



Securities Act
SECURITIES RULES
B.C. Reg. 194/97

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Consolidated Regulations of British Columbia

This is an unofficial consolidation.

B.C. Reg. 194/97 (British Columbia Securities Commission), deposited and effective June 12, 1997, is made under the *Securities Act*, R.S.B.C. 1996, c. 418, ss. 183 and 184.

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This consolidation includes any amendments deposited and in force as of the currency date at the bottom of each page. See the end of this regulation for any amendments deposited but not in force as of the currency date. Any amendments deposited after the currency date are listed in the B.C. Regulations Bulletins. All amendments to this regulation are listed in the *Index of B.C. Regulations*. Regulations Bulletins and the Index are available online at www.bclaws.ca.

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Securities Act

SECURITIES RULES

B.C. Reg. 194/97

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Securities Act

SECURITIES RULES

B.C. Reg. 194/97

PART 1 – INTERPRETATION

Interpretation

1 (1) In these rules:

“**Act**” means the *Securities Act*;

“**branch office**”, in relation to a dealer or adviser, means a location, including a residence, where the dealer or adviser carries on any business as a dealer or adviser, either alone or through one or more individuals, but does not include

(a) the dealer’s or adviser’s chief place of business, or

(b) a location where the dealer or adviser carries on business for 50 or fewer days in any calendar year;

“**commodity pool**” has the meaning ascribed to that term in National Instrument 81-104 *Commodity Pools*;

“**exercise price**” means the price at which a holder of an option has the right to buy or sell the specified asset that is the subject of the option;

“**Joint Regulatory Financial Questionnaire and Report**” means a record, in the required form, of the same name;

“**NI 45-102**” means National Instrument 45-102 *Resale of Securities*;

“**NI 51-102**” means National Instrument 51-102 *Continuous Disclosure Obligations*;

“**NI 52-107**” means National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*;

“**NI 71-102**” means National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers*;

“**NI 81-101**” means National Instrument 81-101 *Mutual Fund Prospectus Disclosure*;

“**NI 81-102**” means National Instrument 81-102 *Investment Funds*;

“**NI 81-106**” means National Instrument 81-106 *Investment Fund Continuous Disclosure*.

(2) In a commission rule, including these rules:

“**auditor**” means a person that is qualified under section 3 (5) to make an auditor’s report;

“**auditor’s report**” means

(a) a Canadian auditor’s report, or

(b) in the case of an issuer incorporated or organized in a jurisdiction other than Canada or a province of Canada

- (i) a Canadian auditor's report, or
- (ii) a foreign auditor's report;

“Canadian auditor's report” means an auditor's report prepared in accordance with Canadian GAAS;

“Canadian GAAP” means generally accepted accounting principles determined with reference to the Handbook;

“Canadian GAAS” means generally accepted auditing standards determined with reference to the Handbook;

“foreign auditor's report” means, for an issuer that is incorporated or organized in a jurisdiction other than Canada or a province of Canada, an auditor's report that is required in the incorporating or organizing jurisdiction under the applicable legislation, and, subject to the requirements dealing with auditor's reports in such legislation, if a recommendation has been made by an association in the incorporating or organizing jurisdiction that is the equivalent of the Canadian Institute of Chartered Accountants, the report recommended by that equivalent association;

“foreign GAAP” means, for an issuer that is incorporated or organized in a jurisdiction other than Canada or a province of Canada, the generally accepted accounting principles that are required in the incorporating or organizing jurisdiction under the applicable legislation, and, subject to the requirements dealing with generally accepted accounting principles in such legislation, if a recommendation has been made by an association in the incorporating or organizing jurisdiction that is the equivalent of the Canadian Institute of Chartered Accountants, the principles recommended by that equivalent association;

“foreign GAAS” means, for an issuer that is incorporated or organized in a jurisdiction other than Canada or a province of Canada, the generally accepted auditing standards that are required in the incorporating or organizing jurisdiction under the applicable legislation, and, subject to the requirements dealing with generally accepted auditing standards in such legislation, if a recommendation has been made by an association in the incorporating or organizing jurisdiction that is the equivalent of the Canadian Institute of Chartered Accountants, the standards recommended by that equivalent association;

“generally accepted accounting principles” means

- (a) Canadian GAAP, or
- (b) in the case of an issuer incorporated or organized in a jurisdiction other than Canada or a province of Canada
 - (i) Canadian GAAP, or
 - (ii) foreign GAAP;

“generally accepted auditing standards” means

- (a) Canadian GAAS, or

Part 1 – Interpretation

- (b) in the case of an issuer incorporated or organized in a jurisdiction other than Canada or a province of Canada

- (i) Canadian GAAS, or
 - (ii) foreign GAAS;

“Handbook” means

- (a) the Chartered Professional Accountants of Canada Handbook – Accounting, as amended from time to time, and
- (b) the Chartered Professional Accountants of Canada Handbook – Assurance, as amended from time to time;

“review engagement report” means a review engagement report prepared in accordance with the Handbook.

[am. B.C. Regs. 3/2000, s. 1; 174/2001, Sch., s. 1; 269/2001, s. 1 (a); 69/2002, s. 1; 40/2003, s. 1; 109/2004, s. 1; 113/2004, s. 1; 218/2005, App. H, s. 1; 59/2008, App. B, s. 1; 215/2008, s. 1; 228/2009, Sch. A, s. 1; 176/2014, Sch. F, s. 1 (j); 45/2020, Sch. D, s. 1; 209/2023, Sch. G.]

