127 Sections 58 and 67 of the Act do not apply to a distribution of securities where

- (a) the trade is made in a security of a mutual fund that
 - (i) is administered by a trust company, and
 - (ii) consists of a pool of funds that
 - (A) results from, and is limited to, the combination or commingling of funds of pension or other superannuation plans registered

under the Income Tax Act (Canada), and

(B) is established by or related to persons or companies that

(x) are associates or affiliates of, or

(xx) otherwise do not deal at arm's length (within the meaning of the Income Tax Act (Canada)) with

the promoters of the mutual fund except the trust company that administers the fund, and

(C) is managed, in whole or in part, by a person who is registered or who is exempt from registration under the Act;

Clause 127(a) is not applicable after July 14, 1991 (see Section 127A).

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

Clause 127(b) is not applicable after July 14, 1991 (see Section 127A).

(c) the trade is made in a variable insurance contract issued by an insurance company if the variable insurance contract is

(i) a contract of group insurance,

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

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

(iv) a variable life annuity;

Clause 127(c) is not applicable after July 14, 1991 (see Section 127A).

(d) the trade is made in a security of an offeree issuer to an offeror pursuant to a transaction referred to in clause (r) or (s);

Clause 127(d) is not applicable after July 14, 1991 (see Section 127A).

(e) the trade is made in a security of an issuer by a promoter of the issuer and the trade is a distribution by virtue of clause 77(10)(c) of the Act if Sections 58 and 67 of the Act do not apply by virtue of an exemption contained in subsection 77(1) of the Act or this Section 127;

Clause 127(e) is not applicable after July 14, 1991 (see Section 127A).

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

Clause 127(f) is not applicable after July 14, 1991 (see Section 127A).

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

- (i) the licensed real estate broker has listed for sale real estate and incidental property owned by a company and the owner or owners of all of the issued and outstanding shares in the capital of the company are prepared to sell his or their shares as an alternative to the company selling the real estate and incidental property which has been so listed,
- (ii) the securities which are the subject of the trade include all of the issued and outstanding shares in the capital of the company,
- (iii) any sale of the shares which results from or in connection with the listing is to a single purchaser or group of purchasers who have not been introduced to each other by the owner or owners of the shares, the company or anyone acting on their behalf,
- (iv) all shares sold as a result of or in connection with the listing are sold contemporaneously,
- (v) the trade is a distribution solely by virtue of subclause 2(1)(l)(iii) of the Act, and
- (vi) each purchaser who purchases any of the shares obtains legal advice before entering into a binding agreement to purchase the shares;

Clause 127(g) is not applicable after July 14, 1991 (see Section 127A).

- (h) the trade is in an option, a commodity futures option or a commodity futures contract that is
 - (i) issued by a clearing house recognized by the Commission for this purpose, and
 - (ii) traded on an exchange recognized by the Commission for this purpose;

Clause 127(h) is not applicable after July 14, 1991 (see Section 127A).

- (i) the trade is made in a security of an issuer previously
 - (i) issued by the issuer pursuant to the exemption in clause 77(1)(p) of the Act, or
 - (ii) issued by the issuer or sold by a promoter of the issuer pursuant to the exemption in clause 77(1)(w) of the Act,

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

Clause 127(i) is not applicable after July 14, 1991 (see Section 127A).

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

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

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

Clause 127(j) is not applicable after July 14, 1991 (see Section 127A).

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

- (i) the initial trade in the shares or units of the mutual funds to that purchaser was made in reliance on the exemption in clause 77(1)(d) of the Act, and

- (ii) either the net asset value or the aggregate acquisition cost of the shares or units in the mutual fund held by the purchaser as at the date of the trade is not less than \$150,000;

Clause 127(k) is not applicable after July 14, 1991 (see Section 127A).

- (l) the trade is the transfer of beneficial ownership of the security to a lender, pledgee, mortgagee or other encumbrancer pursuant to a realization of security given in connection with a trade which was exempted from the requirements of Sections 58 or 67 by virtue of clause 77(1)(e) of the Act;

Clause 127(l) is not applicable after July 14, 1991 (see Section 127A).

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

Clause 127(m) is not applicable after July 14, 1991 (see Section 127A).

- (n) the trade is made by an issuer in consideration of a cash payment pursuant to the terms of a plan referred to in clause 77(1)(v) of the Act which provides that holders of securities of the issuer who are permitted to direct that dividends or interest be applied in the manner referred to in that clause have the option to purchase for cash consideration additional securities of the same class as may be purchased with the application of dividends or interest, provided that the aggregate number of additional securities of any class which the issuer is permitted to issue pursuant to the exercise of such options in any financial year of the issuer does not exceed 2% of the number of outstanding securities of the class at the commencement of the financial year;

Clause 127(n) is not applicable after July 14, 1991 (see Section 127A).

- (o) the trade is made by an issuer or a promoter in the bona fide and reasonable belief that it is exempted from Sections 58 or 67 of the Act by virtue of

clause 77(1)(p) or 77(1)(w) of the Act or clause (p) and is not so exempted if the reason it is not so exempted is the failure of one or more of the purchasers to purchase as principal, to have access to the required information, to be a purchaser whose net worth and/or investment experience permits him to purchase under the exemption, to consult with or receive the required advice, or to receive an offering memorandum or to receive an offering memorandum in a timely manner provided that

- (i) the vendor has exercised due diligence to ensure that such failure did not occur,
- (ii) the vendor delivers the offering memorandum and extends a contractual right of action that is described therein to any purchaser on request, and
- (iii) the issuer or promoter gives written notice to the Director of its or his intention to rely on this exemption within ten days after becoming aware of the unavailability of the exemption on which he or it had intended to rely and provides the Director with such details of the trade as the Director may from time to time require;

Clause 127(o) is not applicable after July 14, 1991 (see Section 127A).

- (p) the trade is made by an issuer in a share or share and warrant of its own issue which is or is part of a specified securities issue, within the meaning of the Nova Scotia Stock Savings Plan Act and regulations made thereunder, in respect of which a certificate of eligibility has been issued pursuant to that Act and has not been revoked, if
 - (i) each purchaser to whom shares or shares and warrants are sold in reliance on this exemption has been supplied information identifying every officer and director of the issuer and every promoter thereof and giving the particulars of such of their professional qualifications and associations during the immediately preceding five years as are relevant to the undertaking being financed and indicating which of the directors will be devoting his full time to the affairs of the issuer,
 - (ii) each purchaser has access to substantially the same information concerning the issuer that a prospectus filed under the Act would provide and is
 - (A) an investor who, by virtue of his or its net worth and investment experience or by virtue of consultation with or advice from a person or company who is not a promoter of the issuer whose securities are being offered and who is a registered adviser or a registered broker, investment dealer or securities dealer, is able to evaluate the prospective investment on the basis of information respecting the investment presented to him or it by or on behalf of the issuer, or
 - (B) a senior officer or director of the issuer or of an affiliate of the issuer or a spouse, parent, brother, sister or child of any such

director or officer,

- (iii) each purchaser is furnished with an offering memorandum in form satisfactory to the Director before an agreement of purchase and sale is entered into with such purchaser and is given the right to withdraw from the purchase of the securities by giving written notice to the issuer or underwriter of his intention not to be bound thereby not later than midnight on the second day, exclusive of Saturdays and holidays, after receipt by the purchaser of the offering memorandum or the latest offering memorandum and if such notice is given the purchaser shall not be bound by any agreement of purchase and sale of the securities,

Subclause 127(p)(iii) amended: O.I.C. 91-815, N.S. Reg. 157/91.

- (iv) the issuer has given the Director written notice of the proposed trade and a copy of the proposed offering memorandum prior to the trade and either
 - (A) the Director has not informed the issuer in writing within twenty-one days after receipt of the written notice and proposed offering memorandum that he objects to the proposed trade, or
 - (B) the issuer has delivered to the Director information relating to the proposed trade or has amended the proposed offering memorandum in a manner satisfactory to the Director,
- (v) the issuer is not a reporting issuer and does not have similar status under the securities laws of any other jurisdiction and for the purpose of this subclause, an issuer shall be deemed not to be a reporting issuer if it is a reporting issuer only by virtue of subsection 3A(2),

Subclause 127(p)(v) replaced: O.I.C. 91-815, N.S. Reg. 157/91.

- (vi) the trade is a distribution only by virtue of subclause 2(1)(l)(i) of the Act,
- (vii) the issuer is not required to file or provide any purchaser of the shares or shares and warrants with a prospectus or similar disclosure document under the laws of any other jurisdiction,
- (viii) no security of the issuer's own issue is being issued concurrently pursuant to the exemptions in clause 77(1)(p) or (w) of the Act, and
- (ix) no promoter of the issuer, other than a registered dealer, has acted within the previous twelve months as a promoter of any other issuer which has traded in securities of its own issue pursuant to the exemptions in clause 77(1)(p) or (w) of the Act;
- (q) the trade is made in securities of an issuer previously issued by the issuer pursuant to the exemption in clause (p) or shares of an issuer issued by the issuer as a consequence of the exercise of a warrant issued by the issuer pursuant to the exemption contained in clause (p), where each of the parties

to the trade is one of the purchasers referred to in clause (p), provided that the purchaser in the trade is advised in writing by or on behalf of the vendor prior to entering into an agreement of purchase and sale that the purchaser shall not accrue any advantage under the Nova Scotia Stock Savings Plan Act as a result of such purchase;

- (r) the trade is made in a security of an issuer that is exchanged by or for the account of the issuer with the security holders of another issuer (in this clause called the "offeree company") in connection with a transaction which would be a takeover bid pursuant to the Act if Sections 95 to 111, inclusive, of the Act were proclaimed where
 - (i) the transaction in question is regulated by a province in Canada whose laws governing the transaction are satisfactory to the Director (in this clause called the "principal jurisdiction") and the security holders (in this clause called "resident security holders") whose latest address as shown on the books of the offeree company is in Nova Scotia are furnished prior to the trade with a disclosure document which contains substantially the same information concerning the issuer of the securities that a prospectus filed under this Act would provide,
 - (ii) the issuer extends to the resident security holders the same rights and protections as are extended to security holders of the offeree company whose latest address as shown on the books of the offeree company is in the principal jurisdiction, and
 - (iii) the disclosure document referred to in subclause (i) is filed with the Director five days prior to the issue of the securities which constitutes the trade and the Director has not objected thereto;

Clause 127(r) is not applicable after July 14, 1991 (see Section 127A).

- (s) the trade is made in a security of an issuer that is exchanged by or for the account of the issuer with the security holders of another issuer in connection with a transaction which would be an exempt take-over bid pursuant to the Act if Sections 95 to 111, inclusive, of the Act were proclaimed; and

Clause 127(s) is not applicable after July 14, 1991 (see Section 127A).

- (t) a trade by a person or company referred to in subclause 2(1)(l)(iii) of the Act in a security acquired pursuant to a take-over bid that is a formal bid as defined in subsection 97(1) of the Act if
 - (i) the offeree issuer has been a reporting issuer for at least twelve months at the date of the bid,
 - (ii) either
 - (A) the intention to make the trade was disclosed in the take-over bid circular in respect of the take-over bid, or

- (B) the trade was made to a person or company that made a competing formal bid for the securities of the same issuer for consideration which did not exceed that offered in the competing formal bid,
- (iii) the trade is made within the period commencing on the day of the expiry of the bid and ending twenty days thereafter,
- (iv) a notice of intention and a declaration in Form 23 are filed before the trade,
- (v) a report of the trade is filed within five days after the completion of the trade, and
- (vi) no effort is made to prepare the market or create a demand for the security and no extraordinary commission is paid in respect of the trade.

