
SECURITIES AMENDMENT ACT, 2019**CHAPTER 38***Assented to November 28, 2019*

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:

1 Section 1 (1) of the Securities Act, R.S.B.C. 1996, c. 418, is amended

(a) in the definition of “adviser” by striking out “exchange contracts” and substituting “trades of derivatives”,

(b) by adding the following definitions:

“**benchmark**” means a price, rate, index, value or measurement, or an estimate of a price, rate, index, value or measurement, that

- (a) is determined from time to time by reference to or an assessment of an underlying interest,
- (b) is disclosed to the public, and
- (c) once publicly disclosed, would reasonably be expected to be referenced or used by or in relation to a security or derivative, including, for greater certainty, for the purposes of
 - (i) determining the interest payable or other sums that are due under a security or derivative,
 - (ii) determining the value of the security or derivative or the price at which the security or derivative may be traded, or
 - (iii) measuring the performance of a security or derivative;

“**benchmark contributor**” means a person that provides, or intends to provide, information in relation to a benchmark with the expectation that the information will or could be used by a benchmark administrator to determine the benchmark; ,

(c) by repealing the definition of “class of exchange contracts”,

(d) by repealing the definition of “clearing agency” and substituting the following:

“**clearing agency**” means,

- (a) when used in relation to securities, a person that
 - (i) in connection with trades in securities, acts as an intermediary in paying funds or delivering securities,

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- (ii) provides a centralized facility through which trades in securities are cleared, or
 - (iii) provides a centralized facility as a depository of securities, and
 - (b) when used in relation to derivatives, a person that provides a centralized facility for the clearing or settlement of trades in derivatives if the facility
 - (i) enables the substitution of the credit of the person for the credit of a party to a derivative through novation or otherwise,
 - (ii) arranges for or provides, on a multilateral basis, the settlement or netting of obligations resulting from a derivative or a trade in a derivative, or
 - (iii) arranges for or provides the mutualization or transfer of credit risk that results from a derivative among some or all the persons that have entered into an agreement to access the facility,
- but does not include a prescribed person or a person within a class of prescribed persons; ,

(e) by adding the following definition:

“derivative” includes

- (a) an option, swap, futures contract, forward contract or other financial or commodity contract or instrument if the market price or value of, or the delivery obligations, payment obligations or settlement obligations connected to, the option, swap, contract or instrument reference, or are derived from or based on, an underlying interest,
 - (b) a security, or a security within a class of securities, described in an order made under section 3.2, or
 - (c) a security within a class of securities that are prescribed to be derivatives,
- but does not include
- (d) a derivative, or a derivative within a class of derivatives, described in an order made under section 3.1, or
 - (e) a prescribed derivative or a derivative within a prescribed class of derivatives; ,

(f) in paragraphs (a) and (b) of the definition of “economic interest” by striking out “or an exchange contract”;

(g) by repealing the definitions of “exchange contract” and “futures contract”;

(h) by repealing the definition of “investor relations activities”;

(i) *by repealing the definition of “material fact” and substituting the following:*

“material fact” means,

- (a) when used in relation to a security issued or proposed to be issued, a fact that would reasonably be expected to have a significant effect on the market price or value of the security, and
- (b) when used in relation to a derivative, a fact that would reasonably be expected to have a significant effect on the market price or value of, or obligations under, the derivative; ,

(j) *in the definition of “portfolio security” by adding “or derivative” after “a security”*,

(k) *by adding the following definition:*

“promotional activity” means any activity, including, for greater certainty, any oral or written communication, that by itself or together with one or more other activities encourages or reasonably could be expected to encourage a person

- (a) to purchase, not purchase, trade or not trade a security, or
- (b) to trade or not trade a derivative,

but does not include an activity prescribed for the purpose of this definition; ,

(l) *in paragraph (b) of the definition of “related financial instrument” by striking out “or an exchange contract”*,

(m) *in the definition of “security”*

(i) *by repealing paragraph (n)*,

(ii) *by adding the following paragraphs:*

- (p) a derivative, or a derivative within a class of derivatives, described in an order made under section 3.2, or
 - (q) a derivative within a class of derivatives that are prescribed to be securities,
- , and*

(iii) *by striking out “an exchange contract” and substituting “a security, or a security within a class of securities, described in an order made under section 3.1, or a prescribed security or a security within a prescribed class of securities”*,

(n) *by repealing the definition of “self regulatory body” and substituting the following:*

“self-regulatory body” means a regulatory body other than a government or governmental authority; ,

(o) *in the definition of “trade”*

(i) *in paragraph (a) by adding “or other obligation” after “for a debt”*,

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(ii) *by repealing paragraphs (a.1) and (b),*

(iii) *in paragraph (d) by striking out “exchange contract” and substituting “effect a transaction in a derivative”,*

(iv) *in paragraph (e) by adding “or other obligation” after “for a debt” and by striking out “and”,*

(v) *by adding the following paragraphs:*

(e.1) entering into a derivative, materially amending a derivative or terminating a derivative,

(e.2) a purchase, sale, assignment or novation of a derivative, other than a novation with a clearing agency, and, **and**

(vi) *in paragraph (f) by striking out “paragraphs (a) to (e)” and substituting “paragraphs (a) to (e.2)”, and*

(p) *by adding the following definitions:*

“trade repository” means a person that collects and maintains records relating to derivatives;

“underlying interest” includes, in relation to a derivative,

(a) a benchmark, and

(b) any other price, quote, estimate, rate, index, value, probability, event or thing; .

2 *Section 1 (2) is amended by striking out “this Act, an issuer” and substituting “this Act, other than section 53, an issuer”.*

3 *Section 3 is amended*

(a) *in paragraph (a) (ii) and (iii) by adding “considering or” before “proposing”,*

(b) *in paragraph (b) by striking out “is engaging in or is proposing” and substituting “has engaged in, is engaging in or is considering or proposing”, and*

(c) *by striking out “or” at the end of paragraph (d), by adding “, or” at the end of paragraph (e) (ii) and by adding the following paragraph:*

(f) is within a prescribed class of persons.

4 *Section 3.1 (1) is amended*

(a) *by repealing paragraph (a) and substituting the following:*

(a) a derivative, or a class of derivatives, is not a derivative, , **and**

(b) *by adding the following paragraph:*

(a.1) a security, or a class of securities, is not a security, .

5 Section 3.2 (1) is amended by striking out “or” at the end of paragraph (a) and by adding the following paragraphs:

- (b.1) a derivative, or a derivative within a class of derivatives, is a security, or
- (b.2) a security, or a security within a class of securities, is a derivative.

6 Section 4.1 is amended by adding the following paragraph:

- (c.1) section 11 [*general power to make rules respecting practice and procedure*]; .

7 Section 7 is amended

(a) in subsection (2) by striking out “section 114 (1), 137, 142, 143, 145, 148 to 152, 157, 162, 163 or 165” and substituting “section 114 (1), 137, 142, 143, 143.1, 145, 148 to 150, 157, 162, 163, 164.04, 165 or 179.1”, and

(b) in subsection (4) by striking out “section 142, 143, 145 or 148 to 152” and substituting “section 142, 143, 143.1, 145, 148 to 150, 164.04 or 179.1”.

8 Section 8 (5) (b) is amended by adding “162.2,” after “section 81, 89, 161.”.

9 Section 13 (2) is amended by striking out “(1) and (2)” and by adding “preserve and” before “produce records and things”.