2 Repealed. [B.C. Reg. 228/2009, Sch. A, s. 2.]

Preparation of financial statements

3 (1) to (4) Repealed. [B.C. Reg. 228/2009, Sch. A s. 3 (a).]

- (5) For the purposes of section 3.3 of NI 52-107, a person is authorized to sign an auditor’s report if the person is independent of the person that is required to file the financial statements and

- (a) the person is a member of, or is a partnership whose partners are members of, and is authorized to carry on the practice of public accounting by, the institute of chartered accountants of a province or territory of Canada,
 - (b) the person is a member of, or is a partnership whose partners are members of, and is authorized to carry on the practice of public accounting by, the Certified General Accountants Association of British Columbia,
 - (c) the person is certified as an auditor by the Auditor Certification Board established under section 221 of the *Business Corporations Act*, or
 - (d) the person
 - (i) has qualifications as an auditor that the executive director considers are similar to the qualifications for membership in the Institute of Chartered Accountants of British Columbia or the Certified General Accountants Association of British Columbia, and
 - (ii) is authorized, by the appropriate authority in the jurisdiction in which the auditor is qualified, to carry on the practice of public accounting, and to report on the financial statements of issuers or registrants.

(6) to (8) Repealed. [B.C. Reg. 228/2009, Sch. A, s. 3 (c).]

(9) Repealed. [B.C. Reg. 218/2005, App. H, s. 4.]

(10) and (11) Repealed. [B.C. Reg. 109/2004, s. 4 (e).]

(12) to (14) Repealed. [B.C. Reg. 218/2005, App. H, s. 4.]

[am. B.C. Regs. 127/2001, s. (a); 109/2004, s. 3; 218/2005, App. H, ss. 2 to 4; 59/2008, App. B, s. 2; 228/2009, Sch. A, s. 3.]

Disclosure of securities beneficially owned

- 4** (1) If the Act or the regulations require the disclosure of the number or percentage of securities beneficially owned by a person and, under section 1 (4) of the Act, one or more corporations will also have to be shown as beneficially owning the securities, a statement
- (a) disclosing all the securities beneficially owned by the person or deemed to be beneficially owned, and
 - (b) indicating whether the ownership is direct or indirect and, if indirect, indicating
 - (i) the name of the controlled corporation or corporation affiliated with the controlled corporation through which the securities are indirectly owned, and
 - (ii) the number or percentage of the securities so owned by the corporation,
- is sufficient disclosure without disclosing the name of any other corporation which is deemed to beneficially own the same securities.
- (2) If the Act or the regulations requires the disclosure of the number or percentage of securities beneficially owned by a corporation and, under section 1 (4) of the Act, one or more other corporations 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 corporation, and
 - (b) indicating whether the ownership is direct or indirect and, if indirect, indicating
 - (i) the name of the subsidiary through which the securities are indirectly owned, and
 - (ii) the number or percentage of the securities so owned,
- is deemed sufficient disclosure without disclosing the name of any other corporation which is deemed to beneficially own the same securities.
- (3) Despite subsections (1) and (2), an insider that is a corporation that is required to report its ownership under National Instrument 55-104 *Insider Reporting Requirements and Exemptions* must report its ownership in accordance with that instrument.

[am. B.C. Reg. 104/2010, Sch. B, s. 1.]

PART 2 – THE COMMISSION

PART 3 – FINANCIAL ADMINISTRATION

PART 4 – SELF-REGULATORY BODIES AND EXCHANGES

PART 5 – REGISTRATION

Division 1 – General

Interpretation

- 5** In this Part, “**risk adjusted capital**” means the amount of risk adjusted capital determined under the Joint Regulatory Financial Questionnaire and Report.

Division 2 – Interpretation of “Limited Dealer”

Limited Dealer – Mortgage Brokers Act Regulations

- 6** In these rules “**limited dealer**” means a person registered in a category other than the category of investment dealer.

[en. B.C. Reg. 226/2009, Sch. C, s. 1 (b).]

- 7 to 13** Repealed. [B.C. Reg. 226/2009, Sch. C, s. 1 (c).]

Division 3 – Registration – General

Fair dealing with clients

- 14** (1) A registrant must deal fairly, honestly and in good faith with the clients of the registrant.
- (2) A registered
- (a) dealing representative, or
 - (b) advising representative,
- of a dealer or adviser must deal fairly, honestly and in good faith with the clients of the dealer or adviser.

[am. B.C. Reg. 226/2009, Sch. C, s. 2.]

- 15 to 18** Repealed. [B.C. Reg. 226/2009, Sch. C, s. 3.]

Division 4 – Capital and Bonding

- 19 and 20** Repealed. [B.C. Reg. 226/2009, s. (c).]

- 21 and 22** Repealed. [B.C. Reg. 226/2009, s. (b).]

Compensation or contingency trust fund

- 23** (1) A dealer, other than a security issuer or scholarship plan dealer, must participate in and contribute to a compensation fund or contingency trust fund approved by the executive director and established by
- (a) a self-regulatory body or an exchange recognized under section 24 (a) or (b) of the Act, or
 - (b) a trust company.
- (2) A dealer must contribute an amount of money to a fund referred to in subsection (1) equal to the amount that the self-regulatory body, exchange or, in the case of a fund established by a trust company, the executive director requires.
- (3) The executive director may exempt a dealer that does not hold funds or securities of its clients from the requirements of subsection (1).
[am. B.C. Reg. 45/2020, Sch. D, s. 2.]