Clause 127(t) added: O.I.C. 91-815, N.S. Reg. 157/91.

127A Clauses (a) to (o) inclusive, and clauses (r) and (s) of Section 127 shall cease to apply on, from and after the day on which this Section comes into force. **(Effective July 15, 1991)**

Section 127A added: O.I.C. 91-815, N.S. Reg. 157/91.

Restrictions on exemptions

128 For the purposes of subclauses 77(1)(p)(iv) and (vi) of the Act, subclauses 77(1)(w)(iv) and (vi) of the Act and clause 77(1)(ag) of the Act, the exemption contained in clause 127(p) is hereby specified.

Section 128 replaced: O.I.C. 91-815, N.S. Reg. 157/91.

129 (1) Subject to subsection (2), subsection 77(1) of the Act, clause 78(1)(a) of the Act and Section 127 shall not apply to a distribution where the trade is made

- (a) by an issuer in a share or share and warrant of its own issue which is or is part of a specified securities issue, within the meaning of the Nova Scotia Stock Savings Plan Act and regulations made thereunder, in respect of which a certificate of eligibility has been issued pursuant to that Act; or
- (b) by an issuer in a share of its own issue which is issued pursuant to the exercise of a warrant referred to in clause (a) where the sale of the warrant which is so exercised would constitute a distribution other than a distribution to which Sections 58 and 67 of the Act would not apply by virtue of subsection 77(11) of the Act, other than clause (a) thereof, if there were compliance with the requirements of subclauses (b)(i) and (ii) and clause (c) of that Section in respect of such sale.

Clause 129(1)(b) amended: O.I.C. 91-815, N.S. Reg. 157/91.

(2) Notwithstanding subsection (1),

- (a) clause 127(p) may apply to a trade referred to in clause (1)(a); and

(b) subclause 77(1)(f)(iii) of the Act may apply to a trade referred to in clause (1)(b).

Section 129 revoked effective May 5, 2003: Rule 45-102.

Offering memorandum rules

130 For the purpose of the Act and these regulations if there is no written agreement of purchase and sale between the seller and the purchaser with respect to the securities, then the completion of the purchase of the securities by the purchaser shall be deemed to be the time at which the agreement of purchase and sale is entered into.

Subsection 130(2) repealed, subsection 130(1) renumbered 130: O.I.C. 91-815, N.S. Reg. 157/91.

Resale restrictions

- 131 (1)** A vendor who acquires a security pursuant to a distribution exempted from Sections 58 and 67 of the Act by clause 127(r) or (s) shall be deemed to have acquired the security pursuant to a distribution exempted from Sections 58 and 67 of the Act by clause 77(1)(j) of the Act.
- (2)** The first trade in a security previously acquired by the vendor pursuant to a distribution exempted from Sections 58 and 67 of the Act by clause 127(f), (i) or (k) is a distribution unless such first trade is made in accordance with subsections 77(5) or (6) of the Act as if those subsections were applicable thereto and contained references to clauses 127(f), (i) and (k) where they contain references to clauses of subsections 77(1) of the Act, other than where subsection 77(6) of the Act contains a reference to subclause 77(1)(f)(iii) of the Act.
- (3)** The first trade in a security previously acquired by the vendor pursuant to a distribution exempted from Sections 58 and 67 of the Act by clauses 127(a), (j), (m) or (n) is a distribution unless such first trade is made in accordance with subsection 77(7) of the Act as if that subsection were applicable thereto and contained references to clauses 127(a), (j), (m) and (n) where it contains references to clauses of subsection 77(1) of the Act other than where it contains a reference to subclause 77(1)(f)(iii) of the Act.
- (4)** For all purposes of Section 77 of the Act and these regulations, a trade made in reliance on clause 127(e) is deemed to have been made in reliance on the exemption contained in subsection 77(1) of the Act or Section 127 on which the vendor has relied by virtue of clause 127(e) and it is hereby declared that clause 127(e) exists for clarity in interpreting clause 77(10)(c) of the Act.
- (5)** Subject to subsection (6), the first trade in securities by a vendor who acquired them pursuant to a trade that was in contravention of the requirements of the Act or these regulations is a distribution.
- (6)** For the purposes of Sections 77 and 78 of the Act and these regulations, where a purchaser has acquired securities pursuant to a distribution exempted from Sections 58 and 67 of the Act by clause 127(o) or which would have been exempted by clause 127(o) 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 clause 127(o) on which the issuer or

promoter intended to rely was not available to the issuer or the promoter, the purchaser shall be deemed to have acquired the securities pursuant to a distribution exempted from Sections 58 and 67 of the Act by the exemption referred to in clause 127(o) which the issuer or the promoter believed to be applicable to the trade.

- (7) The first trade in a share or warrant previously acquired by the vendor pursuant to a distribution exempted from Sections 58 and 67 of the Act by clause 127(p) is a distribution unless such first trade is made in accordance with subsection 77(5) of the Act as if that subsection were applicable thereto and contained a reference to clause 127(p) where it contains references to clauses of subsection 77(1) of the Act.
- (8) The first trade in a share previously acquired by the vendor pursuant to a distribution exempted from Sections 58 and 67 of the Act by subclause 77(1)(f)(iii) of the Act where the share was acquired as a consequence of the exercise of a warrant issued by an issuer pursuant to the exemption contained in clause 127(p) is a distribution unless such first trade is made in accordance with subsection 77(6) of the Act as if that subsection were applicable thereto and contained a reference to clause 127(p) where it contains references to clauses of subsection 77(1) of the Act other than where it contains a reference to subclause 77(1)(f)(iii) of the Act.
- (9) Subsection 77(7) of the Act shall not apply to a share previously acquired by a vendor pursuant to a distribution exempted from Sections 58 and 67 of the Act by subclause 77(1)(f)(iii) of the Act where the share was acquired as a consequence of the exercise of a warrant issued by an issuer pursuant to the exemption contained in clause 127(p).
- (10) A purchaser who purchases securities from a vendor who has relied on the exemption contained in clause 127(q) is deemed, for the purposes of subsections (7) and (8) and subsection 77(11) of the Act, to have purchased the securities at the same time and pursuant to the same distribution as the vendor purchased the securities except that if the vendor is deemed by this subsection to have purchased the securities at a particular time and pursuant to a particular distribution then the purchaser shall be deemed to have purchased the securities at the same time and pursuant to the same distribution.
- (11) Notwithstanding subsection (10), a purchaser who purchases a share previously acquired as a consequence of the exercise of a warrant (the "exercised warrant") issued by an issuer pursuant to the exemption contained in clause 127(p) from a vendor who has relied on the exemption contained in clause 127(q) is deemed, for the purpose of subsections (8) and 132(5) and subsection 77(11) of the Act, to have acquired the exercised warrant at the time at which and pursuant to the distribution in respect of which the vendor acquired, or was deemed by this subsection to have acquired, the exercised warrant and to have acquired the share on the exercise of the exercised warrant.

Section 131 revoked effective May 5, 2003: Rule 45-102.

Applicable hold periods

- 132** (1) For the purposes of clause 77(5)(b) of the Act, clause 77(6)(b) of the Act and clause 77(11)(b) of the Act the "applicable hold period" is twelve months.
- (2) For the purposes of clause 77(11)(b) of the Act, eighteen months is prescribed to be the period of time that the issuer is required to be a reporting issuer.
- (3) For the purposes of clauses 77(5)(b) and 77(6)(b) of the Act and subsections (1) and (4), the seller may elect in respect of any particular trade to be deemed to have disposed of securities of the class or, in the case of debt securities, of the kind, out of his holdings of securities of that class or kind, in any order he may choose but having so elected he may not subsequently change that election.
- (4) For the purposes of clause 77(11)(b) of the Act and subsection (1), the seller is deemed to first distribute those securities of the class, or in the case of debt securities, of the kind, which are being distributed which were most recently acquired and not previously deemed to have been distributed by the seller except where the seller has acquired securities pursuant to a distribution made in accordance with Section 58 or 67 of the Act or in a trade which was not a distribution, the seller may elect to rely on subsection (3) in determining the order of distribution of a number of securities of the class, or in the case of debt securities, of the kind, not exceeding the number so acquired.
- (5) For the purpose of clause 77(11)(b) of the Act and subsections (1) and (4), a seller is deemed to have acquired a security which he acquired pursuant to a distribution exempted from the requirements of Section 58 or 67 of the Act by subclause 77(1)(f)(iii) of the Act at the time at which and pursuant to the distribution in which he acquired the right to purchase, convert or exchange which was exercised to acquire the security.

Section 132 revoked effective May 5, 2003: Rule 45-102.

132A Notwithstanding subsection 132(1), for the purposes of the clauses referred to therein the "applicable hold period" is six months with respect to a trade in securities acquired by the vendor prior to this Section coming into force if it would have been six months pursuant to Section 132 as that Section read on October 15, 1987.

Section 132A revoked effective May 5, 2003: Rule 45-102.

Put and call options

133 Every option to sell securities known as a "put" referred to in clause 78(1)(c) of the Act and every option to purchase securities known as a "call" referred to in clause 78(1)(c) of the Act shall be in accordance with Forms 25 and 26 respectively.

Section 133, heading added: O.I.C. 91-815, N.S. Reg. 157/91.

Reporting requirements

134 (1) Subject to subsection (3), where a trade has been made under clause 127(f),(i),(k),(p) or (q), the vendor shall within ten days following the trade file a report.

Subsection 134(1) revoked effective may 5, 2003: Rule 45-102.

(2) Every report filed under subsection 77(4) of the Act and every report filed under

subsection (1) shall be filed in duplicate and prepared in accordance with Form 20.

Subsection 134(1) revoked effective May 5, 2003: Rule 45-102.

- (3) Where a trade is made in reliance on the exemption in clause 127(p) and the distribution is not completed within ninety days following the date of the certificate of eligibility under the Nova Scotia Stock Savings Plan Act, the report shall be filed within ten days following the expiration of the ninety days and a separate report shall be filed within ten days following the expiration of each successive ninety day period until the distribution is completed.

Subsection 134(3) revoked effective May 5, 2003: Rule 45-102.

- (4) every report filled under clause 77(1B) (a) of the Act shall be filed in duplicate and prepared in accordance with Form 22A.

- (5) Clause 77(1B)(a) of the Act shall not apply to a co-operative in respect of a calendar year if the co-operative has filed a report under clause 41(1B) (a) of the Act in respect of that calendar year which contains the same information which a report required to be filed by the co-operative under clause 77(1B)(a) of the Act in respect of the same calendar year would contain.

Subsections 134(4) and (5) added effective December 4, 2002: Rule GSR-1.

135 Every report filed under clause 77(5)(c) or 77(6)(c) of the Act shall be filed in duplicate and prepared in accordance with Form 21.

Section 135 revoked effective May 5, 2003: Rule 45-102.

136 Every report required to be filed under clause 77(7)(b) of the Act shall be filed in duplicate and prepared in accordance with Form 22.

Section 136 revoked effective May 5, 2003: Rule 45-102.

137 (1) Where the first trade in securities previously acquired under an exemption referred to in subsection 77(7) of the Act is a further trade exempted by subsection 77(1) of the Act or these regulations, the person or company making the trade shall, within ten days of making the trade file with the Director a letter

- (a) disclosing the particulars of the trade; and
- (b) referring to the clause of subsection 77(1) of the Act or the clause of Section 127 that applies to the trade.

Subsection 137(1) amended: O.I.C. 91-815, N.S. Reg. 157/91.