10 Section 15 is amended

(a) by repealing subsection (1) and substituting the following:

- (1) Revenue required to be paid under this Act, including but not limited to
 - (a) money required to be paid under an order made under section 155.1 (b), 157 (1) (b), 161 (1) (g), 162, 162.04, 164.09 or 164.12,
 - (b) money required to be paid under a notice given under section 162.01, and
 - (c) any cost recoveries under this Act,but not including money from fines referred to in section 155, must be paid to the commission. ,

(b) by repealing subsection (3) and substituting the following:

- (3) Money received by the commission
 - (a) under an order made under section 155.1 (b), 157 (1) (b), 161 (1) (g), 162, 162.04, 164.09 or 164.12,
 - (b) under a notice given under section 162.01, or
 - (c) from the disposition of property forfeited under section 164.12,may, subject to the regulations, be expended for the purpose of

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- (d) educating securities market participants and members of the public about investing, financial matters or the operation or regulation of securities markets,
- (e) benefiting a third party the commission considers appropriate,
- (f) enforcing
 - (i) the order or notice, or
 - (ii) this Act, including, for greater certainty, the enforcement of another order made under section 155.1 (b), 157 (1) (b), 161 (1) (g), 162, 162.04, 164.09 or 164.12 or a notice given under section 162.01, or
- (g) exercising a power or performing a duty under section 15.1. , **and**

(c) by repealing subsection (3.1) and substituting the following:

- (3.1) Despite subsection (3) of this section, the commission may not expend money received under section 155.1 (b), 157 (1) (b) or 161 (1) (g) for a purpose referred to in subsection (3) (d), (e) or (f) (ii) of this section unless the period set out in the notice published under section 15.1 (1) has expired.

11 Section 15.1 is amended

(a) in subsection (1) by striking out “notify the public in accordance with the regulations” and substituting “publish a notice”,

(b) by adding the following subsections:

- (1.1) A notice under subsection (1) must set out a period within which a person may make a claim.
- (1.2) The period referred to in subsection (1.1) must be at least 3 months from the date that the notice is given. ,

(c) in subsection (2) by striking out “within 3 years from the date of the first notification made under subsection (1)”, and

(d) by repealing subsection (5) and substituting the following:

- (5) The commission may retain any money not payable under subsection (3) after the period referred to in subsection (1.1) expires and after adjudicating all claims in accordance with the regulations.

12 The heading to Part 4 is repealed and the following substituted:

**PART 4 – BENCHMARK ADMINISTRATORS, CLEARING AGENCIES,
EXCHANGES, INFORMATION PROCESSORS, QUOTATION AND TRADE
REPORTING SYSTEMS, SELF-REGULATORY BODIES AND TRADE
REPOSITORIES .**

13 Section 23 is repealed and the following substituted:**Interpretation****23** In sections 26 to 32,

- (a) a reference to a clearing agency, exchange, quotation and trade reporting system, self-regulatory body or trade repository means a person that has been recognized, under section 24, as a clearing agency, exchange, quotation and trade reporting system, self-regulatory body or trade repository, as the case may be,
- (b) a reference to a benchmark administrator means a benchmark administrator that has been designated for the purposes of a regulation referred to in section 183 (2.2), and
- (c) a reference to an information processor means an information processor that has been designated for the purposes of a regulation referred to in section 183 (2.3).

14 Section 24 is amended by striking out “or” at the end of paragraph (c), by adding “, or” at the end of paragraph (d) and by adding the following paragraph:

- (e) a trade repository.

15 Section 26 (2) is repealed and the following substituted:

- (2) A benchmark administrator, clearing agency, exchange, information processor, quotation and trade reporting system, self-regulatory body or trade repository must provide to the commission or the executive director, at the request of the commission or the executive director,
 - (a) in the case of an exchange or a self-regulatory body, a copy, or a partial copy as specified in the request, of the charter, as defined in section 1 of the *Financial Institutions Act*, or
 - (b) any information or record in the possession of the benchmark administrator, clearing agency, exchange, information processor, quotation and trade reporting system, self-regulatory body or trade repository relating to
 - (i) a registrant or former registrant,
 - (ii) a client or former client of a registrant or of a former registrant,
 - (iii) an issuer,
 - (iv) trading in securities or derivatives,
 - (v) the bylaws, rules, other regulatory instruments or policies of the benchmark administrator, clearing agency, exchange, information processor, quotation and trade reporting system, self-regulatory body or trade repository,
 - (vi) the directions, decisions or similar determinations made by the benchmark administrator, clearing agency, exchange, information

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processor, quotation and trade reporting system, self-regulatory body or trade repository,

- (vii) the charter, as defined in section 1 of the *Financial Institutions Act*, of the clearing agency, exchange, quotation and trade reporting system, self-regulatory body or trade repository, or
- (viii) this Act or the regulations.

16 Section 27 (1) is amended

(a) in paragraphs (a) and (b) by striking out “self regulatory body, an exchange, a quotation and trade reporting system or a clearing agency” **and substituting** “benchmark administrator, clearing agency, exchange, information processor, quotation and trade reporting system, self-regulatory body or trade repository”,

(b) in paragraph (c) by striking out “an exchange or a clearing agency” **and substituting** “a benchmark administrator, clearing agency, exchange, information processor or trade repository”,

(c) by repealing paragraph (e) and substituting the following:

- (e) a derivative trading on an exchange or the provision of information about a derivative to a trade repository; , **and**

(d) by adding the following paragraph:

- (h) if it is reasonable to do so, requiring a person that is providing or has provided information to a benchmark administrator to not cease providing information or provide information to the benchmark administrator.

17 Section 28 is amended

(a) in subsection (1) by striking out “self regulatory body, an exchange, a quotation and trade reporting system, or a clearing agency” **and substituting** “clearing agency, exchange, quotation and trade reporting system, self-regulatory body or trade repository”,

(b) in subsection (1) by striking out “(8)” and substituting “(9)”, and

(c) in subsections (2) (b) and (3) (a) by striking out “trade reporting system or” **and substituting** “trade reporting system, trade repository or”.

18 Section 33 (1) is amended

(a) in paragraph (a) by striking out “self regulatory body, an exchange or a quotation and trade reporting system” **and substituting** “benchmark administrator, clearing agency, exchange, information processor, quotation and trade reporting system, self-regulatory body or trade repository”, **and**

(b) in paragraph (b) by striking out “self regulatory bodies, exchanges or quotation and trade reporting systems” and substituting “benchmark administrators, clearing agencies, exchanges, information processors, quotation and trade reporting systems, self-regulatory bodies or trade repositories”.

19 Section 34 is amended

(a) by renumbering the section as section 34 (1), and

(b) by adding the following subsection:

- (2) Except as permitted under the regulations, an individual required to be registered under subsection (1) (a) or (b) must not
- (a) trade in a security or derivative except on behalf of a registered dealer that is not an individual, or
 - (b) act as an adviser except on behalf of a registered adviser that is not an individual.

20 Section 50 is repealed and the following substituted:

Representations prohibited

- 50** (1) A person must not do any of the following:
- (a) represent that the person or another person will
 - (i) resell or repurchase a security, or
 - (ii) refund all or any of the purchase price of a security;
 - (b) represent that the person or another person will
 - (i) refund any amount paid in respect of a derivative, or
 - (ii) assume all or part of an obligation under a derivative;
 - (c) while engaged in a promotional activity, represent the future value or price of a security or derivative;
 - (d) while engaged in a promotional activity, without obtaining the prior written permission of the executive director, represent the following:
 - (i) that a security will be listed, posted or quoted on an exchange or another trading system;
 - (ii) that an application has been or will be made to list, post or quote a security on an exchange or another trading system;
 - (iii) that a derivative will be listed, posted or quoted on an exchange or another trading system;
 - (iv) that an application has been or will be made to list, post or quote a derivative on an exchange or another trading system.
- (2) A person must not make a statement that the person knows, or reasonably should know, is a misrepresentation.