24 and 25 Repealed. [B.C. Reg. 226/2009, s. (c).]

Division 5

26 to 42 Repealed. [B.C. Reg. 226/2009, Sch. C, s. 9.]

Division 6 – Client Accounts and Statements of Account and Portfolio

43 to 48 Repealed. [B.C. Reg. 226/2009, Sch. C, s. 10.]

49 and 50 Repealed. [B.C. Reg. 226/2009, s. (c).]

51 Repealed. [B.C. Reg. 226/2009, Sch. C, s. 13.]

Change in ownership or sale of account

- 52** (0.1) Spent.
- (1) Repealed. [B.C. Reg. 226/2009, s. (c).]
 - (2) Repealed. [B.C. Reg. 226/2009, Sch. C, s. 14 (ii).]
[am. B.C. Regs. 57/2001, s. 9; 226/2009, Sch. C, s. 14; 226/2009, s. (c).]
- 53** Repealed. [B.C. Reg. 226/2009, s. (b).]
- 54** Repealed. [B.C. Reg. 226/2009, s. (c).]
- 55 to 59** Repealed. [B.C. Reg. 226/2009, Sch. C, s. 17.]

Division 7

60 to 63 Repealed. [B.C. Reg. 226/2009, Sch. C, s. 18.]

Division 8

64 to 68 Repealed. [B.C. Reg. 226/2009, Sch. C, s. 18.]

Division 9

69 to 72 Repealed. [B.C. Reg. 226/2009, Sch. C, s. 18.]

Division 10

73 and 74 Repealed. [B.C. Reg. 226/2009, Sch. C, s. 18.]

Division 11

75 to 77 Repealed. [B.C. Reg. 226/2009, Sch. C, s. 18.]

78 Repealed. [B.C. Reg. 311/2001, s. 3.]

79 to 83 Repealed. [B.C. Reg. 226/2009, Sch. C, s. 18.]

84 Repealed. [B.C. Reg. 174/2001, s. 5.]

85 Repealed. [B.C. Reg. 226/2009, Sch. C, s. 18.]

PART 6

86 to 90 Repealed. [B.C. Reg. 226/2009, Sch. C, s. 19.]

91 Repealed. [B.C. Reg. 69/2002, s. 5.]

92 Repealed. [B.C. Reg. 226/2009, Sch. C, s. 19.]

PART 7 – TRADING IN SECURITIES GENERALLY

Representations prohibited

93 For the purposes of section 50 (5) (b) of the Act the prescribed amount is \$50 000.
[am. B.C. Reg. 45/2020, Sch. D, s. 3.]

Submission of advertising

94 (1) If the executive director has given a person that is a dealer, adviser, underwriter or issuer an opportunity to be heard, and is satisfied that the person's past conduct in the use of advertising and sales literature makes it necessary for the protection of the public, the executive director may order the person to file copies of all advertising and sales literature that the dealer, adviser, underwriter or issuer

proposes to use in connection with trading in securities or exchange contracts at least 7 days before the advertising and sales literature is used.

- (2) If an order is made under subsection (1), the executive director may, after examining the advertising and literature delivered to the executive director, prohibit their use or require that deletions or changes be made in them.

PART 8 – TRADING IN EXCHANGE CONTRACTS

PART 9 – PROSPECTUS

Division 1

95 to 99 Repealed. [B.C. Reg. 59/2008, App. B, s. 3.]

100 to 105 Repealed. [B.C. Reg. 3/2000, s. 4.]

106 to 108 Repealed. [B.C. Reg. 59/2008, App. B, s. 3.]

109 and 110 Repealed. [B.C. Reg. 342/2003, s. (h).]

Division 2

111 to 114 Repealed. [B.C. Reg. 59/2008, App. B, s. 3.]

115 Repealed. [B.C. Reg. 411/2007, s. (d).]

116 to 119 Repealed. [B.C. Reg. 59/2008, App. B, s. 3.]

Division 3 – Receipts on Filing

Refusal to issue a receipt for prospectus

- 120** (1) In this section, “**underwriter**” means an underwriter that has signed a certificate included in a prospectus under section 5.9 (1) of National Instrument 41-101.
- (2) The executive director must not issue a receipt for a prospectus if it appears to the executive director that
- (a) the prospectus or any document required to be filed with it
 - (i) does not comply in any substantial respect with any of the requirements of the Act or the regulations,
 - (ii) contains any statement, promise, estimate or forward-looking information that is misleading, false or deceptive, or
 - (iii) contains a misrepresentation,

- (b) an unconscionable consideration has been paid or given, or is intended to be paid or given, for any services or promotional purposes or for the acquisition of property,
- (c) the aggregate of
 - (i) the proceeds from the sale of the securities under the prospectus that are to be paid into the treasury of the issuer, and
 - (ii) the other resources of the issueris insufficient to accomplish the purpose of the issue stated in the prospectus,
- (d) the issuer cannot reasonably be expected to be financially responsible in the conduct of its business because of the financial condition of
 - (i) the issuer,
 - (ii) any of the issuer's officers, directors, promoters, or control persons, or
 - (iii) the investment fund manager of the issuer or any of the investment fund manager's officers, directors or control persons,
- (e) the business of the issuer may not be conducted with integrity and in the best interests of the security holders of the issuer because of the past conduct of
 - (i) the issuer,
 - (ii) any of the issuer's officers, directors, promoters or control persons, or
 - (iii) the investment fund manager of the issuer or any of the investment fund manager's officers, directors or control persons,
- (f) a person that has prepared or certified any part of the prospectus, or that is named as having prepared or certified a report or valuation used in connection with the prospectus, is not acceptable,
- (g) an escrow or pooling agreement in the form that the executive director considers necessary or advisable with respect to the securities has not been entered into,
- (h) adequate arrangements have not been made for the holding in trust of the proceeds payable to the issuer from the sale of the securities pending the distribution of the securities, or
- (i) the directors and officers of the issuer or the directors and officers of the investment fund manager of the issuer lack the knowledge and expertise necessary to conduct the business of the issuer in the best interests of the security holders of the issuer.