- (2) Subject to subsection (3), for the purpose of clause 77(7)(b) of the Act, adequate disclosure and report is deemed to have been made to the Director of a trade made in reliance on the exemption referred to in subsection 77(7) of the Act if particulars of the date of the trade, the number of securities purchased and the purchase price paid or to be paid are disclosed in

- (a) an information circular or takeover bid circular filed in accordance with these regulations; or
- (b) a letter filed with the Director by a person or company certifying that he or it has knowledge of the facts therein contained,

where the filing is effected prior to the vendor making the first trade in the securities acquired in the exempt distribution except that where the vendor, at the time of the first trade, is not in a special relationship with the issuer of the securities and either the issuer of the securities has been, at the time of the exempt distribution, a reporting issuer for at least twelve months or, in the case of securities acquired pursuant to clause 77(1)(i) of the Act, one of the amalgamating or merged companies or one of the continuing companies has been a reporting issuer for at least twelve months no disclosure need be made of the exempt distribution.

Subsection 137(2) amended: O.I.C. 91-815, N.S. Reg. 157/91.

(3) Subsection (2) shall not make unavailable the exemption in subsection 77(7) of the Act if disclosure of the exempt trade is made to the Director in some way other than that described in subsection (2).

(4) For the purposes of subsections (1) and (2), a trade shall be deemed to have been made in reliance on an exemption referred to in subsection 77(7) of the Act if it is a trade made in reliance on an exemption contained in these regulations and these regulations provide that the first trade in the security acquired in the exempt trade is a distribution unless such first trade is made in accordance with subsection 77(7) of the Act.

Subsection 137(4) added: O.I.C. 91-815, N.S. Reg. 157/91.

Section 137 revoked effective May 5, 2003: Rule 45-102.

138 (1) Subject to subsection (2), where a purchase plan or arrangement is operated without a prospectus in reliance on the exemption in clause 77(1)(n) or (va) of the Act, it shall be sufficient for the purposes of subsection 137(2) if the disclosure contemplated by that subsection is made

- (a) when the plan or arrangement is first commenced; and
- (b) not less frequently than annually after that commencement.

Subsection 138(1) amended: O.I.C. 91-815, N.S. Reg. 157/91.

(2) Where the volume of trading in securities sold in reliance on the exemption contained in clauses 77(1)(n) and (af) of the Act, in aggregate, in a month exceeds 1% of the securities of that class that were outstanding at the beginning of the month in which the securities were sold, a separate report shall be filed with respect to that month.

Subsection 138(2) amended: O.I.C. 91-815, N.S. Reg. 157/91.

(3) Separate disclosure of a trade and resale shall be made in accordance with clause 77(7)(b) and subsection 77(11) of the Act, respectively, where

- (a) the trade is made with an employee or trustee, respectively, in reliance on the exemption in clause 77(1)(n) or (af) of the Act;
- (b) the employee or trustee on behalf of the employee immediately resells the security; and
- (c) the resale is a distribution as defined in clause 2(1)(l) of the Act.

Clause 138(3)(a) replaced: O.I.C. 91-815, N.S. Reg. 157/91.

Section 138 revoked effective May 5, 2003: Rule 45-102.

139 (1) Every notice of intention and declaration filed under subclause 77(11)(b)(i) of the Act shall be filed in duplicate and prepared in accordance with Form 23.

(2) Every report filed under subclause 77(11)(b)(ii) of the Act shall be filed in duplicate and prepared in accordance with Form 36.

Section 139 renumbered 139(1): O.I.C. 91-815, N.S. Reg. 151/95.

Subsection 139(1) amended: O.I.C. 91-815, N.S. Reg. 157/91.

Subsection 139(2) added: O.I.C. 91-815, N.S. Reg. 157/91.

Section 139 revoked effective May 5, 2003: Rule 45-102.

Part VII CONTINUOUS DISCLOSURE

Heading amended effective March 30, 2004: Rule 51-801.

Non-financial matters

140 (1) Every report required to be filed under subsection 81(2) of the Act by an investment fund shall be prepared in accordance with Form 27.

(2) Every report required to be filed under subsection 81(2) of the Act by a reporting issuer that is not an investment fund shall be prepared in accordance with Form 51-102F3 of National Instrument 51-102 Continuous Disclosure Obligations except that,

(a) the reference in Item 3 of the Form to section 7.1 of National Instrument 51-102 shall be read as if it were a reference to subsection 81(1) of the Act; and

(b) the references in Items 6 and 7 of the Form to subsection 7.1(2) or (5) of National Instrument 51-102 shall be read as if they were references to subsection 81(3) or 81(4), respectively, of the Act.

(3) Every report required to be filed under subsection 81(2) of the Act shall, subject to section 141, be delivered to the Commission in an envelope addressed to the Commission and marked "Continuous Disclosure".

Section 140 amended effective March 30, 2004: Rule 51-801.

Confidential matters

141 Where the reporting issuer files

(a) the report required by subsection 81(2) of the Act in reliance on

(i) subsection 81(3) of the Act,

(ii) Item 7 of Form 27, in the case of a reporting issuer that is an investment fund; or

(i) Item 7 of Form 51-102F3 of National Instrument 51-102 Continuous Disclosure Obligations, in the case of any other reporting issuer; or

(b) the notification required by subsection 81(4) of the Act,

everything that is required to be filed by that provision shall be marked "Confidential" and placed in an envelope addressed to the Director marked "Confidential - s. 81".
Clause 141(a) amended effective March 30, 2004: Rule 51-801.

Annual filing of reporting issuer

- 142** (1) Every report required to be filed under subsection 87(2) of the Act shall be completed in accordance with Form 28.
- (2) The information contained in a report required to be filed under subsection 87(2) of the Act shall be clearly presented and
- (a) the statements made in the report shall be divided into groups according to subject matter; and
 - (b) the various groups of statements mentioned in clause (a) shall be preceded by appropriate headings.
- (3) The order of items set out in Form 28 need not be followed.
- (4) Where practicable and appropriate, information required by Form 28 shall be presented in tabular form.
- (5) All amounts required by Form 28 shall be stated in figures.
- (6) Information required by more than one applicable item in Form 28 need not be repeated.
- (7) No statement need be made in response to any item in Form 28 which is inapplicable and negative answers to any item may be omitted.

Section 142 revoked effective March 30, 2004: Rule 51-801.

Other disclosure material

- 143** (1) Every reporting issuer that is an investment fund shall file with the Director, in duplicate,
- (a) a copy of all material sent by the reporting issuer to its security holders; and
 - (b) subject to subsection (2), all information not already filed with the Commission or Director, whether in the same or a different form, that it files with a government of another jurisdiction, or an agency of that government, or a stock exchange of another jurisdiction pursuant to the securities or corporation statute or regulations of that jurisdiction or under the by-laws, rules or regulations of the stock exchange, on the basis that it is material to investors although the information is not specifically required to be filed by the terms of the applicable statute or regulations, or of the applicable by-laws, rules or regulations of the stock exchange.

Subsection 143(1) amended effective March 30, 2004: Rule 51-801.

- (2) No information is required to be filed with the Director pursuant to clause (1)(b) where the information filed in the other jurisdiction is information that is specifically required to be filed in the other jurisdiction by the terms of
 - (a) the applicable statute or regulation; or
 - (b) the by-laws, rules or regulations of the stock exchange.
- (3) Information required to be filed with the Director pursuant to subsection (1) shall be sent to the Director within twenty-four hours after
 - (a) sending the information mentioned in clause (1)(a) to its security holders; or
 - (b) filing in another jurisdiction the information mentioned in clause (1)(b).
- (4) The Director shall keep as confidential all information that is filed with him pursuant to clause (1)(b), and has been filed on a confidential basis in all other jurisdictions in which it is filed as long as the information remains confidential in all those other jurisdictions.

Financial matters - interim financial disclosure

- 144** (1) The interim financial statements required to be filed under subsection 83(1) of the Act shall include
- (a) subject to subsection (2), a statement of changes in financial position; and
 - (b) an income statement.
- (2) Every issuer primarily engaged in the business of investing shall file a statement of changes in net assets for each period in lieu of a statement of changes in financial position.

Section 144 revoked effective May 19, 2005: Rule 51-801.

Information to be included re interim financial statements

- 145** The interim financial statements required to be filed under subsection 83(1) of the Act
- (a) shall present financial information for the current fiscal year to the date to which the financial statements are prepared; and
 - (b) may
 - (i) include, as additional information, financial information for the most recent three-month period to the date to which the financial statements are prepared, and
 - (ii) be comparative for the corresponding three-month period in the last fiscal year.

Section 145 revoked effective May 19, 2005: Rule 51-801.

Auditor's report not required

146 The interim financial statements required to be filed under Section 83 of the Act need not include an auditor's report.

Section 146 revoked effective May 19, 2005: Rule 51-801.

Annual Financial Disclosure

147 (1) The financial statements required to be filed under Section 84 of the Act by an issuer that is not a mutual fund in Nova Scotia shall include

- (a) an income statement;
- (b) a statement of retained earnings;
- (c) subject to subsection (2), a statement of changes in financial position; and
- (d) a balance sheet,

prepared for or as at the end of the period as applicable.

(2) Every issuer primarily engaged in the business of investing shall file a statement of changes in net assets for each period in lieu of a statement of changes in financial position.

Section 147 revoked effective May 19, 2005: Rule 51-801.

Approval of financial statements

148 Every financial statement required to be filed under Section 84 of the Act by a reporting issuer that is not a mutual fund, shall be approved by the board of directors of the reporting issuer and the approval shall be evidenced by the manual or facsimile signatures of two directors duly authorized to signify the approval.

Section 148 revoked effective May 19, 2005: Rule 51-801.

Finance companies and financial statements

149 (1) Each finance company not otherwise required to file financial statements in accordance with Sections 83 and 84 of the Act shall file, in duplicate, the financial statements required under subsections 83(1) and 84(1) of the Act, as appropriate, as though the finance company were subject to those subsections.

(2) Subject to subsection (3), each finance company, whether or not otherwise required to file financial statements in accordance with Sections 83 and 84 of the Act, shall complete and file, annually, within one hundred and forty days after the end of its financial year

- (a) a report in accordance with Form 29; and
- (b) those other Forms that the Commission considers appropriate.

(3) A finance company is not required to comply with subsection (2) where

- (a) the Association of Canadian Finance Corporations after consultation with the Investment Dealers' Association of Canada, has passed a by-law setting a standard of continuous disclosure for its members deemed by the Commission to be an appropriate alternative to the disclosure required by subsection (2); and

- (b) the finance company, whether it is a member of the Association of Canadian Financial Corporations or an agreeing non-member
 - (i) complies with the by-law mentioned in clause (a),
 - (ii) files copies of each report required by that by-law with
 - (A) the Association of Canadian Financial Corporations in accordance with the by-law,
 - (B) the Director, and
 - (C) any stock exchange designated by the Commission for the purpose of this Section, and
 - (iii) agrees that it will, immediately on the request of the Association of Canadian Financial Corporations or of the interested party, add the name of an interested party to its mailing list for distribution of those reports until the interested party requests or agrees to the removal of his name from the mailing list.
- (4) For purposes of subsection (3), an "agreeing non-member" is a finance company that is not a member of the Association of Canadian Financial Corporations but has filed a written undertaking with the Director that it will comply with the by-law of the Association of Canadian Financial Corporations relating to continuous disclosure.
- (5) Where the Director, on application by a finance company, is of the opinion that the mode of operation of the applicant is such that some or all of the reporting requirements of subsections (1) or (2) are not appropriate, the Director may order, on those terms and conditions that he considers necessary, that some or all of the reporting requirements of subsections (1) or (2) do not apply to the finance company.
- (6) Every report filed pursuant to subsection (2) shall be accompanied by a report of the auditor of the finance company stating that he has
 - (a) read the report; and
 - (b) no reason to believe that there is any misrepresentation in the information contained in the report that is
 - (i) derived from the financial statements on which he reported, or
 - (ii) within his knowledge as a result of his audit of financial statements on which he reported.
- (7) Copies of the report required by subsection (2) or prepared in accordance with subsection (3), including exhibits and all papers and documents required in support of it, shall be filed with the Director.