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- (3) A person engaged in a promotional activity must not make a statement or provide information
- (a) that a reasonable investor would consider important in determining whether to purchase, not purchase, trade or not trade a security if the statement or information, at the time and in light of the circumstances in which the statement is made or the information is provided,
 - (i) is false or misleading, or
 - (ii) omits a fact necessary to make the statement or information not false or misleading, or
 - (b) that a reasonable person would consider important in determining whether to trade or not trade a derivative if the statement or information, at the time and in light of the circumstances in which the statement is made or the information is provided,
 - (i) is false or misleading, or
 - (ii) omits a fact necessary to make the statement or information not false or misleading.
- (4) A person engaged in a promotional activity must not engage in an unfair practice.
- (5) Subsection (1) (a) and (b) does not apply to a representation
- (a) in respect of a security that carries an obligation of the issuer to redeem or purchase, or a right of the owner to require redemption or purchase,
 - (b) contained in a written agreement if the security involved has an aggregate acquisition cost in excess of a prescribed amount,
 - (c) in respect of a derivative if the terms of the derivative provide for a refund of any amount paid in respect of the derivative or provide a right to a party to require a refund, or
 - (d) in respect of a derivative if the terms of the derivative provide a right to a party to assume all or part of an obligation under the derivative.
- (6) In this section, “**unfair practice**” includes any of the following:
- (a) putting unreasonable pressure on a person to purchase, not purchase, trade or not trade a security or trade or not trade a derivative;
 - (b) taking advantage of a person’s inability or incapacity to reasonably protect the person’s own interest because of physical or mental infirmity, ignorance, illiteracy, age or inability to understand the character, nature or language of any matter relating to a decision to purchase, not purchase, trade or not trade a security or trade or not trade a derivative;
 - (c) imposing terms or conditions that make a transaction inequitable.

21 Section 52 is repealed.

22 Section 53 is repealed and the following substituted:**Use of name of another registrant, etc.**

- 53** A registrant must not use a word, name, trademark, logo or advertisement or other commercial symbol in connection with the business of the registrant in a way likely to
- (a) deceive or mislead a person about the registrant's identity, or
 - (b) give a false impression that the registrant is affiliated with another person or otherwise doing business with that other person.

23 Section 54 (2) is repealed and the following substituted:

- (2) A person must not make a statement or provide information about something that a reasonable investor would consider important in determining whether to enter or maintain a trading or advising relationship with the person if the statement or information, at the time and in light of the circumstances in which the statement is made or the information is provided,
- (a) is false or misleading, or
 - (b) omits a fact necessary to make the statement or information not false or misleading.

24 Section 55 is amended

- (a) *by adding* "or the accuracy" *after* "passed on the merits",
- (b) *in paragraph (b) by striking out* "exchange contract or issuer" *and substituting* "derivative, underlying interest of a derivative or issuer",
- (c) *by repealing paragraph (c) and substituting the following:*
 - (c) any disclosure in relation to a security or derivative, , *and*
- (d) *by adding* ", or" *at the end of paragraph (d) and by adding the following paragraph:*
 - (e) a benchmark administrator or a benchmark.

25 Section 57 is repealed and the following substituted:**Manipulation and fraud**

- 57** (1) A person must not, directly or indirectly, engage in or participate in conduct relating to a security, derivative or underlying interest of a derivative if the person knows, or reasonably should know, that the conduct
- (a) results in or contributes to a misleading appearance of trading activity in, or an artificial price for, a security,
 - (b) contributes to a fraud perpetrated by another person, or contributes to another person's attempt to commit a fraud, relating to a security, derivative or underlying interest, or

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- (c) results in or contributes to a misleading appearance of trading activity in, or an artificial price for, a derivative or an underlying interest of a derivative.
- (2) A person must not, in relation to a security, derivative or benchmark,
 - (a) perpetrate a fraud, or
 - (b) attempt to perpetrate a fraud.
- (3) A person must not, directly or indirectly, engage in or participate in conduct relating to a benchmark if
 - (a) the person knows, or reasonably should know, that the conduct results in or contributes to a false benchmark, or
 - (b) the conduct is intended to mislead a benchmark administrator.

26 Section 57.2 is amended

(a) in subsection (4) by striking out “who proposes to” and substituting “that is considering or proposing to”,

(b) in subsection (4) (e) by striking out “to effect the” and substituting “in the course of business relating to a”, and

(c) by repealing subsection (5) and substituting the following:

- (5) If a material fact relating to securities of an issuer or a material change with respect to an issuer has not been generally disclosed,
 - (a) the issuer, or
 - (b) a person that has knowledge of the fact or change and
 - (i) is in a special relationship with the issuer, or
 - (ii) is considering whether to take, or proposes to take, one or more of the actions in subsection (4) (a), (b) or (c)

must not recommend or encourage another person to enter into a transaction involving a security of the issuer or a related financial instrument of a security of the issuer.

27 Section 57.3 is amended

(a) by repealing subsection (1) and substituting the following:

(1) In this section:

“investor” means a person

- (a) that has indicated an intention to
 - (i) purchase or trade a security,
 - (ii) trade a derivative, or

(iii) enter into a transaction involving an underlying interest of a derivative, or

(b) for whose account an order is or would be placed;

“material order information” means information that relates to

(a) the intention of an investor to purchase or trade a security, trade a derivative or purchase or sell an underlying interest of a derivative, or

(b) one or more unexecuted orders,

if the execution of one or more orders, the placement of one or more orders to carry out the intention, or the disclosure of any of the information, would reasonably be expected to affect the market price of the security, the market price or value of the derivative or the market price or value of the underlying interest of a derivative;

“order” means an order to purchase or trade a security, trade a derivative or purchase or sell an underlying interest of a derivative. ,

(b) in subsection (2) (c) by striking out “is engaging” and substituting “has engaged in, is engaging in, is considering whether to engage in”,

(c) by repealing subsection (3) and substituting the following:

(3) A person that is connected to an investor and knows of material order information relating to the investor must not enter into a transaction involving

(a) a security that is the subject of the material order information,

(b) a related financial instrument of a security referred to in paragraph (a),

(c) a derivative that is the subject of the material order information, or

(d) a derivative that has an underlying interest that is the subject of the material order information. , **and**

(d) by repealing subsection (5) and substituting the following:

(5) A person that is connected to an investor and knows of material order information relating to the investor must not recommend or encourage another person to enter into a transaction involving

(a) a security that is the subject of the material order information,

(b) a related financial instrument of a security referred to in paragraph (a),

(c) a derivative that is the subject of the material order information, or

(d) a derivative that has an underlying interest that is the subject of the material order information.

28 *Section 57.4 (1) is amended by striking out “, exchange contract”.*

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29 *Section 57.5 (2) is amended by adding “being conducted or is likely” after “examination or inspection is” and by striking out “before the hearing, review, investigation, examination or inspection”.*

30 *Section 57.7 is repealed and the following substituted:*

Records

- 57.7** (1) Subject to the regulations, a person referred to in section 141 (2) must keep the following:
- (a) records of the person’s business transactions and financial affairs and the transactions that the person executes on behalf of others;
 - (b) records that enable the determination of the person’s compliance with this Act, the regulations and any decision that applies to the person.
- (2) A record required to be kept under subsection (1) must be kept for a period of 7 years from the date the record is created or the date the record is obtained, whichever is later.

31 *The heading to Part 8 is repealed and the following substituted:*

PART 8 – TRADING IN DERIVATIVES .