(3) to (6) Repealed. [B.C. Reg. 59/2008, App. B, s. 6.]

[am. B.C. Regs. 109/2004, s. 4; 59/2008, App. B, ss. 4 to 6.]

Division 4

121 to 126 Repealed. [B.C. Reg. 59/2008, App. B, s. 7.]

PART 10 – EXEMPTIONS FROM PROSPECTUS REQUIREMENTS**Division 1**

127 Repealed. [B.C. Reg. 269/2001, s. 1 (d).]

Division 2

- 128** (a) to (c) Repealed. [B.C. Reg. 69/2002, s. 7 (a).]
(d) Repealed. [B.C. Reg. 269/2001, s. 1 (d).]
(e) to (g) Repealed. [B.C. Reg. 227/2009, App. s. 1 (f) (i).]
(h) and (i) Repealed. [B.C. Reg. 269/2002, s. 7(c).]
[am. B.C. Regs. 269/2001, s. 1 (d); 69/2002, s. 7; 227/2009, App., s. 1 (f) (i).]
- 129** Repealed. [B.C. Reg. 227/2009, App., s. 1 (f) (i).]
- 130** Repealed. [B.C. Reg. 69/2002, s. 8.]
- 131** Repealed. [B.C. Reg. 227/2009, App., s. 1 (f) (i).]
- 132** Repealed. [B.C. Reg. 269/2001, s. 1 (d).]

Division 3

133 and 134 Repealed. [B.C. Reg. 69/2002, s. 10.]

Division 4 – Filings

- 135** Repealed. [B.C. Reg. 69/2002, s. 10.]
- 136** Repealed. [B.C. Reg. 227/2009, App., s. 1 (f) (i).]

Reports by control person of a reporting issuer

- 137** (1) If a control person of a reporting issuer distributes a security under an order issued under section 76 (1) of the Act, the control person must file a report in the form required under section 87 of the Act on or before the 3rd day after the distribution.
- (2) On application by a control person of a reporting issuer or on the commission's or executive director's own motion, the commission or executive director, if the commission or executive director considers that to do so would not be prejudicial

to the public interest, may order that section 137 (1) does not apply to a trade, intended trade or control person or class of trades, intended trades or control persons.

[am. B.C. Regs. 230/2001, Sch., s. 1; 227/2009, s. App., s. 1 (f) (ii).]

138 Repealed. [B.C. Reg. 69/2002, s. 10.]

139 Repealed. [B.C. Reg. 227/2009, s. 1 (f) (i).]

Division 5

140 to 143 Repealed. [B.C. Reg. 269/2001, s. 1 (f).]

PART 11 – CIRCULATION OF MATERIALS

Prescribed period – section 83 (3)

143.1 For the purposes of section 83 (3) of the Act, the prescribed period is 2 business days after receipt by the purchaser of the latest prospectus, any amendment to that prospectus or another prescribed document that the purchaser is entitled to receive under the Act.

[en. B.C. Reg. 190/2023, s. (b).]

PART 12 – CONTINUOUS DISCLOSURE

Division 1

144 and 145 Repealed. [B.C. Reg. 57/2008, s. (f).]

146 to 149 Repealed. [B.C. Reg. 218/2005, App. H, s. 17.]

150 Repealed. [B.C. Reg. 113/2004, s. 4.]

Division 2 – Filing

151 and 152 Repealed. [B.C. Reg. 218/2005, s. (j) and App. H, s. 17.]

Filing of material sent to securityholders or filed in other jurisdictions

153 (1) Subject to subsection (3), an investment fund that is a reporting issuer must file a copy of any record that it

(a) Repealed. [B.C. Reg. 218/2005, App. H, s. 18.]

(b) files with a government of another jurisdiction, or an agency of that government, or with an exchange wherever situate, under the securities or corporate law of that jurisdiction or under the bylaws, rules, other

regulatory instruments or policies of that exchange, if the record contains information that is

- (i) not already filed with the commission, whether in the same or a different form, and
 - (ii) material to investors.
- (2) An investment fund that is a reporting issuer must file the records under subsection (1) within 7 days after the issuer
 - (a) Repealed. [B.C. Reg. 218/2005, App. H, s. 18.]
 - (b) files the records referred to in subsection (1) (b) with the comparable body or exchange.
- (3) Repealed. [B.C. Reg. 218/2005, App. H, s. 18.]
[am. B.C. Regs. 113/2004, s. 5; 218/2005, App. H, s. 18.]

Filing of records filed in another jurisdiction

- 154** If an investment fund is a reporting issuer, and the laws of the jurisdiction in which the investment fund carries on business, or in which the investment fund was incorporated, organized or continued, require the investment fund to file substantially the same information in that jurisdiction as is required by these rules, the investment fund may comply with the filing requirements of these rules by filing a copy of the press release, timely disclosure report, information circular or financial statements and auditor's report, as the case may be, required by that jurisdiction, if those records are signed and certified in accordance with section 189.