- (8) The reports filed with the Director and any stock exchange designated by the Commission for the purposes of this Section shall be manually signed by a senior financial officer of the finance company.
- (9) Every finance company shall, on the request of a debt security holder of the finance company, provide the debt security holder with a copy of its financial statements most recently filed under subsection (1) or Sections 83 or 84 of the Act.

Section 149 revoked effective March 30, 2004: Rule 51-801.

Additional matters to be included in financial statements

150 Where applicable, and where the period or date reported on is a financial year or financial year end, the following additional matters shall be referred to in the financial statements or by way of a note to the financial statements

- (a) in the case of a finance company of an issuer engaged primarily in investing, an analysis of shares, bonds, debentures and other investments showing separately
 - (i) the name of each issuer of the securities owned by the company,
 - (ii) the class or designation of each security held,
 - (iii) the number of each class of shares or aggregate face value of each class of other securities held, and
 - (iv) the cost and market value of each class of securities held and, if the carrying value is other than average cost, the basis of valuation;
- (b) in the case of an industrial or natural resource company that is in the promotional, exploratory or developmental stage
 - (i) an analysis, if material, of shares, bonds, debentures and other investments owned by the company showing separately
 - (A) the name of each issuer of the securities held,
 - (B) the class or designation of each security held,
 - (C) the number of each class of shares or aggregate face value or each class of other securities held, and
 - (D) the cost and market value of each class of securities held and, if the carrying value is other than average cost, the basis of valuation, and
 - (ii) an analysis of deferred charges, if material, for the period covered by
 - (A) the income statement, or
 - (B) statement of changes in financial position,

segregating, year by year, expenditures for development and exploration from expenditures for administration and showing the total for each.

Section 150 revoked effective May 19, 2005: Rule 51-801.

Continuous disclosure for Nova Scotia stock savings plan - exempt issuers

151 An issuer which is a reporting issuer solely by virtue of subsection 3A(2) is exempt from the requirement to prepare and file interim financial statements pursuant to subsection 83(1) of the Act

- (a) where the reporting issuer has not completed its first financial year, for the period commencing with the beginning of that year and ending nine and three months respectively before the date on which that year ends; and
- (b) where the reporting issuer has completed its first financial year, to the end of each of the three-month and nine-month periods of the current financial year including a comparative statement to the end of each of the corresponding periods in the last financial year.

Section 151 revoked effective March 30, 2004: Rule 51-801.

Part VIII - Continuous disclosure for mutual funds

Financial statements of a mutual fund

152 (1) In this Section

- (a) "management fee" means the total fees paid by the mutual fund for portfolio management, investment advice and other services; and
- (b) "other expenses" and "other revenue" means the sum of those items of expense or revenue, other than those mentioned in clauses (2)(a), (b) and (e) to (i), inclusive, that individually do not exceed 5% of the total expenses or total revenue of the mutual fund for the period reported on.

(2) Every income statement of a mutual fund shall present fairly the results of the operations of the mutual fund for the period covered by the statement and shall show separately at least the following:

- (a) dividend revenue;
- (b) interest revenue;
- (c) every other item of revenue that is 5% or more of total revenue;
- (d) other revenue;
- (e) management fees;
- (f) audit fees;
- (g) directors' fees;
- (h) custodian's fees;
- (i) legal fees;
- (j) salaries, where the amount is 5% or more of total expenses;
- (k) shareholders' or unitholders' information costs, where the amount is 5% or more of total expenses;

- (l) every other item of expense that is 5% or more of total expenses;
- (m) other expenses;
- (n) income before taxes;
- (o) provision for income tax;
- (p) extraordinary gains, losses and provisions for losses;
- (q) net income for the period;
- (r) net income per share or unit for the period based on the average number of shares or units outstanding during the period; and
- (s) net income per share or unit for the immediately preceding period based on the average number of shares or units outstanding during that period.

(3) The notes to an income statement of a mutual fund shall include

- (a) the basis for calculating the management fee; and
- (b) the composition of other expenses and other revenue,

and unless otherwise disclosed in the material of which the income statement forms a part or which it accompanies

- (c) the services received in consideration of the management fee;
- (d) the services provided to the mutual fund by those to whom salaries were paid;
- (e) where the mutual fund has a management company and salaries of employees of the management company are allocated to the mutual fund, the basis of and reasons for that allocation;
- (f) the basis of the tax calculation and an explanation of the tax position of the mutual fund; and
- (g) where an unusual change in expenses from period to period is not adequately explained by changes in total assets of the mutual fund, a description and explanation of the unusual change.

Statement of change in net assets of mutual fund

153 (1) Subject to subsection (2), every statement of changes in net assets shall present fairly the information shown in the statement for the period covered by the statement and shall show separately at least

- (a) net assets at the beginning of the period;
- (b) net investment income or loss;
- (c) aggregate proceeds on sale of portfolio securities;
- (d) aggregate cost of portfolio securities owned at the beginning of the period;
- (e) aggregate cost of purchases of portfolio securities;

- (f) aggregate cost of portfolio securities owned at the end of the period;
 - (g) aggregate cost of portfolio securities sold;
 - (h) realized profit or loss on portfolio securities sold;
 - (i) distributions, showing separately the amount out of net investment income and out of realized profits on portfolio securities sold;
 - (j) proceeds from securities issued;
 - (k) the redemption price of securities redeemed;
 - (l) net increase or decrease in unrealized appreciation or depreciation of portfolio securities;
 - (m) net assets at the end of the period;
 - (n) net asset value per share or unit at the end of the period and at the end of each of the four immediately preceding periods;
 - (o) distribution per share or unit out of net investment income; and
 - (p) distribution per share or unit out of realized profits on portfolio securities sold.
- (2) Items of the nature described in clauses (1)(c) to (g) inclusive, and (n) to (p) inclusive may be shown by way of a note or schedule to the statement of changes in net assets.

Balance sheet of a mutual fund

- 154** (1) In this Section, "other assets" or "other liabilities" means the sum of those classes of assets or liabilities, as the case may be, that as individual classes are less than 5% of the total assets, or total liabilities, as the case may be, of the mutual fund at the date reported on.
- (2) Every balance sheet of a mutual fund shall present fairly the financial position of the mutual fund as at the date at which it is made up and shall show separately at least the following:
- (a) cash, term deposits and, if not included in the statement of investment portfolio, short-term debt instruments;
 - (b) dividends and accrued interest receivable;
 - (c) accounts receivable with respect to shares or units sold;
 - (d) accounts receivable with respect to portfolio securities sold;
 - (e) every other class of asset that is 5% or more of total assets;
 - (f) other assets;
 - (g) investments at market value with a notation of their cost;
 - (h) total assets;

- (i) accrued expenses;
 - (j) liabilities with respect to portfolio securities purchased;
 - (k) liabilities with respect to shares or units redeemed;
 - (l) income tax payable;
 - (m) every other class of liability that is 5% or more of total liabilities;
 - (n) other liabilities;
 - (o) total liabilities;
 - (p) total net assets and shareholders' or unitholders' equity; and
 - (q) net asset value per share or unit.
- (3) The notes to a balance sheet of a mutual fund shall include
- (a) where the basis of computing the cost of investments is other than average cost, a statement of the basis of computing the cost;
 - (b) where a mutual fund has outstanding more than one class of shares or units ranking equally against the net assets but differing in other respects, a statement of
 - (i) the differences between the classes,
 - (ii) the number of shares or units in each class, and
 - (iii) the number of shares or units in each class that have been issued and are outstanding; and
 - (c) the composition of other assets and other liabilities.
- (4) Any of the specified classes of assets or total liabilities which accounts for less than 5% of the total assets or liabilities, as the case may be, of the mutual fund at the date reported on may be omitted and the relevant amount included in "other assets" or "other liabilities" with an appropriate explanation made by note.

Statement of investment portfolio of a mutual fund

- 155** (1) Every statement of investment portfolio of a mutual fund shall present fairly the following information as at the date to which it is made up:
- (a) the name of each issuer of securities held;
 - (b) the class or designation of each security held;
 - (c) the number or aggregate face value of each class or designation of securities held;
 - (d) the market value of each class or designation of securities held; and
 - (e) the cost of each class or designation of securities held and, where the basis of computing the cost is other than average cost, a statement of the basis of computing the cost.
- (2) Subsection (1) applies to all short term debt instruments held pending the investment of funds but the information mentioned in subsection (1) need only be provided in the aggregate with respect to those short term debt instruments that

- (a) are issued by a bank, a trust company or a loan company; or
- (b) have achieved an investment rating falling within the highest or next highest categories of every service recognized by the Commission that publishes ratings on the short term debt instruments of the issuer.

Clause 155(2)(a) amended: O.I.C. 91-815, N.S. Reg. 157/91.

- (3) The information required by clauses (1)(a) to (c), inclusive, with respect to securities with an aggregate market value of less than 5% of the total net assets of a mutual fund may be omitted from a statement of investment portfolio of the mutual fund where
 - (a) the securities are included in the statement as "miscellaneous securities"; and
 - (b) the information required by clauses (1)(d) and (e) is given for the "miscellaneous securities" in the aggregate.
- (4) Where information is omitted from a statement of investment portfolio under subsection (3), the omitted information and the reason for omitting the information shall be included in the next corresponding statement of investment portfolio.
- (5) The information required by subsection (1) with respect to securities that are mortgages may be omitted from a statement of investment portfolio of the mutual fund if the following information with respect to mortgages is presented in lieu of the information required by subsection (1):
 - (a) the total number of mortgages held;
 - (b) the total market value of mortgages held;
 - (c) the distribution, by reference to number and market value, of mortgages among mortgages insured under the National Housing Act (Canada), insured conventional mortgages and uninsured conventional mortgages;
 - (d) the distribution, by reference to number, market value, amortized cost and outstanding principal value, of mortgages among groups representing contractual interest rates varying by no more than 1/4 of 1%.

Statement of portfolio transactions of a mutual fund

- 156 (1)** Every statement of portfolio transactions of a mutual fund shall present fairly the following information:
- (a) the name of each issuer of every security purchased or sold during the period reported on;
 - (b) the class or designation of every security purchased or sold during the period reported on;

- (c) the number or aggregate face value, by issuer, of securities of each class or designation purchased during the period reported on and the total cost of purchasing securities of each class or designation;
 - (d) the number or aggregate face value, by issuer, of securities of each class or designation sold during the period reported on and the consideration for selling securities of each class or designation.
- (2) Subsection (1) applies to all short term debt instruments held pending the investment of funds but the information mentioned in subsection (1) need only be provided in the aggregate with respect to those short term debt instruments held pending the investment of funds that
- (a) are issued by a bank, a trust company or a loan company; or
 - (b) have achieved an investment rating falling within the highest or next highest categories of every service recognized by the Commission that publishes ratings on the short term debt instruments of the issuer.

Clause 156(2)(a) amended: O.I.C. 91-815, N.S. Reg. 157/91.