32 *Section 58 is repealed and the following substituted:*

Disclosure documents

- 58** (1) A person must not enter into a transaction for a prescribed derivative unless a disclosure document has been prepared, filed and sent in accordance with the regulations.
- (2) A person must not enter into a prescribed transaction for a derivative unless a disclosure document has been prepared, filed and sent in accordance with the regulations.

33 *The following section is added:*

Effect of failure to comply

- 58.1** For greater certainty, a derivative is not void, voidable or unenforceable, and a party to a trade in a derivative is not entitled to rescind the trade, as a result of another party’s failure to comply with this Act or the regulations unless
- (a) the terms or conditions of the derivative provide otherwise, or
 - (b) the parties to the derivative agree otherwise.

34 *Section 59 is repealed.*

35 *Section 88 is amended by adding “or the executive director” after “If the commission” and by striking out “it may” and substituting “the commission or the executive director may”.*

36 *Section 89 is amended*

(a) in subsection (1) (a) (i) by striking out “market price of, a security or exchange contract” and substituting “market price of, a security”,

(b) in subsection (1) (a) by adding the following subparagraph:

(i.1) considers that there are unexplained and unusual fluctuations in the volume of trading in, or market price or value of, a derivative or an underlying interest of a derivative, ,

(c) in subsection (1) (a) (ii) by striking out “market price of, a security or exchange contract” and substituting “market price of, a security”,

(d) in subsection (1) (a) by adding the following subparagraph:

(ii.1) becomes aware of information, other than information filed under this Act, that when disclosed to the public may cause or is likely to cause unusual fluctuations in the volume of trading in, or market price or value of, a derivative or an underlying interest of a derivative, ,

(e) in subsection (1) (a) (iii) by adding “to the public” after “when disclosed” and by striking out “or” at the end of the subparagraph,

(f) in subsection (1) (a) by adding the following subparagraph:

(iii.1) in the case of a derivative that is a related financial instrument, considers that there may have been a material change in the business or operations of the issuer of the security that is the underlying interest of the derivative that, when disclosed to the public, could significantly affect the market price of the security, or ,

(g) in subsection (1) (a) (iv) by striking out “trading of a security or exchange contract” and substituting “trading of a security, a derivative or an underlying interest of a derivative”,

(h) in subsection (1) by striking out “that security or exchange contract” and substituting “that security or derivative”,

(i) by repealing subsection (2) and substituting the following:

(2) If an order is made under subsection (1)

(a) with respect to a security, notice of the order must be sent immediately to the issuer of the security, or

(b) with respect to a derivative, notice of the order must be posted immediately to a publicly accessible website maintained by the commission. ,

(j) in subsection (3) (b) by striking out “an exchange contract” and substituting “a derivative”, and

(k) by repealing subsection (4) and substituting the following:

(4) If the commission or the executive director considers it necessary and in the public interest, the commission or the executive director may,

(a) in the case of a security, after providing the issuer whose securities are affected by the order with an opportunity to be heard, or

(b) in the case of a derivative, after providing a person directly affected by the order with an opportunity to be heard,

make an order extending the order made under subsection (1) until a hearing is held and a decision is rendered.

(5) For the purpose of subsection (4) (b), notice of an opportunity to be heard is considered to be provided to a person on the date the notice is posted to a publicly accessible website maintained by the commission.

37 The heading to Part 13 is repealed and the following substituted:

**PART 13 – TAKE OVER BIDS, ISSUER BIDS, BUSINESS COMBINATIONS
AND RELATED PARTY TRANSACTIONS .**

38 Section 92 is amended by repealing paragraph (a) of the definition of “interested person” and substituting the following:

(a) an issuer that is, or whose securities are, the subject of a take over bid, issuer bid or other offer to acquire, business combination or related party transaction, or an issuer whose securities are the subject of a proxy solicitation, .

39 The heading to Division 2 of Part 13 is repealed and the following substituted:

Division 2 – General .

40 Section 114 is amended

(a) by repealing subsection (1) and substituting the following:

(1) On application by an interested person, if the commission considers that a person has not complied with or is not complying with a requirement under this Part, Part 14 or the regulations related to this Part or Part 14, or that a person is acting contrary to the public interest, the commission may make an order

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- (a) restraining the distribution of any record used or issued in connection with a take over bid, issuer bid, business combination, related party transaction or proxy solicitation,
 - (b) requiring an amendment to or variation of any record used or issued in connection with a take over bid, issuer bid, business combination, related party transaction or proxy solicitation, and requiring the distribution of amended, varied or corrected information,
 - (c) requiring the distribution of any record relating to a take over bid, issuer bid, business combination, related party transaction or proxy solicitation that the commission considers must be distributed,
 - (d) directing any person to comply with a requirement under this Part, Part 14 or the regulations related to this Part or Part 14,
 - (e) restraining any person from contravening a requirement under this Part, Part 14 or the regulations related to this Part or Part 14,
 - (f) directing the directors and officers of any person to cause the person to comply with or cease contravening a requirement under this Part, Part 14 or the regulations related to this Part or Part 14,
 - (g) varying a period prescribed under a regulation related to this Part or Part 14,
 - (h) rescinding a transaction with any interested person, including the issue of a security or an acquisition and sale of a security,
 - (i) requiring any person to dispose of any securities acquired in connection with a take over bid, issuer bid, business combination, related party transaction or transaction in relation to which proxies are being or were solicited,
 - (j) prohibiting any person from exercising a voting right attaching to a security,
 - (k) prohibiting any person from exercising a right attaching to a derivative,
 - (l) requiring that
 - (i) all persons,
 - (ii) the person or persons named in the order, or
 - (iii) one or more classes of personscease trading in, or are prohibited from purchasing, any securities or derivatives relating to a take over bid, issuer bid, business combination, related party transaction or proxy solicitation, or
 - (m) providing that any or all of the exemptions set out in this Act, the regulations or a decision do not apply to a person. , **and**

(b) in subsection (2) by striking out “under this Part” and substituting “under this Part, Part 14” and by striking out “relating to this Part” and substituting “relating to this Part or Part 14”.

41 Section 115 (1) is amended

- (a) *by striking out* “under this Part,” *and substituting* “under this Part, Part 14 or the regulations relating to this Part or Part 14,”
- (b) *in paragraph (a) by striking out* “a requirement of this Part or the regulations” *and substituting* “a requirement of this Part, Part 14 or the regulations relating to this Part or Part 14”,
- (c) *in paragraph (c) by striking out* “take over bid or an issuer bid” *and substituting* “take over bid, issuer bid, business combination, related party transaction or transaction in relation to which proxies are being or were solicited”, *and*
- (d) *by repealing paragraph (d) and substituting the following:*
 - (d) prohibiting any person from exercising a voting right attaching to a security,
 - (d.1) prohibiting any person from exercising a right attaching to a derivative, or .

42 Section 131 (6) and (7) is repealed and the following substituted:

- (6) A person is not liable under subsection (1) if the person proves that, with respect to any part of the prospectus purporting
 - (a) to be made on the person’s own authority as an expert, or
 - (b) to be a copy of, or an extract from, the person’s own report, opinion or statement as an expert,the person had, after reasonable investigation, reasonable grounds to believe and did believe that there had been no misrepresentation.
- (7) A person is not liable under subsection (1) if the person proves that, with respect to any part of the prospectus not purporting
 - (a) to be made on the authority of an expert, and
 - (b) to be a copy of, or an extract from, a report, opinion or statement of an expert,the person had, after reasonable investigation, reasonable grounds to believe and did believe that there had been no misrepresentation.