[en. B.C. Reg. 113/2004, s. 6.]

Division 3 – Insider Reporting

- 155** Repealed. [B.C. Reg. 72/2004.]

- 155.1** Repealed. [B.C. Reg. 104/2010, Sch. B, s. 2.]

- 156** and **157** Repealed. [B.C. Reg. 104/2010, Sch. B, s. 2.]

Early report by control person

- 158** If a control person files a report under section 137 the control person is not required to file a report under section 87 of the Act.

[am. B.C. Reg. 230/2001, Sch., s. 3.]

Filing in other jurisdictions

- 159** (1) Subject to subsection (2), if the laws of the jurisdiction in which the reporting issuer carries on business or in which the reporting issuer was incorporated, organized or continued require substantially the same reports in that jurisdiction as are required by section 87 of the Act, the filing requirements of section 87 of

the Act are satisfied by filing the reports which are required by the laws of the other jurisdiction and which are signed or certified as set out in section 189.

- (2) Subsection (1) does not apply to insiders that are required to file insider reports in electronic format under National Instrument 55-102 *System for Electronic Disclosure by Insiders* (SEDI).

[en. B.C. Reg. 230/2001, Sch., s. 4.]

160 Repealed. [B.C. Reg. 139/2001.]

Division 4

161 Repealed. [B.C. Reg. 397/2007, s. 3.]

PART 13

162 to 172 Repealed. [B.C. Reg. 21/2008, Sch. B, s. 1.]

173 Repealed. [B.C. Reg. 84/2000.]

174 Repealed. [B.C. Reg. 21/2008, Sch. B, s. 1.]

175 Repealed. [B.C. Reg. 84/2000.]

176 to 180 Repealed. [B.C. Reg. 21/2008, Sch. B, s.1.]

PART 14 – PROXIES

Division 1 – Rights of Beneficial Owner of Securities

Interpretation

181 (1) In this Part:

“**securityholder**” has the same meaning as in section 116 of the Act;

“**solicit**” has the same meaning as in section 1.1 of National Instrument 51-102 *Continuous Disclosure Obligations*.

(2) In section 182:

“**custodian**” means a custodian of securities issued by an investment fund and held for the benefit of plan holders under a custodial agreement or other arrangement;

“**record date**” means the date determined under section 171 of the *Business Corporations Act*.

[am. B.C. Regs. 218/2005, App. H, s. 19; 59/2008, App. B, s. 9.]

Meeting information and voting instructions

182 (1) In this section:

“**NI 54-101**” means National Instrument 54-101 *Communication with Beneficial Owners of Securities of a Reporting Issuer*;

“**other relevant material**” includes a bid circular, a director’s circular and a director’s or officer’s circular within the meaning of Part 13 of the Act.

(2) Subject to subsections (3) and (4), if

- (a) a registrant or custodian receives a notice of a meeting of an issuer’s security holders or other relevant material,
- (b) the registrant or custodian, or its nominee, as the case may be, is a registered security holder of that issuer at the record date for notice of that meeting or at the date of the other relevant material, as the case may be,
- (c) the security is not beneficially owned by the registrant or custodian, and
- (d) the registrant or custodian knows the name and address of the beneficial owner of the security,

the registrant or custodian must send, without delay, a copy of any notice, financial statement, information circular or other relevant material received from the reporting issuer or its agent to the beneficial owner.

(3) Subsection (2) does not apply to a registrant or custodian if the beneficial owner of the security referred to in subsection (2) has not declined to receive the material and has not agreed to pay the reasonable costs of sending the material under that subsection.

(4) On request, the reporting issuer or its agent, at its own expense, must send the required number of copies of the notice, statement, circular or other relevant material referred to in subsection (2) to the registrant or custodian, as the case may be.

(5) If the beneficial owner instructs or requests the registrant or custodian to do so, the registrant or custodian must, in accordance with the instructions or request,

- (a) vote the security or give a proxy requiring a nominee to vote the security, or
- (b) if requested in the instructions, give the beneficial owner or beneficial owner’s nominee a proxy enabling one of them, as specified in the request, to vote the security.

(6) Subsections (2), (4) and (5) do not apply to a registrant if the registrant has been notified that the notice, financial statement, information circular or other relevant material will be sent under National Instrument 54-101.

[am. B.C. Reg. 154/2002, s. 2.]

183 and 184 Repealed. [B.C. Reg. 218/2005, App. H, s. 20.]

PART 15 – SELF DEALING

PART 16 – CIVIL LIABILITY

Document prescribed for section 132.1 of the Act

184.1 For the purpose of section 132.1 of the Act, the prescribed disclosure document is the offering memorandum required to be delivered to a purchaser of a security under section 2.9 of National Instrument 45-106 *Prospectus Exemptions*.

[en. B.C. Reg. 260/2002; am. B.C. Regs. 269/2005, Sch. E, s. 4; 67/2015, Sch. B, s. 1 (l) (i).]

Document and time period prescribed for section 135.1 of the Act

184.2 For the purpose of section 135.1 of the Act,

- (a) the prescribed disclosure document is an offering memorandum required to be delivered to a purchaser of a security under section 2.9 of National Instrument 45-106 *Prospectus Exemptions*, and
- (b) the prescribed time is two business days after the purchaser signs the agreement to purchase the securities.