- (3) Every statement of portfolio transactions shall
- (a) separate debt securities from securities other than debt securities; and
 - (b) provide
 - (i) a total for debt securities, and
 - (ii) a total for other than debt securities.
- (4) Where information with respect to securities is omitted from a statement of investment portfolio of a mutual fund pursuant to subsection 155(3), the information required with respect to those securities by this Section may be omitted from the statement of portfolio transactions of the mutual fund.
- (5) Where information is omitted from a statement of portfolio transactions pursuant to subsection (4), the omitted information and the reason for omitting the information shall be included in the next corresponding statement of portfolio transactions.
- (6) The information required by subsection (1) with respect to securities that are mortgages may be omitted from a statement of portfolio transactions if the following information with respect to mortgages is presented in lieu of the information required by subsection (1):
- (a) the total number of mortgages purchased or sold during the period reported on;
 - (b) the total cost of mortgages purchased and the total consideration for mortgages sold;
 - (c) the distribution, by reference to number, of mortgages purchased or sold during the period reported on among mortgages insured under the National

Housing Act (Canada), insured conventional mortgages and uninsured conventional mortgages;

- (d) the distribution, by reference to number, of mortgages purchased or sold during the period reported on among groups representing contractual interest rates varying by no more than 1/4 of 1%.

(7) Subsections (1) to (6) do not apply to a commodity pool subject to Multilateral Instrument 81-104 Commodity Pools.

Subsection 156(7) added effective August 26, 2003: Rule 81-104.

Additional matters to be included in financial statements of a mutual fund

157 Where applicable, and where the period or date reported on is a financial year or financial year end, the following additional matters shall be referred to in the financial statements of a mutual fund or by way of a note to the financial statements:

- (a) the total commission paid to dealers in connection with portfolio transactions for the mutual fund during the period reported on; and
- (b) the total compensation, other than commissions, paid to dealers in connection with portfolio transactions for the mutual fund during the period reported on and
 - (i) if the figure provided is an estimate, the basis for calculating the compensation, and
 - (ii) if the compensation to a dealer for the sale of shares or units in the mutual fund includes an allocation of the execution of portfolio transactions to that dealer, the compensation so allocated.

Interim financial statements under subsection 83(2) of the Act re mutual fund

158 (1) Subject to subsection (2), every interim financial statement required to be filed under subsection 83(2) of the Act shall include

- (a) an income statement;
- (b) a statement of investment portfolio;
- (c) a statement of portfolio transactions;
- (d) a statement of changes in net assets,

prepared for or as at the end of the period as applicable.

(2) Every interim financial statement required to be filed pursuant to subsection 83(2) of the Act by a mutual fund in Nova Scotia that invests exclusively in the shares or units of another mutual fund shall include

- (a) an income statement of the other mutual fund;
- (b) a statement of investment portfolio of the other mutual fund;

- (c) a statement of portfolio transactions of the other mutual fund;
- (d) a statement of changes in net assets of the other mutual fund,

prepared for or as at the end of the period, as applicable.

Information to be included re interim financial statements of mutual fund

- 159 (1)** The interim financial statements under subsection 83(2) of the Act
- (a) shall present at least the financial information for the current fiscal year to the date to which the financial statements are prepared; and
 - (b) may include comparative financial information for the corresponding six-month period in the last financial year.
- (2)** The interim financial statements under Section 83 of the Act need not include an auditor's report.

Annual financial disclosure of mutual funds

- 160 (1)** Subject to subsection (2), the financial statements required to be filed under Section 84 of the Act by a mutual fund in Nova Scotia shall include
- (a) an income statement;
 - (b) a balance sheet;
 - (c) a statement of investment portfolio;
 - (d) a statement of portfolio transactions; and
 - (e) a statement of changes in net assets,

prepared for or as at the end of the period, as applicable.

- (2)** Every financial statement required to be filed under Section 84 of the Act by a mutual fund in Nova Scotia that invests exclusively in the shares or units of another mutual fund shall include
- (a) an income statement of the other mutual fund;
 - (b) a balance sheet of the other mutual fund;
 - (c) a statement of investment portfolio of the other mutual fund;
 - (d) a statement of portfolio transactions of the other mutual fund;
 - (e) a statement of changes in net assets of the other mutual fund;
 - (f) a balance sheet of the mutual fund,

prepared for or as at the end of the period, as applicable.

Approval of financial statements

- 161** Every financial statement required to be filed under Section 84 of the Act by a mutual fund in Nova Scotia shall be approved by the board of directors of the mutual fund and the approval shall be evidenced by the manual or facsimile signatures of two directors duly authorized to signify the approval.

Statement of portfolio transactions

- 162** (1) Notwithstanding Sections 158 and 160 but subject to subsection (4), a statement of portfolio transactions may be omitted from any interim or annual financial statements of a mutual fund if a copy of the statement that would otherwise be required to be included in it is filed with the Director prior to or concurrently with the filing of the financial statements from which that statement has been omitted.
- (2) Notwithstanding Section 100 but subject to subsection (4), a statement of portfolio transactions may be omitted from a prospectus of a mutual fund if a copy of the statement that would otherwise be required to be included in it is filed with the Director concurrently with the filing of the prospectus or has previously been filed with the Director under subsection (1).
- (3) A statement of portfolio transactions filed with the Director pursuant to this Section need not be reported on by an auditor, but shall contain a certificate
- (a) signed by the chief executive officer and chief financial officer, or the person or persons temporarily carrying out the responsibilities of either of them; and
 - (b) stating that the portfolio transactions present fairly the required information.
- (4) Where a statement of portfolio transactions is omitted from interim or financial statements pursuant to subsection (1) or from a prospectus pursuant to subsection (2), the published financial statements or prospectus shall contain a statement indicating that additional information as to portfolio transactions will be provided without charge on request to a specified address and
- (a) the omitted information shall be sent promptly and without charge to each person or company that requests it in compliance with the indication; and
 - (b) where a person or company requests that the omitted information be sent routinely to that person or company, the request shall be carried out while the information continues to be omitted from subsequent financial statements or prospectuses until the person or company requests or agrees to termination of the arrangement.

Subsections 162(3) & (4) added: O.I.C. 87-1238, N.S. Reg. 216/87.

Part IX - Mutual funds - trades confirmation

- 163** (1) Where a trade is made in a security of a mutual fund under a contractual plan that requires that some charges be prepaid but permits other charges to be deducted from first and subsequent instalments, the confirmation of trade required by subsection 42(3) of the Act shall contain, in addition to the requirements of subsections 42(1) and (2) of the Act and clause 42(3)(d) of the Act, the disclosure required by
- (a) clauses 42(3)(a) and (b) of the Act in respect of sales, service or other

charges or portions thereof that are prepaid; and

- (b) clause 42(3)(c) of the Act in respect of all sales, service or other charges or any portions thereof to be deducted from subsequent instalments.

Section 163 renumbered subsection 163(1): O.I.C. 91-815, N.S. Reg. 157/91.

- (2) Where a customer advises a registered dealer in writing before a trade in a security of a mutual fund of the customer's participation in an automatic payment plan, automatic withdrawal plan or contractual plan that provides for systematic trading in the securities of the mutual fund no less frequently than monthly, the registered dealer shall provide the confirmation of that trade as required by Section 42 of the Act, and thereafter during the continued existence of the plan and the customer's participation in the plan, the registered dealer, in lieu of the confirmations of trade required by Section 42 of the Act may send by prepaid mail or deliver to the customer, no less frequently than semi-annually, written summaries of trades containing the information required by that Section to be disclosed to the customer, with respect to all trades of the security of the mutual fund by the customer since the last confirmation or summary of trades was prepared.
- (3) A registered dealer who complies with subsection (2) need not comply with clause 42(1)(d) of the Act if the confirmation or summary of trades contains a statement that the name of the person or company from or to or through whom the security of the mutual fund was bought or sold will be furnished to the customer upon request.

Subsections 163(2) and (3) added: O.I.C. 91-815, N.S. Reg. 157/91.

163A Where, in connection with any trade in a security of a mutual fund, a written confirmation of the transaction setting forth the information that is required pursuant to Section 42 of the Act and this Part has been sent promptly by prepaid mail or delivery to the customer directly by the mutual fund, it shall not be necessary for the registered dealer who acted as agent in the transaction to provide a separate confirmation.

Section 163A added: O.I.C. 91-815, N.S. Reg. 157/91.

Part X PROXIES AND PROXY SOLICITATION RE INVESTMENT FUNDS

Heading amended effective June 1, 2004: Rule 51-801.

Information Circular

- 164 (1)** An information circular for an investment fund sent pursuant to Section 92 of the Act shall contain the information prescribed in Form 30.
- (2) The information required by Form 30 shall be given as of a specified date not more than thirty days prior to the date on which the information circular is first sent to any of the security holders of the reporting issuer.
- (3) The information contained in an information circular for an investment fund shall be clearly presented and the statements made in it shall be divided into groups

according to subject matter and the various groups of statements shall be preceded by appropriate headings.

- (4) The order of items set out in Form 30 need not be followed.
- (5) Where practicable and appropriate, information required by Form 30 shall be presented in tabular form.
- (6) All amounts required by Form 30 shall be stated in figures.
- (7) Information required by more than one applicable item in Form 30 need not be repeated.
- (8) No statement need be made in response to any item in Form 30 that is inapplicable and negative answers to any item may be omitted.
- (9) Information that is
 - (a) not known to the person or company on whose behalf the solicitation is to be made; and
 - (b) not reasonably within the power of the person or company to ascertain or procure,

may be omitted if a brief statement is made in the information circular of the circumstances rendering the information unavailable.

- (10) There may be omitted from the information circular for an investment fund any information contained in any
 - (a) other information circular;
 - (b) notice of meeting; or
 - (c) form of proxy,

sent to the persons or companies whose proxies were solicited in connection with the same meeting if reference is made to the particular document containing the information.

Subsections 164(1), (3) and (10) amended effective June 1, 2004: Rule 51-801.

- 165** (1) Every form of proxy sent or delivered to a security holder of a reporting issuer by a person or company soliciting proxies shall indicate in bold-face type that the proxy is solicited by or on behalf of
- (a) the management of the reporting issuer; or
 - (b) a person or company that is not the management of a reporting issuer, in which case the name of the person or company shall also be disclosed,

as the case may be, and shall provide a specifically designated blank space for dating the form of proxy.

- (2) An information circular or form of proxy shall

- (a) indicate in bold-face type that the security holder has the right to appoint a person or company to represent him at the meeting other than the person or company, if any, designated in the form of proxy; and
 - (b) contain instructions as to the manner in which the security holder may exercise the right.
- (3) If a form of proxy contained a designation of a named person or company as nominee, it shall provide a means whereby the security holder may designate in the form of proxy some other person or company as his nominee.
- (4) Every form of proxy shall provide a means for the security holder to specify that the securities registered in his name shall be voted for or against each matter or group of related matters identified in
- (a) the form of proxy;
 - (b) the notice of meeting; or
 - (c) an information circular,

other than the appointment of an auditor and the election of directors.

- (5) A proxy may confer discretionary authority with respect to each matter mentioned in subsection (4) as to which a choice is not so specified if the form of proxy or the information circular states in bold-face type how the securities represented by the proxy will be voted with respect to each matter or group of related matters.
- (6) A proxy shall provide a means for the security holder to specify that the securities registered in the name of the security holder shall be
- (a) voted; or
 - (b) withheld from voting,

with respect to the appointment of an auditor or the election of directors.

- (7) A proxy or an information circular shall state that
- (a) the securities represented by the proxy will be voted or withheld from voting in accordance with the instructions of the security holder on any ballot that may be called for; and
 - (b) if the security holder specifies a choice under subsection (4) or (6) with respect to any matter to be acted on, the securities shall be voted accordingly.