43 Section 132 (6) and (7) is repealed and the following substituted:

- (6) A person is not liable under subsection (1) or (3) if the person proves that, with respect to any part of the circular or notice purporting
 - (a) to be made on the person’s own authority as an expert, or
 - (b) to be a copy of, or an extract from, the person’s own report, opinion or statement as an expert,the person had, after reasonable investigation, reasonable grounds to believe and did believe that there had been no misrepresentation.

- (7) A person is not liable under subsection (1) or (3) if the person proves that, with respect to any part of the circular or notice not purporting
- (a) to be made on the authority of an expert, and
 - (b) to be a copy of, or an extract from, a report, opinion or statement of an expert,
- the person had, after reasonable investigation, reasonable grounds to believe and did believe that there had been no misrepresentation.

44 Section 132.1 is amended

- (a) in subsection (1) by striking out “and” at the end of paragraph (b) (ii) and by adding the following subparagraph:**

- (ii.1) every person whose consent to the disclosure of information in the disclosure document was filed, and ,

- (b) by adding the following subsection:**

- (2.1) A person referred to in subsection (1) (b) (ii.1) is liable only with respect to a misrepresentation contained in a report, opinion or statement made by the person. ,

- (c) in subsection (4) by striking out “or” at the end of paragraph (b), by adding “, or” at the end of paragraph (c) and by adding the following paragraph:**

- (d) with respect to any part of the disclosure document purporting
- (i) to be made on the person’s own authority as an expert, or
 - (ii) to be a copy of, or an extract from, the person’s own report, opinion, or statement as an expert,
- but that contained a misrepresentation attributable to a failure to fairly represent the person’s report, opinion or statement as an expert,
- (iii) the person had, after reasonable investigation, reasonable grounds to believe and did believe that the relevant part of the disclosure document fairly represented the person’s report, opinion or statement as an expert, or
 - (iv) on becoming aware that the relevant part of the disclosure document did not fairly represent the person’s report, opinion or statement as an expert, the person, as soon as practicable, advised the commission and the issuer that
 - (A) the person’s report, opinion or statement was not fairly represented, and
 - (B) the person would not be responsible for that part of the disclosure document. ,

(d) by adding the following subsection:

- (4.1) A person is not liable under subsection (1) if the person proves that, with respect to any part of the disclosure document purporting
- (a) to be made on the person's own authority as an expert, or
 - (b) to be a copy of, or an extract from, the person's own report, opinion or statement as an expert,
- the person had, after reasonable investigation, reasonable grounds to believe and did believe that there had been no misrepresentation. , *and*

(e) by repealing subsection (5) and substituting the following:

- (5) A person is not liable under subsection (1) if the person proves that, with respect to any part of a disclosure document not purporting
- (a) to be made on the authority of an expert, or
 - (b) to be a copy of, or an extract from, a report, opinion or statement of an expert,
- the person had, after reasonable investigation, reasonable grounds to believe and did believe that there had been no misrepresentation.

45 *The following section is added:*

Liability for misrepresentation in prescribed disclosure document – derivatives

- 132.2** (1) In this section, “**purchaser**” means a person that
- (a) enters into a transaction for a derivative, and
 - (b) with respect to the transaction, is entitled to receive a prescribed disclosure document.
- (2) If a prescribed disclosure document contains a misrepresentation, a purchaser that receives the disclosure document
- (a) is deemed to have relied on the misrepresentation if it was a misrepresentation at the time of the transaction, and
 - (b) has a right of action for damages against the person that was required to prepare and send the disclosure document.
- (3) A person that was required to prepare and send the prescribed disclosure document is not liable under subsection (2) if the person proves that the purchaser had knowledge of the misrepresentation.
- (4) The right of action for damages conferred by this section is in addition to and not in derogation from any other right the purchaser may have.
- (5) If a misrepresentation is contained in a record incorporated by reference in, or deemed incorporated into, a prescribed disclosure document, the misrepresentation is deemed to be contained in the document.

46 *Section 138.1 (a) is amended by striking out “34 or”.*

47 *Section 140.94 is amended*

(a) by renumbering the section as section 140.94 (1), and

(b) by adding the following subsection:

- (2) If an application is filed with a court under section 140.8, the limitation period under subsection (1) of this section is suspended on the date of the filing and resumes running,
- (a) if the court grants leave or dismisses the application and
 - (i) an appeal of the court’s decision has been filed, on the latest date that any appeals of the matter have been disposed of, or
 - (ii) an appeal of the court’s decision is not filed, on the date that the time to file an appeal of the decision expires, or
 - (b) on the date that the application is abandoned or discontinued.

48 *The following section is added to Part 17:*

Definitions

140.95 In this Part:

“**computer data**” means representations, including signs, signals or symbols, that are in a form suitable for processing in a computer system;

“**computer program**” means computer data representing instructions or statements that, when executed in a computer system, cause the computer system to perform a function;

“**computer system**” means a device that, or a group of interconnected or related devices one or more of which,

- (a) contains a computer program or other computer data, and
- (b) by means of a computer program, performs a function;

“**data**” means representations, including signs, signals or symbols, that are capable of being understood by an individual or processed by a computer system or other device;

“**financial institution**” means

- (a) a savings institution,
- (b) a corporation or unincorporated association to which the *Cooperative Credit Associations Act* (Canada) applies,
- (c) an insurance company or a fraternal benefit society incorporated or formed under the *Insurance Companies Act* (Canada),
- (d) a person that controls a savings institution,
- (e) a registrant or a person that is required to be registered,

- (f) a person engaged in the business of foreign exchange dealing, of remitting funds or transmitting funds by any means or through any person, entity or electronic funds transfer network, or of issuing or redeeming money orders, traveller's cheques or other similar negotiable instruments except for cheques payable to a person named on a cheque,
 - (g) a person holding itself out to be a casino, or
 - (h) the British Columbia Lottery Corporation;
- “judge”** means a judge of the Supreme Court;
- “tracking data”** means data that relate to the location of a transaction, individual or thing;
- “transmission data”** means data that
- (a) relate to the telecommunication function of dialling, routing, addressing or signalling,
 - (b) are transmitted to identify, activate or configure a device, including a computer program, in order to establish or maintain access to a telecommunication service for the purpose of enabling a communication, or are generated during the creation, transmission or reception of a communication and identify or purport to identify the type, direction, date, time, duration, size, origin, destination or termination of the communication, and
 - (c) do not reveal the substance, meaning or purpose of the communication.

49 *Section 141 (2) is amended*

- (a) *by striking out* “or entities”,
- (b) *in paragraph (f) by striking out* “paragraph (b), (c), (d), (g), (j) or (k)” *and substituting* “this subsection”,
- (c) *in paragraph (g)*
 - (i) *by striking out* “an exemption”,
 - (ii) *in subparagraph (i) by adding* “an exemption” *before* “from section 61”, *and*
 - (iii) *in subparagraph (ii) by striking out* “in”,
- (d) *in paragraph (h) by striking out* “a reporting issuer” *and substituting* “an issuer”,
- (e) *by repealing paragraph (k) and substituting the following:*
 - (k) a person engaged in promotional activities
 - (i) by or on behalf of
 - (A) an issuer, security holder or party to a derivative, or
 - (B) another person that is reasonably expected to benefit from the promotional activity, or

(ii) on the person's own behalf in respect of circumstances that would reasonably be expected to benefit the person; ,

(f) by repealing paragraph (l) and substituting the following:

(l) a person that manages a compensation, contingency or similar fund formed to compensate clients of dealers or advisers; ,

(g) in paragraph (n) by adding "or required to be recognized under section 25" after "under section 24", and

(h) by adding the following paragraphs:

- (p) an information processor;
- (q) a benchmark administrator;
- (r) a benchmark contributor;
- (s) a trade repository;
- (t) a trustee or custodian of assets of a reporting issuer or of the assets of an investment fund or of securities held by an investment fund;
- (u) a director, officer, control person or promoter of a person purporting to distribute securities in reliance on
 - (i) an exemption from section 61, or
 - (ii) an order issued under section 76;
- (v) a person exempted, in an order issued under section 33, from the requirement to be recognized;
- (w) a member of a committee referred to in section 130.1 or another committee established by an investment fund;
- (x) any person who was formerly a person described in this subsection;
- (y) a prescribed person or a person within a class of prescribed persons.