[en. B.C. Reg. 260/2002; am. B.C. Regs. 269/2005, Sch. E, s. 5; 67/2015, Sch. B, s. 1 (l) (ii).]

Document prescribed for section 138.1 of the Act

184.3 For the purpose of section 138.1 of the Act, the prescribed disclosure document is the offering memorandum required to be delivered to a purchaser of a security under section 2.9 of National Instrument 45-106 *Prospectus Exemptions*.

[en. B.C. Reg. 260/2002; am. B.C. Regs. 269/2005, Sch. E, s. 6; 67/2015, Sch. B, s. 1 (l) (iii).]

Limits on liability

184.4 For the purpose of section 136 (3) (b) of the Act, the amount is equal to triple the profit made by all persons, or the losses avoided by all persons, because of the misconduct.

[en. B.C. Reg. 397/2007, s. 5.]

Amount prescribed for section 139 of the Act

185 For the purpose of section 139 (1) of the Act, the prescribed amount is \$50 000.

PART 16.1 – CIVIL LIABILITY FOR SECONDARY MARKET DISCLOSURE

Market capitalization calculation

185.1 In this Part, “equity security” means any security of an issuer that carries a residual right to participate in the earnings of the issuer and, on the liquidation or winding up of the issuer, in its assets.

[en. B.C. Reg. 215/2008, s. 4.]

Definitions

185.2 For the purposes of Part 16.1 of the Act and this Part,

“market capitalization” means, in respect of an issuer, the amount determined as follows:

- (a) For each class of equity securities for which there is a published market, determine the sum of the number of outstanding securities of the class at the close of trading on each of the 10 trading days before the day on which the misrepresentation was made or the failure to make timely disclosure first occurred;
- (b) Divide the sum determined under paragraph (a) by 10;
- (c) Multiply the quotient determined under paragraph (b) for each class by the trading price of the securities of the class on the principal market for the securities for the 10 trading days before the day on which the misrepresentation was made or the failure to make timely disclosure first occurred;
- (d) Add the amounts determined under paragraph (c) for each class of equity securities for which there is a published market;
- (e) For each class of equity securities not traded on a published market, determine the fair market value of the outstanding securities of that class as of the day on which the misrepresentation was made or the failure to make timely disclosure first occurred;
- (f) Add the amounts determined under paragraph (e) for each class of equity securities not traded on a published market;
- (g) Add the amount determined under paragraph (d) to the amount determined under paragraph (f) to determine the “market capitalization” of the issuer.

“principal market” means, in respect of a class of securities of a responsible issuer,

- (a) the published market in Canada on which the greatest volume of trading in securities of that class occurred during the 10 trading days before the day on which the misrepresentation was made or the failure to make timely disclosure first occurred, or
- (b) the published market on which the greatest volume of trading in securities of that class occurred during the 10 trading days before the day on which the misrepresentation was made or the failure to make timely disclosure first occurred, if securities of that class are not traded during those 10 trading days on a published market in Canada.

“trading price” means, in respect of a security of a class of securities for which there is a published market, the amount determined as follows:

- (a) Subject to paragraphs (b) and (c), the trading price of the security is the volume weighted average price of securities of that class on the published market during the period for which the trading price is to be determined;
- (b) Subject to paragraph (c), if there was trading in the securities of that class on the published market on fewer than half of the trading days during the period for which the trading price of the securities is to be determined, the trading price of the security is determined as follows:

- (i) Calculate the sum of the average of the highest bid and lowest ask prices for each trading day in the period on which there were no trades in securities of that class in the published market;
- (ii) Divide the amount determined under subparagraph (i) by the number of trading days on which there were no trades in securities of that class in the published market;
- (iii) Add to the amount determined under subparagraph (ii) the volume weighted average price of securities of that class on the published market for those trading days on which securities of that class were traded;
- (iv) Divide by two the amount determined under subparagraph (iii);
- (c) If there were no trades of securities of that class in the published market during the period for which the trading price is to be determined, the trading price of the security is the fair market value of the security.

[en. B.C. Reg. 215/2008, s. 4.]

Prescribed trades subject to civil liability remedy

- 185.3** (1) Part 16.1 of the Act applies to an acquisition of an issuer's security pursuant to an exemption from section 61 of the Act that is set out in section 2.8 of NI 45-102 and, for greater certainty, the class of acquisitions described in this subsection is prescribed for the purposes of section 140.2 (b) of the Act.
- (2) Part 16.1 of the Act applies to the acquisition or disposition of an issuer's security in connection with or pursuant to a take-over bid that is exempt under section 4.1, 4.4 or 4.5 of National Instrument 62-104 *Take-Over Bids and Issuer Bids* or an issuer bid that is exempt under section 4.8, 4.10 or 4.11 of National Instrument 62-104 *Take-Over Bids and Issuer Bids* and, for greater certainty, the class of acquisitions and the class of dispositions described in this subsection are prescribed for the purposes of clause 140.2 (c) of the Act.

[en. B.C. Reg. 215/2008, s. 4; am. B.C. Reg. 106/2016, Sch. H.]

PART 17 – INVESTIGATIONS AND AUDITS

PART 18 – ENFORCEMENT

Division 1 – Reactivation

Reactivation of dormant issuer

- 186** If the commission or the executive director has ordered under section 164 (1) of the Act that all persons cease trading in a specified security or class of securities and that order has been in effect for more than 90 days, the issuer, concurrently with filing the required record or information referred to in the order, must file additional records or additional information about the issuer that the commission or the executive director

considers necessary to determine whether trading in the specified security or class of securities, as the case may be, is prejudicial to the public interest.