Where discretionary authority may be exercised

166 A proxy with respect to an investment fund may confer discretionary authority with respect to

- (a) amendments or variations to matters identified in the notice of meeting; and

- (b) other matters which may properly come before the meeting;

where

- (c) the person or company by whom or on whose behalf the solicitation is made is not aware within a reasonable time prior to the time the solicitation is made that any such amendments, variations or other matters are to be presented for action at the meeting; and
- (d) a specific statement is made in the information circular or in the form of proxy that the proxy is conferring such discretionary authority.

Section 166 amended effective June 1, 2004: Rule 51-801.

Restrictions on authority to vote

167 No proxy with respect to an investment fund shall confer authority to vote

- (a) for the election of any person or company as a director of a reporting issuer unless a bona fide proposed nominee for that election is named in the information circular; or
- (b) at any meeting other than the meeting specified in the notice of meeting or any adjournment of that meeting.

Section 167 amended effective June 1, 2004: Rule 51-801.

Filing of information circulars, etc.

168 Every person or company that sends or delivers an information circular or proxy to security holders of a reporting issuer that is an investment fund shall immediately file a copy of

- (a) the information circular;
- (b) the proxy; and
- (c) all other material sent or delivered by the person or company in connection with the meeting to which the information circular or proxy relates.

Section 168 amended effective June 1, 2004: Rule 51-801.

Certificate of Information Circular

169 The certificate of every information circular for an investment fund required to be filed under Section 87 of the Act shall be evidenced by the manual or facsimile signature of the officer or director mentioned in clause 9(b).

Section 169 amended effective June 1, 2004: Rule 51-801.

Part XI - Insider trading

170 The disclosure required by Section 46 of the Act with respect to a person or company that would be an insider of the adviser if the adviser were a reporting issuer is required only where such person or company participates in the formulation of, or has access prior to implementation, to investment decisions made on behalf of or the advice given to clients of the adviser.

171 Every report required to be filed under Section 113 or 116 of the Act shall be prepared in accordance with Form 36.

Section 171 revoked effective October 1, 2003: Rule 55-102.

172 Notwithstanding subsection 113(1) of the Act, a person or company is not required to file a report on becoming an insider of an issuer where the person or company does not own or exercise control or direction over securities of the issuer.

173 Every report required to be filed under Section 116 of the Act shall be filed within ten days of the date of the transfer.

174 Every report required to be filed under Section 117 of the Act shall be prepared in accordance with Form 38.

175 Every report required to be filed under Section 125 of the Act shall be prepared in accordance with Form 39.

176 For the purposes of Section 113 of the Act,

(a) a report filed by a company which includes securities beneficially owned or deemed to be beneficially owned by an affiliate or which includes changes in the affiliate's beneficial ownership of the securities shall be deemed to be a report filed by the affiliate and the affiliate need not file a separate report; or

(b) a report filed by a person which includes the securities beneficially owned or deemed to be beneficially owned by a company controlled by the person or by an affiliate of the controlled company or which includes changes in the controlled company's or affiliate's beneficial ownership or deemed beneficial ownership of the securities shall be deemed to be a report filed by the controlled company or affiliate and the controlled company and affiliate need not file a separate report.

177 (1) Where there are one or more executors, administrators or other personal representatives of an estate, referred to in this Section as an executor, the reporting requirements of this Part shall be deemed to be satisfied as they apply to

(a) a co-executor; and

(b) the directors and senior officers of an executor or co-executor,

where the applicable report is filed by a co-executor or by the executor in respect of securities owned by the estate.

(2) Subsection (1) only applies to reporting requirements that arise solely from the capacity of co-executor or director or senior officer of an executor or co-executor.

178 (1) Upon the occurrence of a stock dividend, stock split, consolidation, amalgamation, reorganization, merger or other similar corporate event that

affects all holdings of a class of securities in the same manner, on a per share basis, the reporting requirements of Sections 112 to 128, inclusive, of the Act shall be deemed to have been satisfied as they apply to a holder of the class of securities of an issuer that is affected, where an officer of the issuer files written notice of the event, including a description of the effect on each class of securities of the issuer that is affected, within ten days of the event.

- (2) Upon the acquisition by a person or company of securities of an issuer through a stock dividend plan, a share purchase plan or other plan available to a class of security holders, employees or management of an issuer, the reporting requirements of Sections 112 to 128, inclusive, of the Act shall be deemed to have been satisfied as they apply to the person or company where an officer of the issuer files written notice including a description of the transaction and the effect upon the holdings of the person or company within ten days of the transaction.

Section 178 revoked effective October 1, 2003: Rule 55-102.

- 179 (1)** A person or company that is required under this Part and under Sections 112 to 128, inclusive, of the Act to file a report prepared in accordance with Form 55-102F6(made under National Instrument 55-102 System for Electronic Disclosure by Insiders (SEDI)) shall be deemed to have complied with such requirements if a report prepared in accordance with Form 55-102F6(made under National Instrument 55-102 System for Electronic Disclosure by Insiders (SEDI)) is filed in a Canadian jurisdiction other than Nova Scotia with a securities commission or other agent that has been designated by the Director for the purpose of accepting such filings.

- (2) This section does not apply to insiders who are required by National Instrument 55-102 System for Electronic Disclosure by Insiders (SEDI) to file the report in electronic format.

Section 179 amended effective October 1, 2003: Rule 55-102.

- 180 (1)** A report prepared in accordance with Form 55-102F6(made under National Instrument 55-102 System for Electronic Disclosure by Insiders (SEDI)) that is filed with the Director may contain the facsimile signature of the individual, officer, director, agent or attorney required to sign the Form if an original manually signed copy is filed concurrently with a securities commission in Canada or other agent designated by the Director for the purpose of accepting such filings.

- (2) This section does not apply to insiders who are required by National Instrument 55-102 System for Electronic Disclosure by Insiders (SEDI) to file the report in electronic format.

Section 180 amended effective October 1, 2003: Rule 55-102.

- 181 (1)** A person or company that purchases or sells securities of a reporting issuer with knowledge of a material fact or material change with respect to the reporting issuer that has not been generally disclosed is exempt from subsection 82(1) of the Act and from liability under Section 142 of the Act, where the person or company proves that

- (a) no director, officer, partner, employee or agent of the person or company who made or participated in making the decision to purchase or sell the securities of the reporting issuer had actual knowledge of the material fact or material change; and
- (b) no advice was given with respect to the purchase or sale of the securities to the director, officer, partner, employee or agent of the person or company who made or participated in making the decision to purchase or sell the securities by a director, partner, officer, employee or agent of the person or company who had actual knowledge of the material fact or the material change,

but this exemption is not available to an individual who had actual knowledge of the material fact or change.

- (2) A person or company that purchases or sells securities of a reporting issuer with knowledge of a material fact or material change with respect to the reporting issuer that has not been generally disclosed is exempt from subsection 82(1) of the Act and from liability under Section 142 of the Act, where the person or company proves that
 - (a) the purchase or sale was entered into as agent for another person or company pursuant to a specific unsolicited order from that person or company to purchase or sell;
 - (b) the purchase or sale was made pursuant to participation in an automatic dividend reinvestment plan, share purchase plan or other similar automatic plan that was entered into by the person or company prior to the acquisition of knowledge of the material fact or material change; or
 - (c) the purchase or sale was made to fulfil a legally binding obligation entered into by the person or company prior to the acquisition of knowledge of the material fact or material change.
- (3) In determining whether a person or company has sustained the burden of proof under subsection (1), it shall be relevant whether and to what extent the person or company has implemented and maintained reasonable policies and procedures to prevent contravention of subsection 82(1) of the Act by persons making or influencing investment decisions on its behalf and to prevent transmission of information concerning a material fact or material change contrary to subsection 82(2) or (3) of the Act.
- (4) A person or company who purchases or sells a security of a reporting issuer as agent or trustee for a person or company who is exempt from subsection 82(1) of the Act and from liability under Section 142 of the Act by reason of clause 2(b) or (c), is also exempt from subsection 82(1) of the Act and from liability under Section 142 of the Act.
- (5) A person or company is exempt from subsections 82(1), (2) and (3) of the Act where the person or company proves that such person or company reasonably believed that

- (a) the other party to a purchase or sale of securities; or
- (b) the person or company informed of the material fact or material change, as the case may be,

had knowledge of the material fact or material change.

Original Section 181 renumbered Section 204; Section 181 added: O.I.C. 91-815, N.S. Reg. 157/91.

Part XII - Take-over bids and issuer bids

Original Part XII renumbered Part XIII; Part XII added: O.I.C. 91-815, N.S. Reg. 157/91.

182 (1) In this Section,

- (a) "formal valuation" means a valuation prepared by a qualified and independent valuer based upon techniques that are appropriate in the circumstances, after considering going concern or liquidation assumptions or both, together with other relevant assumptions, that arrives at an opinion as to a value or range of values for the participating securities based upon such analysis without any downward adjustments to reflect the fact the participating securities do not form part of a controlling interest;
- (b) "going private transaction" means an amalgamation, arrangement, consolidation or other transaction proposed to be carried out by an insider of an issuer as a consequence of which the interest of the holder of a participating security of the issuer in that security may be terminated without the consent of that holder and without the substitution therefor of an interest of equivalent value in a participating security of the issuer or of a successor to the business of that issuer or of another issuer that controls the issuer but does not include the acquisition of participating securities pursuant to a statutory right of acquisition;
- (c) "insider" means
 - (i) every director or senior officer of an issuer,
 - (ii) every director or senior officer of a company that is itself an insider or subsidiary of an issuer,
 - (iii) any person or company who beneficially owns, directly or indirectly, voting securities of an issuer or who exercises control or direction over voting securities of an issuer or a combination of both carrying more than 10 percent of the voting rights attached to all voting securities of the issuer for the time being outstanding other than voting securities held by the person or company as underwriter in the course of a distribution, and
 - (iv) an issuer where it has purchased, redeemed or otherwise acquired any of its securities, for so long as it holds any of its securities;
- (d) "insider bid" means a take-over bid made by an insider of the offeree issuer

or by any associate or affiliate of an insider of an offeree issuer;

- (e) "participating security" means a security that carries the right to participate in earnings to an unlimited degree including a security that by its terms is convertible into or exchangeable for or carries the right to purchase such a security;
 - (f) "prior valuation" means an existing independent appraisal or valuation or any material non-independent appraisal or valuation in respect to an issuer, its material assets or its securities.
- (2) Every take-over bid circular and issuer bid circular to which this subsection applies shall contain, except where the offeror establishes to the Director's satisfaction that the offeror lacks access to information enabling the offeror to comply with this subsection, and subject to any waiver or variation consented to in writing by the Director,
- (a) a summary of a formal valuation of the offeree issuer;
 - (b) an outline of every prior valuation of the offeree issuer made within twenty-four months preceding the date of the take-over or issuer bid including a description of the source and circumstances under which it was made.
- (3) This Section applies only to
- (a) a take-over bid circular that is required by the Act in respect of an insider bid;
 - (b) a take-over bid circular that is required by the Act where it is anticipated by the offeror that a going private transaction will follow the take-over bid; or
 - (c) an issuer bid circular that is required by the Act.
- (4) Subject to subsection (5), a formal valuation referred to in clause (2)(a) shall be as of a date that is not more than 120 days before the date of the take-over bid or issuer bid and shall contain appropriate adjustments for material intervening events.
- (5) A formal valuation referred to in clause (2)(a) may be as of a date that is more than 120 days before the date of the take-over bid or issuer bid if it is accompanied by a letter addressed to the directors of the issuer confirming that the valuer has no reasonable ground to believe that any intervening event has materially affected the value or range of values determined in such valuation or, if there has been such an event, describing it and stating the resultant change in the value or range of values in the valuation.
- (6) Where the Director is of the opinion that disclosure of information required by subsection (2) to be furnished to the holders of securities would cause a detriment to the offeree issuer or the security holders of the offeree issuer that would outweigh the benefit of the information to the prospective recipients, the

Director may permit the omission of the information.