50 Section 141.1 is amended

(a) in subsection (1) by striking out "a self regulatory body, an exchange, a quotation and trade reporting system, a clearing agency or a credit rating organization" and substituting "a self-regulatory body, exchange, quotation and trade reporting system, clearing agency, trade repository, benchmark administrator or information processor",

(b) in subsection (2) by repealing paragraph (c) and substituting the following:

(c) examine property of a person under review or assets or things on the business premises, ,

(c) in subsection (2) by adding the following paragraphs:

(c.1) use, or cause to be used, any means of communication in the business premises,

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(c.2) use, or cause to be used, any electronic device or other system in the business premises in order to examine information contained in, or available to, the electronic device or system, ,

(d) by adding the following subsections:

(2.1) A person conducting the review under this section may, for the purposes of the review, require that a person under review

(a) provide the person conducting the review with any information, record or thing in the possession or control of the person under review, and

(b) prepare and produce a record containing the information required by the person conducting the review in the form and at the time or intervals determined by the person conducting the review.

(3.1) In exercising the power to examine under subsection (2) (c), the person conducting the review under this section may, on giving a receipt, remove the property, assets or things for the purpose of examining or copying them at other premises specified in the receipt. , ***and***

(e) in subsection (4) by striking out “for copying must” and substituting “for copying, or property, assets or things removed under subsection (3.1) for examination, must”.

51 Section 141.2 is amended

(a) in subsection (1) (b) by striking out “or”,

(b) in subsection (1) (c) by striking out “or clearing agency, if any,” and substituting “clearing agency or trade repository, if any,” and by adding “, or” at the end of the paragraph,

(c) in subsection (1) by adding the following paragraph:

(d) the bylaws, rules, other regulatory instruments or policies of an information processor or benchmark administrator if the person has provided or was required to provide information to the information processor or benchmark administrator. ,

(d) in subsection (2) by repealing paragraph (c) and substituting the following:

(c) examine property of a person under review or assets or things on the business premises, ,

(e) in subsection (2) by adding the following paragraphs:

(c.1) use, or cause to be used, any means of communication in the business premises,

(c.2) use, or cause to be used, any electronic device or other system in the business premises in order to examine information contained in, or available to, the electronic device or system, ,

(f) by adding the following subsections:

- (2.1) A person conducting the review under this section may, for the purposes of the review, require that a person under review
- (a) provide the person conducting the review with any information, record or thing in the possession or control of the person under review, and
 - (b) prepare and produce a record containing the information required by the person conducting the review in the form and at the time or intervals determined by the person conducting the review.
- (3.1) In exercising the power to examine under subsection (2) (c), the person conducting the review under this section may, on giving a receipt, remove the property, assets or things for the purpose of examining or copying them at other premises specified in the receipt. , **and**
- (g) in subsection (4) by striking out “for copying must” and substituting “for copying, or property, assets or things removed under subsection (3.1) for examination, must”.**

52 Section 141.3 is amended

(a) in subsection (1) by striking out “may review the business” and substituting “may review, or appoint a person in writing to review, the business”,

(b) by repealing subsection (2), and

(c) by adding the following subsections:

- (2.1) The executive director or, on the production of the appointment, a person appointed under subsection (1) may do any of the following:
- (a) enter, during business hours, any business premises of a reporting issuer under review;
 - (b) examine the records of a reporting issuer under review that are required to be kept under this Act;
 - (c) examine property of a reporting issuer under review or assets or things on the business premises;
 - (d) use, or cause to be used, any means of communication in the business premises;
 - (e) use, or cause to be used, any electronic device or other system in the business premises in order to examine information contained in, or available to, the electronic device or system;
 - (f) make copies of the records referred to in paragraph (b);
 - (g) make inquiries of a reporting issuer under review, or its employees and agents, concerning business or conduct that reasonably relates to the review.

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- (2.2) The executive director or, on the production of the appointment, a person appointed under subsection (1) may, for the purposes of the review, require that a reporting issuer under review
- (a) provide the person conducting the review with any information, record or thing in the possession or control of the reporting issuer under review, and
 - (b) prepare and produce a record containing the information required by the person conducting the review in the form and at the time or intervals determined by the person conducting the review.
- (2.3) In exercising the power to make copies under subsection (2.1) (f), the executive director or a person appointed under subsection (1) may
- (a) carry out the copying at the business premises of the reporting issuer under review, or
 - (b) on giving a receipt, remove records for the purpose of copying them at other premises specified in the receipt.
- (2.4) In exercising the power to examine under subsection (2.1) (c), the executive director or a person appointed under subsection (1) may, on giving a receipt, remove the property, assets or things for the purpose of examining or copying them at other premises specified in the receipt.
- (2.5) Records removed under subsection (2.3) (b) for copying or property, assets or things removed under subsection (2.4) for examination must be promptly returned to the person from which they were received.

53 Section 141.4 is amended

(a) in subsection (1) by striking out “(l) or (m)” and substituting “(l), (m), (o), (r), (t), (u), (v), (w), (x) or (y)”;

(b) in subsection (2) by adding the following paragraphs:

- (b.1) examine property of a person under review or assets or things on the business premises,
- (b.2) use, or cause to be used, any means of communication in the business premises,
- (b.3) use, or cause to be used, any electronic device or other system in the business premises in order to examine information contained in, or available to, the electronic device or system, ,

(c) by adding the following subsections:

- (2.1) A person conducting the review under this section may, for the purposes of the review, require that a person under review
- (a) provide the person conducting the review with any information, record or thing in the possession or control of the person under review, and

(b) prepare and produce a record containing the information required by the person conducting the review in the form and at the time or intervals determined by the person conducting the review.

(3.1) In exercising the power to examine under subsection (2) (b.1), the person conducting the review under this section may, on giving a receipt, remove the property, assets or things for the purpose of examining or copying them at other premises specified in the receipt. , **and**

(d) in subsection (4) by striking out “for copying must” and substituting “for copying, or property, assets or things removed under subsection (3.1) for examination, must”.

54 Section 141.5 is amended

(a) in subsection (1) by striking out “Despite section 141.1 (2) (a), 141.2 (2) (a) or 141.4 (2) (a),” and substituting “Despite section 141.1 (2) (a), 141.2 (2) (a), 141.3 (2.1) (a), 141.4 (2) (a), 143 (2) or 143.1 (3),” and

(b) in subsection (2)

(i) by striking out “141.2 or 141.4” and substituting “141.2, 141.3 or 141.4” and by adding “or an investigation under section 142, 143.1 or 147,” after “section 141.1, 141.2, 141.3 or 141.4,”

(ii) in paragraph (a) by striking out “and probable”, by adding “or investigation” after “relate to a review” and by adding “and” at the end of the paragraph,

(iii) in paragraph (b) by striking out “and”, and

(iv) by repealing paragraph (c).

55 Section 142 (2) is amended by striking out “the scope of an investigation to be carried out” and substituting “the matter to be investigated”.