Reactivation of dormant exchange contract

- 187** If the commission or the executive director has ordered under section 164 (1) of the Act that all persons cease trading in a specified exchange contract or class of exchange contract and that order has been in effect for more than 90 days, the exchange on which the exchange contract is traded, concurrently with filing the required record or information referred to in the order, must file additional records or additional information about the exchange contract that the commission or the executive director considers necessary to determine whether trading in the specified exchange contract or class of exchange contract, as the case may be, is prejudicial to the public interest.

Division 2 – Principles of Penalty Determination**Prescribed principles**

- 187.1** For the purposes of section 155 (5) of the Act, the principles set out in this Division are prescribed.

[en. B.C. Reg. 45/2020, Sch. D, s. 4 (b).]

General principles

- 187.2** The following general principles apply to the calculation of profit made or loss avoided for the purposes of section 155 (5) of the Act:

- (a) that offenders be treated consistently in terms of the determination of profits made or losses avoided;
- (b) that, in recognition that markets are influenced by many factors, in respect of the determination of profit made or loss avoided, an offender not receive the benefit of, and not bear the burden of, market changes unrelated to the offender's misconduct;
- (c) that, in recognition that it may take a period of time for the impact of an offender's misconduct, or for the information that is the basis for the misconduct, to be fully reflected in the market valuation of a security or derivative, the determination of profit made or loss avoided be based on market valuations over the period of time necessary to reflect the impact of the misconduct or the information;
- (d) that all direct and indirect profits made, and all direct or indirect losses avoided, be accounted for in the determination.

[en. B.C. Reg. 45/2020, Sch. D, s. 4 (b).]

**Loss avoided due to insider trading, tipping
or recommending – sale of securities**

- 187.3** For the purposes of section 155 (5) of the Act, unless the calculation is inconsistent with a principle set out in section 187.2 of this regulation, for a sale of securities in contravention of section 57.2 (2) of the Act, other than a short sale, the loss avoided

is the aggregate of the losses avoided associated with all securities sold in contravention of that subsection where, for the purposes of the calculation, the loss avoided per security sold is the amount determined by the following formula:

$$A - B$$

where

A = the proceeds from the trade of the security, and

B = the volume-weighted average market price of the security over the 10 trading days immediately following general disclosure of the material fact or material change.

[en. B.C. Reg. 45/2020, Sch. D, s. 4 (b).]

**Profit made due to insider trading, tipping
or recommending – purchase of securities**

187.4 For the purposes of section 155 (5) of the Act, unless the calculation is inconsistent with a principle set out in section 187.2 of this regulation, for a purchase of securities in contravention of section 57.2 (2) of the Act, the profit made is the aggregate of the gains associated with all securities purchased in contravention of that subsection where, for the purposes of the calculation, the gain per security purchased is the amount determined by the following formula:

$$A - B$$

where

A = if the security

- (i) was subsequently sold before the 10th trading day immediately following general disclosure of the inside information, the price at which the security was sold, or
- (ii) has not been sold or, if sold, was not sold before the 10th trading day immediately following general disclosure of the inside information, the volume-weighted average market price of the security over the 10 trading days immediately following general disclosure of the inside information, and

B = the amount paid for the security by the person who contravened section 57.2 (2) of the Act.

[en. B.C. Reg. 45/2020, Sch. D, s. 4 (b).]

**Profit made due to insider trading, tipping
or recommending – sale of securities**

187.5 For the purposes of section 155 (5) of the Act, unless the calculation is inconsistent with a principle set out in section 187.2 of this regulation, for a sale of securities in contravention of section 57.2 (2) of the Act, the profit made is the aggregate of the gains associated with all securities sold in contravention of that subsection where, for

the purposes of the calculation, the gain per security sold is the amount determined by the following formula:

$$A - B$$

where

A = the proceeds from the sale of the security, and

B = if the contravention was

- (i) a short sale and the short sale has been covered, the price at which the purchase covering the short sale was made,
- (ii) a short sale and the short sale has not been covered, the volume-weighted average market price of the security over the 10 trading days immediately following general disclosure of the inside information, or
- (iii) not a short sale, the volume-weighted average market price of the security over the 10 trading days immediately following general disclosure of the inside information.

[en. B.C. Reg. 45/2020, Sch. D, s. 4 (b).]

Loss avoided due to front-running – sale of securities

187.6 For the purposes of section 155 (5) of the Act, unless the calculation is inconsistent with a principle set out in section 187.2 of this regulation, for a sale of a security in contravention of section 57.3 (3) (a) of the Act, other than a short sale, the loss avoided is the aggregate of the losses avoided associated with all securities sold in contravention of that paragraph where, for the purposes of the calculation, the loss avoided per security sold is the amount determined by the following formula:

$$A - B$$

where

A = the proceeds from the sale of the security, and

B = the last price paid in the execution of the order that is the subject of the material order information.

[en. B.C. Reg. 45/2020, Sch. D, s. 4 (b).]

Profit made due to front-running – purchase of securities

187.7 For the purposes of section 155 (5) of the Act, unless the calculation is inconsistent with a principle set out in section 187.2 of this regulation, for a purchase of a security in contravention of section 57.3 (3) (a) of the Act, the profit made is the aggregate of the gains associated with all securities purchased in contravention of that paragraph where, for the purposes of the calculation, the gain per security purchased is the amount determined by the following formula:

$$A - B$$

where

A = if the security

- (i) was subsequently sold before the execution of the last trade that was the subject of the material order information, the price at which the security was sold, or
- (ii) has not been sold or, if sold, was not sold before the execution of the last order that was the subject of the material order information, the last price paid in the execution of the last order that is the subject of the material order information, and

B = the amount paid for the security by the person who contravened section 57.3 (3) (a).