- (7) A formal valuation referred to in clause 2(a) and a letter of confirmation, if any, referred to in subsection (5), shall be filed concurrently with the filing of the circular in which reference to the valuation is made except where the Director otherwise permits.

Original Section 182 renumbered Section 206; Section 182 added: O.I.C. 91-815, N.S. Reg. 157/91.

- 183** (1) For the purposes of Sections 95 to 111, inclusive, of the Act, "market price" of a class of securities, as to which there is a published market, at any date, is an amount equal to the simple average of the closing price of securities of that class for each of the business days on which there was a closing price falling not more than twenty business days before that date.
- (2) Where a published market does not provide a closing price, but provides only the highest and lowest prices of securities traded on a particular day, the market price of the securities, at any date, is an amount equal to the average of the simple averages of the highest and lowest prices for each of the business days on which there were highest and lowest prices falling not more than twenty business days before that date.
- (3) Where there is more than one published market for a security, the market price for the purposes of subsections (1) and (2) shall be determined as follows:
- (a) if only one of the published markets is in Canada, the market price shall be determined solely by reference to that market;
 - (b) if there is more than one published market in Canada, the market price shall be determined solely by reference to the published market in Canada on which the greatest volume of trading in the particular class of securities occurred during the twenty business days preceding the date as of which the market price is being determined; and
 - (c) if there is no published market in Canada, the market price shall be determined solely by reference to the published market on which the greatest volume of trading in the particular class of securities occurred during the twenty business days preceding the date as of which the market price is being determined.
- (4) Where there has been trading of securities in a published market for fewer than ten of the twenty business days preceding the date as of which the market price of the securities is being determined, the market price shall be the average of the following prices established for each of the twenty business days preceding that date:
- (a) the average of the bid and ask prices for each day on which there was no trading; and
 - (b) (i) the closing price of securities of the class for each day that there has been trading, if the published market provides a closing price, or

- (ii) the average of the highest and lowest prices of securities of that class for each day that there has been trading, if the published market provides only the highest and lowest prices of securities traded on a particular day.

- (5) Notwithstanding subsection (1), (2), (3) or (4), for the purposes of clause 99(1)(b) of the Act, where an offeror acquires securities on a published market, the market price for those securities shall be the price of the last board lot of securities of that class purchased, before the acquisition by the offeror, by a person or company that was not acting jointly or in concert with the offeror.

Section 183 added: O.I.C. 91-815, N.S. Reg. 157/91.

184 A take-over bid is exempt from Sections 101 to 106 of the Act for securities in respect of which there is no published market if

- (a) purchases are made from not more than five persons or companies in the aggregate, including persons or companies outside of the Province; and
- (b) the bid is not made generally to security holders of the class of securities that is the subject of the bid.

Section 184 added: O.I.C. 91-815, N.S. Reg. 157/91.

185 (1) Subsection 100(2) of the Act is not applicable to an agreement between a security holder and an offeror to the effect that the security holder will tender the security holder's securities to a formal take-over bid made by the offeror in accordance with the terms and conditions of the bid.

- (2) Subsection 100(8) of the Act does not apply to prohibit the issue of securities by an issuer pursuant to a stock dividend plan, dividend reinvestment plan, employees' stock purchase plan or other similar plan, notwithstanding that the issuer is making an issuer bid.

- (3) For the purpose of clause 100(1)(c) of the Act, an associate of a security holder referred to in that clause does not include a person or company who is not acting jointly or in concert with the security holder.

Section 185 added: O.I.C. 91-815, N.S. Reg. 157/91.

186 Subsection 100(5) of the Act does not apply so as to affect the consideration offered or the number of securities offered to be acquired under a formal take-over bid where the prior transaction was an acquisition pursuant to a distribution as defined in subclause 2(1)(l)(i) or subclause 2(1)(l)(ii) of the Act.

Section 186 added: O.I.C. 91-815, N.S. Reg. 157/91.

187 (1) A notice of intention to make an issuer bid as required by clause 99(3)(f) of the Act shall contain the information prescribed in Form 31.

- (2) A notice of intention referred to in subsection (1) shall be filed and a press release in respect thereof issued at least five days before the commencement of the issuer bid.

Section 187 added: O.I.C. 91-815, N.S. Reg. 157/91.

188 A press release that is required by clause 100(3)(c) of the Act shall disclose in respect

of the class of securities subject to the bid and each class of securities convertible into securities of that class purchased through the facilities of the stock exchange

- (a) the name of the purchaser;
- (b) where the purchaser is a person or company referred to in clause 100(1)(b) or (c) of the Act, the relationships of the purchaser and the offeror;
- (c) the number of securities purchased by the purchaser on that day;
- (d) the highest price paid for the securities by the purchaser on that day;
- (e) the aggregate number of securities purchased through the facilities of the stock exchange by the purchaser during the currency of the bid;
- (f) the average price paid for the securities that were purchased by the purchaser through the facilities of the stock exchange during the currency of the bid; and
- (g) the total number of securities owned by the purchaser as of the close of business of the stock exchange on that day.

Section 188 added: O.I.C. 91-815, N.S. Reg. 157/91.

189 A take-over bid circular shall contain the information prescribed in Form 32.

Section 189 added: O.I.C. 91-815, N.S. Reg. 157/91.

190 An issuer bid circular shall contain the information prescribed in Form 33.

Section 190 added: O.I.C. 91-815, N.S. Reg. 157/91.

191 A directors' circular shall contain the information prescribed in Form 34.

Section 191 added: O.I.C. 91-815, N.S. Reg. 157/91.

192 A director's or officer's circular shall contain the information prescribed in Form 35.

Section 192 added: O.I.C. 91-815, N.S. Reg. 157/91.

193 A notice of change or variation in respect of a take-over bid or issuer bid as required by subsection 104(2) of the Act shall contain

- (a) a description of the change in the information contained in the circular or of the variation in the terms of the take-over bid or the issuer bid, as the case may be;
- (b) the date of the change in the information contained in the circular or the variation in the terms of the bid;
- (c) the date up to which securities may be deposited;
- (d) the date by which securities deposited must be taken up by the offeror; and
- (e) the rights of withdrawal that are available to security holders,

and shall include a certificate duly signed and in the form required under Form 32 in

the case of a take-over bid or Form 33 in the case of an issuer bid, amended to refer to the initial circular and all notices of change or variation thereto.

Section 193 added: O.I.C. 91-815, N.S. Reg. 157/91.

194 A notice of change in respect of the information contained in a directors' circular or a [director's] or officer's circular as required by subsection 105(6) of the Act shall contain a description of the change in the information contained in the circular and shall include a certificate, duly signed and in the form required under Form 34 or 35, as the case may be, amended to refer to the initial directors' or director's or officer's circular and all notices of change thereto.

Section 194 added: O.I.C. 91-815, N.S. Reg. 157/91.

195 (1) No variation in the terms of a bid may be made after the expiry of the deposit period, except the waiver by the offeror of a condition that is specifically stated in the bid as being waivable at the sole option of the offeror.

(2) Section 104 of the Act does not apply so as to require a notice of variation with respect to a waiver referred to in subsection (1) after the deposit period where the consideration offered for the securities that are subject to the bid consists solely of cash, but a press release with respect to the waiver must be issued within five days after the deposit period.

(3) In this Section, "deposit period" means the period, including any extension, during which the securities may be deposited pursuant to the bid.

Section 195 added: O.I.C. 91-815, N.S. Reg. 157/91.

196 The consent of every solicitor, auditor, accountant, engineer, appraiser or any other person or company whose profession or business gives authority to a statement made by such person or company to the use of a report, appraisal or statement of such person or company included in or accompanying a take-over bid circular, issuer bid circular, directors' circular, director's or officer's circular or any notice of change or variation to the foregoing, shall be filed with the Commission.

Section 196 added: O.I.C. 91-815, N.S. Reg. 157/91.

197 (1) A press release required under Section 107 of the Act shall be authorized by a senior officer of the offeror and shall set out, in respect of the class of securities subject to the bid and each class of voting or equity securities into which the securities of the class subject to the bid are convertible,

- (a)** the name of the offeror;
- (b)** the number of securities over which the offeror and any person or company acting jointly or in concert with the offeror acquired ownership or control or direction as a result of the transaction or occurrence giving rise to the report;
- (c)** the ownership of or control and direction by the offeror and any person or company acting jointly or in concert with the offeror over the securities immediately after the transaction or occurrence giving rise to the report;
- (d)** the name of the market wherein the transaction or occurrence took place;

- (e) the purpose of the offeror and any person or company acting jointly or in concert with the offeror in effecting the transaction, including any future intention to increase the beneficial ownership, control or direction of the offeror and any person or company acting jointly or in concert with the offeror over securities of the offeree issuer;
- (f) where applicable, a description of any change in any material fact set out in a previous report under Section 107 of the Act; and
- (g) the names of the persons or companies acting jointly or in concert with the offeror in connection with the disclosure required by clause (b), (c) or (d).

(2) A report required under Section 107 of the Act shall be signed by the offeror and shall include the information that is required in subsection (1).

Section 197 added: O.I.C. 91-815, N.S. Reg. 157/91.

198 A press release required under Section 108 of the Act shall be authorized by a senior officer of the offeror and shall include in respect to the class of securities subject to the bid and each class of securities into which the securities of the class which subject to the bid are convertible

- (a) the name of the offeror issuing the release;
- (b) the number of securities acquired by or over which the offeror and every person acting jointly or in concert with the offeror has acquired control or direction since the commencement of the bid;
- (c) the number of securities held by or over which the offeror and every person acting jointly or in concert with the offeror exercised control or direction after the transaction or occurrence giving rise to the press release;
- (d) the market where the transaction or occurrence took place; and
- (e) the purpose of the offeror and any person or company acting jointly or in concert with the offeror in effecting the transaction, including any future intention to increase the beneficial ownership, control or direction of the offeror and any person or company acting jointly or in concert with the offeror over securities of the offeree issuer.

Section 198 added: O.I.C. 91-815, N.S. Reg. 157/91.

199 Where an offeror and one or more persons or companies acting jointly or in concert with the offeror are required to file or issue a report or press release under Section 107 or 108 of the Act, and where a report or press release filed or issued by the offeror discloses the information as to a person or company acting jointly or in concert that is required by Section 197 or 198 of the regulations, as the case may be, the person or company need not file a separate report or press release.

Section 199 added: O.I.C. 91-815, N.S. Reg. 157/91.

200 (1) Every take-over bid circular, issuer bid circular, directors' circular and director's or officer's circular and any notice of change or variation to any such circular,

shall contain a statement of the rights provided by Section 139 of the Act relating to that document.

- (2) If the take-over bid or issuer bid is made in the Province and in another province or territory of Canada, inclusion in a circular or notice of the following statement shall be deemed to be compliance with subsection (1):

Securities legislation in certain of the provinces and territories of Canada provides security holders of the offeree issuer with, in addition to any other rights they may have at law, rights of rescission or to damages, or both, if there is a misrepresentation in a circular or notice that is required to be delivered to such security holders. However, such rights must be exercised within prescribed time limits. Security holders should refer to the applicable provisions of the securities legislation of their province or territory for particulars of those rights or consult with a lawyer.

- (3) If the take-over bid or issuer bid is made in the Province only, inclusion in a circular or notice of the following statement shall be deemed to be compliance with subsection (1):

Securities legislation in Nova Scotia provides security holders of the offeree issuer with, in addition to any other rights they may have at law, rights of rescission or to damages, or both, if there is a misrepresentation in a circular or notice that is required to be delivered to such security holders. However, such rights must be exercised within prescribed time limits. Security holders should refer to the applicable provisions of the Nova Scotia securities legislation for particulars of those rights or consult with a lawyer.