56 Section 143 is amended

(a) in subsection (1) (c) by striking out “, assets or things”,

(b) in subsection (1) (d) by striking out “the assets at any time held” and substituting “the property, assets or things at any time held, possessed or controlled” and by striking out “and” at the end of the paragraph,

(c) in subsection (1) (e) (v) by striking out “exchange contracts” and substituting “the trading of or holding of derivatives”,

(d) in subsection (1) (e) (ix) by adding “, and” at the end of the subparagraph,

(e) in subsection (1) by adding the following paragraph:

- (f) the relationship that may at any time exist or have existed between the person and any other person to whom the person transferred property, assets or things, or from whom the person received property, assets or things. ,

(f) by repealing subsection (2) and substituting the following:

- (2) A person appointed under section 142 or 147 to make an investigation may, on production of an order made under section 142 (1) or 147 (1), enter the business premises of any person named in the order between the hours of 6 a.m. and 9 p.m. and inspect any records, property, assets or things that are used in the business of that person and that relate to the order. ,

(g) by adding the following subsection:

- (2.1) A person appointed under section 142 or 147 to make an investigation may, with respect to the person that is under investigation, require the person to
 - (a) provide the person conducting the investigation with any information, records, property, assets or things that are in the possession or control of the person and that relate to the order, and
 - (b) prepare and produce a record containing the information required by the person conducting the investigation in the form and at the time or intervals determined by the person conducting the investigation. ,

(h) by repealing subsection (3) and substituting the following:

- (3) On being satisfied by information on oath in writing that there are reasonable grounds to believe that a place contains anything that is related to an investigation under section 142, the commission or the Supreme Court may make an order authorizing a person conducting the investigation to enter the place and do the following:
 - (a) examine records, property, assets or things in the place;
 - (b) use, or cause to be used, any means of communication in the place;
 - (c) use, or cause to be used, any electronic device or other system in the place in order to examine information contained in, or available to, the electronic device or system;
 - (d) use, or cause to be used, any copying equipment at the place to make copies of any record;
 - (e) require the production of records, property, assets or things referred to in paragraph (a) and inspect, examine or analyze them;
 - (f) remove any record, property, asset or thing referred to in paragraph (a) from the place for inspection, examination or copying.
- (3.1) If the commission makes an order under subsection (3), the authority conferred under the order to enter a place may be exercised only between the hours of 6 a.m. and 9 p.m. ,

- (i) *in subsection (4) by adding “to the Supreme Court” after “An application”,*
- (j) *in subsection (6) by striking out “and authorized under subsection (2) of this section, a person named in an order under subsection (3) of this section” and by striking out “either of them” and substituting “that person”,*
- (k) *in subsection (6) by striking out “or” at the end of paragraph (a), by adding “or” at the end of paragraph (b) and by adding the following paragraph:*
 - (c) use, or cause to be used, any electronic device or system in the place in order to examine information contained in, or available to, the electronic device or system. , *and*
- (l) *by adding the following subsection:*
 - (8) For greater certainty, a power under subsection (1) may be exercised in relation to any matter relevant to obtaining an order under Part 18.1 in respect of a person under investigation.

57 *The following sections are added:*

Investigation for the purposes of Part 18.1

- 143.1** (1) If any of the circumstances referred to in section 164.04 (3) exist, the commission may, by order, appoint a person to make an investigation the commission considers expedient for the purpose of identifying or investigating property of a person referred to in section 164.04 (2) or identifying or investigating property of a family member or third-party recipient referred to in section 164.04 (3), including the financial affairs of that person, family member or third-party recipient relating to property or a transfer of property.
- (2) A person appointed under subsection (1) may, with respect to the person under investigation, investigate, inquire into, inspect and examine any of the following:
- (a) the financial affairs of that person that relate to property;
 - (b) any records, negotiations, transactions, investigations, investments, loans, borrowings and payments to, by, on behalf of, in relation to or connected with property of that person or previously owned by that person;
 - (c) any property owned, acquired or disposed of in whole or in part by that person or by a person acting on behalf of or as agent for that person;
 - (d) the property, assets or things at any time held by, the liabilities, debts, undertakings and obligations at any time existing and the financial or other conditions at any time prevailing in respect of that person and that relate to or are connected with other property of that person or other property previously owned by that person;

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- (e) the relationship that may at any time exist or have existed between that person and any other person to whom the person transferred property or from whom the person received property.
- (3) A person appointed under subsection (1) may, on production of the order, enter the business premises of any person named in the order between the hours of 6 a.m. and 9 p.m. and inspect any records, property, assets or things that relate to property owned, acquired or disposed of in whole or in part by the person under investigation.
 - (4) A person appointed under subsection (1) may, with respect to the person under investigation, require the person to
 - (a) provide the person conducting the investigation with any information, records, property, assets or things in the possession or control of the person under investigation, or
 - (b) prepare and produce a record containing the information required by the person conducting the investigation in the form and at the time or intervals determined by the person conducting the investigation.
 - (5) On being satisfied by information on oath in writing that there are reasonable grounds to believe that a place contains anything that is related to an investigation under subsection (1), the commission or the Supreme Court may make an order authorizing a person conducting an investigation to enter the place and do the following:
 - (a) examine records, property, assets or things in the place;
 - (b) use, or cause to be used, any means of communication in the place;
 - (c) use, or cause to be used, any electronic device or other system in the place in order to examine information contained in, or available to, the electronic device or system;
 - (d) use, or cause to be used, any copying equipment at the place to make copies of any record;
 - (e) require the production of records, property, assets or things referred to in paragraph (a) and inspect, examine or analyze them;
 - (f) remove any record, property, assets or things referred to in paragraph (a) from the place for inspection, examination or copying.
 - (6) An application to the Supreme Court for an order under subsection (5) must be made in the prescribed manner and, unless the Supreme Court otherwise directs, may be
 - (a) made without notice, and
 - (b) heard in the absence of the public.
 - (7) If the commission makes an order under subsection (5), the authority conferred under the order to enter a place may be exercised only between the hours of 6 a.m. and 9 p.m.

- (8) On an inspection, examination or analysis under this section, a person appointed under subsection (1), or a person acting under the direction of that person, may
- (a) mark the records, property, assets or things for identification,
 - (b) use or alter the records, property, assets or things to the extent reasonably necessary to facilitate the inspection, examination or analysis, or
 - (c) use, or cause to be used, any electronic device or system in the place in order to examine information contained in, or available to, the electronic device or system
- and does not incur any liability because of doing so.

Duty to assist

- 143.2** An owner or person in charge of a place that is entered under section 141.1 (2), 141.2 (2), 141.3 (2.1), 141.4 (2), 141.5 (2), 143 (2) or (3) or 143.1 (3) or (5), and every person that is in the place, must give all assistance that is reasonably required to enable the person conducting the review or the investigation to conduct the review or investigation.

Entry on private property

- 143.3** (1) A person conducting a review under section 141.1, 141.2, 141.3 or 141.4 or a person appointed under section 142 or 143.1 may enter on or pass through any premises for the purpose of gaining entry to a premises referred to in section 141.1 (2), 141.2 (2), 141.3 (2.1), 141.4 (2), 141.5 (2), 143 (2) or (3) or 143.1 (3) or (5).
- (2) Despite subsection (1), if the premises is a residence, the person may enter the residence only with the consent of the occupant or on the authority granted under section 141.5 (2).
- (3) A person may, at the request of a person conducting a review under section 141.1, 141.2, 141.3 or 141.4 or a person appointed under section 142 or 143.1, accompany the person conducting the review or investigation to assist them in gaining entry to a place referred to in section 141.1 (2), 141.2 (2), 141.3 (2.1), 141.4 (2), 141.5 (2), 143 (2) or (3) or 143.1 (3) or (5).