[en. B.C. Reg. 45/2020, Sch. D, s. 4 (b).]

Profit made due to front-running – sale of securities

187.8 For the purposes of section 155 (5) of the Act, unless the calculation is inconsistent with a principle set out in section 187.2 of this regulation, for a sale of securities in contravention of section 57.3 (3) (a) of the Act, the profit made is the aggregate of the gains associated with all securities sold in contravention of that paragraph where, for the purposes of the calculation, the gain per security purchased is the amount determined by the following formula:

$$A - B$$

where

A = the proceeds from the sale of the security, and

B = if the contravention was

- (i) a short sale and the short sale has been covered, the price at which the purchase covering the short sale was made,
- (ii) a short sale and the short sale has not been covered, the last price paid in the execution of the order that is the subject of the material order information, or
- (iii) not a short sale, the last price paid in the execution of the order that is the subject of the material order information.

[en. B.C. Reg. 45/2020, Sch. D, s. 4 (b).]

**Tipping, recommending or encouraging
another to transact – loss avoided**

187.9 For the purposes of section 155 (5) of the Act, unless the calculation is inconsistent with a principle set out in section 187.2 of this regulation, for a contravention of section 57.2 (3), (4) or (5) or section 57.3 (4) or (5) of the Act, the loss avoided is the amount determined by the following formula:

$$A + B$$

where

A = the value of the consideration received by the person for providing the information or recommendation, and

B = the aggregate loss avoided by all persons who received the information or recommendation, calculated under sections 187.3, 187.6 and 187.11 of this regulation, as applicable.

[en. B.C. Reg. 45/2020, Sch. D, s. 4 (b).]

**Tipping, recommending or encouraging
another to transact – profit made**

187.10 For the purposes of section 155 (5) of the Act, unless the calculation is inconsistent with a principle set out in section 187.2 of this regulation, for a contravention of section 57.2 (3), (4) or (5) or 57.3 (4) or (5) of the Act, the profit made is the amount determined by the following formula:

$$A + B$$

where

A = the value of the consideration received by the person for providing the information or recommendation, and

B = the aggregate profit made by all persons who received the information or recommendation, calculated under sections 187.4, 187.5, 187.7, 187.8 and 187.11 of this regulation, as applicable.

[en. B.C. Reg. 45/2020, Sch. D, s. 4 (b).]

Other contraventions

187.11 For the purposes of section 155 (5) of the Act, for a contravention of

- (a) section 57 of the Act,
- (b) section 57.2 (2) of the Act in connection with a related financial instrument,
- (c) section 57.3 (3) (b) of the Act,
- (d) section 57.3 (3) (c) in connection with a derivative,
- (e) section 57.3 (3) (d) of the Act, or
- (f) a provision referred to in section 155 (5) of the Act that is not otherwise referred to in this section,

profit made or loss avoided is, after considering the principles set out in section 187.2 of this regulation, the amount determined by the court.

[en. B.C. Reg. 45/2020, Sch. D, s. 4 (b).]

Commissions paid

187.12 In the case of a person who purchased or traded a security in contravention of the Act, for the purposes of determining the profit made or loss avoided by the person under section 187.3, 187.4, 187.5, 187.6, 187.7, 187.8 or 187.11 of this regulation, a

commission paid by the person in relation to the purchase or trade may be excluded from the determination.

[en. B.C. Reg. 45/2020, Sch. D, s. 4 (b).]

PART 19 – REVIEWS AND APPEALS

PART 20 – GENERAL PROVISIONS

Division 1 – Miscellaneous

Escrow agent

- 188** A person must not act as an escrow agent with respect to any agreement filed with the executive director without the permission of the executive director.

Execution and certification of documents

- 189** Except as otherwise provided in the Act or the regulations,
- (a) subject to paragraph (f), if a record is required or permitted to be filed by an individual and required to be signed or certified, it must be manually signed by the individual immediately above the individual's typewritten or printed name,
 - (b) subject to paragraphs (c), (d) and (f), if a record is required or permitted to be filed by a person other than an individual and required to be signed or certified, it must be manually signed by an officer or director of that person or, subject to paragraph (e), by the attorney or agent of that person, immediately above the typewritten or printed name of the officer, director, attorney or agent signing it,
 - (c) if a partner signs or certifies on behalf of a professional partnership, the partner is not required to sign the partner's name,
 - (d) if an individual other than a partner signs or certifies on behalf of a professional partnership, the individual must manually sign the individual's name immediately above the individual's typewritten or printed name,
 - (e) if a record required or permitted to be filed by a person has been executed by an attorney or agent of that person, a duly completed power of attorney or document of authority authorizing the signing of the record must be filed with the record, and
 - (f) if a record is filed electronically, and required to be signed or certified, a typewritten signature must be substituted for a manual signature.

[am. B.C. Reg. 230/2001, Sch., s. 5.]

Execution and certification of SEDI documents

- 190** Section 189 does not apply to a filing required to be made in electronic format under National Instrument 55-102 *System for Electronic Disclosure by Insiders (SEDI)*.
[en. B.C. Reg. 230/2001, Sch., s. 6.]