Section 200 added: O.I.C. 91-815, N.S. Reg. 157/91.

- 201**
- (1) The information contained in a circular [or] notice required under Sections 95 to 111, inclusive, of the Act shall be clearly presented and the statements made therein shall be divided into groups according to subject matter and the various groups of statements shall be preceded by appropriate headings.
 - (2) The order of items in the appropriate Form need not be followed.
 - (3) Where practical and appropriate, information in a circular or notice shall be presented in tabular form.
 - (4) All amounts required in a circular or notice shall be stated in figures.
 - (5) Information required by more than one applicable item in the appropriate Form need not be repeated.
 - (6) No statement need be made in response to any item in the appropriate Form that is inapplicable and negative answers to any item may be omitted except where expressly required by the applicable Form.

Section 201 added: O.I.C. 91-815, N.S. Reg. 157/91.

- 202** Where the Director is satisfied upon evidence or submissions made to the Director that a chief executive officer or chief financial officer is, for adequate cause, not available to sign a certificate or notice required to be filed under Sections 95 to 111, inclusive, of the Act, the Director may permit the certificate or notice to be signed by another responsible officer or director.

Section 202 added: O.I.C. 91-815, N.S. Reg. 157/91.

203 A circular or notice required under Sections 95 to 111, inclusive, of the Act shall be filed in triplicate on the same date that it is first sent to security holders of the offeree.

Section 203 added: O.I.C. 91-815, N.S. Reg. 157/91.

Part XIII - Enforcement and investigations

Original Part XII renumbered Part XIII; Part XIII title replaced: O.I.C. 91-815, N.S. Reg. 157/91.

Warrants

204 The endorsement of a warrant by a provincial judge or justice of Nova Scotia provided for by Section 132 of the Act shall be completed in accordance with Form 40.

Original Section 181 renumbered Section 204: O.I.C. 91-815, N.S. Reg. 157/91.

205 The following practices and procedures apply to investigations conducted under the Act:

- (a) every summons issued by a person under subsection 27(3) of the Act or Section 29 of the Act shall be served personally on the individual summoned who shall be paid the like fees and allowances for his attendance before the person as are paid for the attendance of a witness summoned to attend before a judge of the Trial Division of the Supreme Court;
- (b) every summons to a witness to appear before a person appointed to make an investigation under Section 27 or 29 of the Act shall be in Form 1; and
- (c) the service of a summons on a witness, the payment or tender of fees and allowances to the witness and the service of a notice on a witness may be proved by an affidavit in Form 2.

Section 205 added: O.I.C. 91-815, N.S. Reg. 157/91.

Part XIV - Fees and costs

Original Part XIII renumbered Part XIV; Part XIV title replaced: O.I.C. 91-815, N.S. Reg. 157/91.

Fees and filing

- 206** (1) Fees shall be paid to the Minister of Finance in accordance with Schedule 1 of the Appendix.
- (2) Where any material that is filed is not prepared in accordance with the Act or these regulations, the Director may, or the Commission may require the Director to, return the material to the person or company that is required to comply with the provisions.
 - (3) Where any material is returned to a person or company under subsection (2), the fee paid on the filing of the material shall not be refunded without the consent of the Commission.

- (4) The fees prescribed for an examination made pursuant to Section 29E of the Act and the tariff of costs for the purpose of Section 135A of the Act are as set forth in Schedule 2 of the Appendix.

Original Section 182 renumbered Section 206; Section 206(4) added: O.I.C. 91-815, N.S. Reg. 157/91.

Appendix A
Schedule 1 - Fees

- 1 Every application for registration or renewal of registration as an underwriter or a dealer, other than a security issuer, or an advisor or any combination of any of them shall be accompanied by a fee of \$600.
- 2 Every applicant for registration or renewal of registration as a security issuer shall be accompanied by a fee of \$400.
- 3 Every application by an individual for registration or renewal of registration as a salesman of a registered dealer or as a partner or officer of a registered dealer or a partner or officer of a registered advisor shall be accompanied by a fee of \$300 but there shall be no fee for any amendment to such registration.
- 4 Every application by an individual for registration or renewal of registration as an advisor shall be accompanied by a fee of \$600.
- 5 Every application for reinstatement or transfer of registration as a salesman or as a partner or officer of a registered dealer shall be accompanied by a fee of \$100.
- 6 Every application by a person or company for registration or renewal of registration as a dealer, advisor or underwriter shall be accompanied by an additional fee of \$100 for each branch office in Nova Scotia at the date of the application of the person or company.
- 7 Every application for amendment of registration as a dealer, advisor or underwriter shall be accompanied by a fee of \$100.

Appendix 1, Schedule 1, Section 7 amended: O.I.C. 96-173, N.S. Reg. 51/96.

- 8 (1) Subject to subsection (2), a preliminary prospectus, pro forma prospectus or statement of material facts as the case may be, shall be accompanied by a fee of \$850 per issuer.

Appendix 1, Schedule 1, subsection 8(1) amended: O.I.C. 96-173, N.S. Reg. 51/96.

- (2) Where Nova Scotia is the principal jurisdiction, a fee of \$1250 per issuer shall accompany any preliminary prospectus or pro forma prospectus.

Appendix 1, Schedule 1, subsection 8(2) amended: O.I.C. 96-173, N.S. Reg. 51/96.

- (3) Any Offering Memorandum filed under the Act or regulations with respect to a specified securities issue under the Nova Scotia Stock Savings Plan Act, shall be accompanied by a fee of \$1,250.

- (4) In addition to any fees payable under subsections (1), (2) and (3), where the issuer of the securities is a natural resource company, \$100 shall be paid for each

property of the issuer that is the subject of a report filed with the preliminary prospectus, pro forma prospectus or a statement of material facts, as the case may be.

- (5) Any annual information form filed under the provisions of National Policy 47 shall be accompanied by a fee of \$1200.

Appendix 1, Schedule 1, subsection 8(5) added: O.I.C. 96-173, N.S. Reg. 51/96.

- (6) Any pro forma or preliminary simplified prospectus and annual information form shall be accompanied by a fee of \$1200 per issuer.

Appendix 1, Schedule 1, subsection 8(6) added: O.I.C. 96-173, N.S. Reg. 51/96.

- (7) Any preliminary or pro forma simplified prospectus and annual information form where Nova Scotia is the principal jurisdiction shall be accompanied by a fee of \$1650 per issuer.

Appendix 1, Schedule 1, subsection 8(7) added: O.I.C. 96-173, N.S. Reg. 51/96.

- 9 If a preliminary prospectus, pro forma prospectus or statement of material facts involves more than one class of securities or more than one type of unit offering, each additional class of securities or each type of unit offering shall be accompanied by an additional fee of \$300.

- 10 The annual financial statements filed by each issuer under Section 84 of the Act shall be accompanied by a fee of \$150 except that where the issuer has securities listed and posted for trading on a stock exchange in Canada, the fee is \$250.

- 11 (1) Every amendment to a preliminary prospectus, pro forma prospectus or statement of material facts shall be accompanied by a fee of \$100 per issuer.

Appendix 1, Schedule 1, subsection 11(1) amended: O.I.C. 96-173, N.S. Reg. 51/96.

- (2) Where an amendment to a preliminary prospectus, pro forma prospectus or statement of material facts is accompanied by a report upon a property or an amended financial statement, the amendment shall be accompanied by an additional fee of \$150 for each property and each financial statement reported upon.

- 12 Every application for recognition as an exempt purchaser or renewal of recognition as an exempt purchaser shall be accompanied by a fee of \$250.

- 13 Every prospecting syndicate agreement filed shall be accompanied by a fee of \$150.

Appendix 1, Schedule 1, Section 14 repealed: O.I.C. 91-815, N.S. Reg. 157/91.

- 15 Every notice to the Commission under subsection (2) of Section 25 of the Act shall be accompanied by a fee of \$50.

- 16 (1) Every application to the Commission under Section 79 of the Act shall be accompanied by a fee of \$450.

- (2) Every application to the Commission under Section 79 of the Act shall be accompanied by a fee of \$450 for each supplementary application that it includes.

17 (1) Subject to subsection (2), every application to the Commission under Section 86 or 128 of the Act shall be accompanied by a fee of \$350.

(2) There shall be no fee for an application to the Commission by an inactive reporting issuer for an order under subclause (iii) of clause (b) of Section 86 of the Act.

18 Every application to the Commission or the Director under any Section of the Act or these regulations or any policy statements, or rules issued pursuant to Section 19 of the Act not otherwise provided for in this Schedule shall be accompanied by a fee of \$350.

Appendix 1, Schedule 1, Section 18 amended: O.I.C. 96-173, N.S. Reg. 51/96.

18A In addition to the fees payable under Sections 16, 17, and 18, every application to the Commission on an expedited basis shall be accompanied by a fee of \$350.

Appendix 1, Schedule 1, Section 18A added: O.I.C. 96-173, N.S. Reg. 51/96.

19 Where a statement referred to in Section 147 of the Act is certified for a person or company by the Commission or a member of the Commission or the Director, the fee is \$50 plus \$1 per page photocopied where the statement includes photocopies of documents required to be made available for public inspection in the offices of the Director or the Commission.

20 Where a decision, document, record or thing is certified by the Commission, Director, Secretary or other authorized official thereof for a person or company, the fee is \$50 plus \$1 per page photocopied for the purpose of the certificate.

21 The fee for examining material required to be made available for public inspection is \$20 per search.

Appendix 1, Schedule 1, Section 21 amended: O.I.C. 96-173, N.S. Reg. 51/96.

22 The fee for photocopying is \$1 per page with a minimum fee of \$2 for each search.

23 Every document filed under the Act or these regulations, other than a document referred to in

- (a) this Schedule;
- (b) Sections 81 through 128, except subsection 81(2), of the Act; or
- (c) any provision of these regulations relating to the Sections of the Act referred to in clause (b)

shall be accompanied by a fee of \$25.

Appendix 1, Schedule 1, clause 23(b) amended: O.I.C. 96-173, N.S. Reg. 51/96.

24 (1) Any share exchange take-over bid circular shall be accompanied by a fee of \$350.

(2) Any amendment to a share exchange take-over bid shall be accompanied by a fee of \$100.

(3) Any directors' circular filed in regard to a share exchange take-over bid shall be

accompanied by a fee of \$100.

Appendix 1, Schedule 1, Section 24 added: O.I.C. 96-173, N.S. Reg. 51/96.

Appendix 1, Schedule 1 replaced: O.I.C. 90-557, N.S. Reg. 131/90.

Schedule 2 - Prescribed fees and tariff of costs

- 1** For each hour during which the Director or any Deputy Director or any lawyer, investigator or accountant employed by the Commission is engaged in any investigation of an offence under the Act, including time spent in preparing for and attending any trial or hearing before the Commission, the sum of \$50 for each person so engaged.
- 2** For each person appointed pursuant to Section 27, 29 or 29E of the Act, an amount equal to the amount paid by the Commission or the Minister for the investigation or examination not exceeding fees of \$2,000 for each day of the investigation or examination plus all charges for the costs of the investigation or examination.
- 3** For each expert appointed to assist in an investigation pursuant to Section 27 or 29 of the Act an amount equal to the amount paid by the Commission or the Minister to such expert not exceeding fees of \$1,000 for each day that the expert is so engaged plus all charges for the disbursement costs of the expert.

Schedule 2 added: O.I.C. 91-815, N.S. Reg. 157/91.