Contempt – obstructing entry

- 143.4** The failure or refusal of a person to permit entry under section 143 (2) or (3), 143.1 (3) or (5) or 143.2 makes the person, on application to the Supreme Court, liable to be committed for contempt as if in breach of an order or judgment of the Supreme Court.

58 Section 144 is amended

- (a) *in subsection (1) by striking out “section 142 or 147” and substituting “section 142, 143.1 or 147”*,

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(b) in subsection (1) by striking out “and” at the end of paragraph (b) and by adding the following paragraph:

(b.1) to compel witnesses to preserve records and things or classes of records and things, and,

(c) in subsection (1) (c) by adding “to provide information or” after “to compel witnesses”;

(d) by adding the following subsections:

(1.1) A summons under subsection (1), or a demand under that subsection to produce records, property, assets or things or a class of records, property, assets or things, must be served personally on the witness or, if the witness cannot be conveniently found, may be left for the witness at the individual’s last or usual residence with an occupant of the residence who appears to be at least 16 years of age.

(1.2) Despite subsection (1.1), if

(a) the person to be served by personal service is evading service, or

(b) after a diligent search,

(i) the person to be served by personal service cannot be found, or

(ii) the last or usual residence of the person cannot be found or is unoccupied,

the commission may make an order that the document may be served by substituted service in accordance with the order.

(1.3) If a document is to be served by substituted service permitted under subsection (1.2), a copy of the substituted service order that granted permission to use that substituted method must be served with the document unless

(a) the commission orders otherwise, or

(b) the substituted service permitted under subsection (1.2) is service by advertisement. ,

(e) in subsection (2) by striking out “or” at the end of paragraph (c) and by adding the following paragraph:

(c.1) to preserve records and things or classes of records and things in the custody, possession or control of the witness, or ,

(f) in subsection (2) (d) by striking out “to produce the records” and substituting “to provide information or to produce the records”, and

(g) in subsection (4) by striking out “section 142 or 147” and substituting “section 142, 143.1 or 147”.

59 Section 145 is amended by striking out “section 142” and substituting “section 142 or 143.1”.

60 *Section 146 is amended by striking out “section 142 or 145” and substituting “section 142, 143.1 or 145”.*

61 *The following sections are added:*

Preservation demand

- 146.01** (1) A peace officer may make a demand to a person requiring the person to preserve computer data that are in the person’s possession or control when the demand is made.
- (2) A peace officer may make a demand under subsection (1) only if the officer has reasonable grounds to suspect that
- (a) an offence under this Act has been or will be committed, and
 - (b) the computer data are in the person’s possession or control and will assist in the investigation of the offence.
- (3) A demand under subsection (1) may not be made of a person that is under investigation for an offence referred to in subsection (2).
- (4) A peace officer may, by written notice given to the person at any time,
- (a) revoke a demand made under subsection (1), or
 - (b) revoke a restriction, requirement or prohibition referred to in subsection (6).
- (5) Unless a demand made under subsection (1) is revoked earlier, the demand expires 21 days after the date on which it is made.
- (6) A peace officer who makes a demand under subsection (1) may, in the demand, impose any restrictions or requirements that the officer considers appropriate and may prohibit the disclosure of the demand’s existence or some or all of its contents.
- (7) If a peace officer makes a demand under subsection (1), the officer may not make another demand requiring the person to preserve the same computer data in connection with the investigation.

Order to preserve information, records or things

- 146.02** (1) On application by a peace officer, a judge or justice may order that a person preserve information or a record or thing that is in the person’s possession or control when the person receives the order.
- (2) Before making an order under subsection (1), the judge or justice must be satisfied by information on oath
- (a) that there are reasonable grounds to suspect that
 - (i) an offence under this Act has been or will be committed,
 - (ii) the information, record or thing that is to be preserved will assist in the investigation of the offence, and

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- (iii) the person that is the subject of the order has possession or control of the information, record or thing that is to be preserved, and
 - (b) that a peace officer intends to apply or has applied for a warrant or an order in connection with the investigation to seize or require the production of the information, record or thing, or other property containing the information or record, and to inspect, examine or analyze them.
- (3) A person that is under investigation for an offence referred to in subsection (2) may not be made subject to an order under subsection (1).
 - (4) Unless an order made under subsection (1) is revoked earlier, the order expires 90 days after the date on which it is made.

Preservation order – computer data

- 146.03** (1) On application by a peace officer, a judge or justice may order that a person preserve computer data that are in the person's possession or control when the person receives the order.
- (2) Before making an order under subsection (1), the judge or justice must be satisfied by information on oath
- (a) that there are reasonable grounds to suspect that
 - (i) an offence under this Act has been or will be committed, and
 - (ii) the computer data are in the person's possession or control and will assist in the investigation of the offence, and
 - (b) that a peace officer intends to apply or has applied for a warrant or an order in connection with the investigation to obtain a document that contains the computer data.
- (3) A person that is under investigation for an offence referred to in subsection (2) may not be made subject to an order under subsection (1).
- (4) Unless an order made under subsection (1) is revoked earlier, the order expires 90 days after the date on which it is made.

Order for production of information, etc.

- 146.04** (1) On application by a peace officer, a judge or justice may order a dealer, a party to a derivative that is not an individual, or an issuer whose securities are publicly traded to do any of the following within a specified period and at a specified place:
- (a) produce to the peace officer a copy of a record, certified by affidavit to be a true copy, that is specified in the order;
 - (b) prepare and produce to the peace officer a written statement setting out in detail the information that is required by the order;
 - (c) prepare and produce to the peace officer a record containing the information that is required by the order.

- (2) An order under subsection (1) may not be made in respect of an individual.
- (3) Before making the order, the judge or justice must be satisfied by information on oath that there are reasonable grounds to believe that
 - (a) an offence under this Act has been or will be committed,
 - (b) the record or statement that is to be produced will assist in the investigation of the offence, and
 - (c) the person that is the subject of the order has knowledge, possession or control of the information that is to be produced.
- (4) A person that is under investigation for an offence referred to in subsection (3) may not be made subject to an order under subsection (1).

General production order

- 146.05** (1) Despite sections 146.06 to 146.10, on application by a peace officer, a judge or justice may order a person to produce a document that is a copy of a document that is in the possession or control of the person when the person receives the order, or to prepare and produce a document containing data that are in the possession or control of the person at that time.
- (2) Before making the order, the judge or justice must be satisfied by information on oath that there are reasonable grounds to believe that
 - (a) an offence under this Act has been or will be committed, and
 - (b) the document or data are in the person's possession or control and will afford evidence respecting the commission of the offence.
 - (3) A person that is under investigation for an offence referred to in subsection (2) may not be made subject to an order under subsection (1).

Production order to trace specified communication

- 146.06** (1) On application by a peace officer for the purpose of identifying a device or person involved in the transmission of a communication, a judge or justice may order a person to prepare and produce a document containing transmission data that are related to that purpose and that are, when the person is served with the order, in the person's possession or control.
- (2) Before making the order, the judge or justice must be satisfied by information on oath that there are reasonable grounds to suspect that
 - (a) an offence under this Act has been or will be committed,
 - (b) the identification of a device or person involved in the transmission of a communication will assist in the investigation of the offence, and

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- (c) transmission data that are in the possession or control of one or more persons whose identity is unknown when the application is made will enable that identification.
- (3) A peace officer may, within 60 days after the date on which the order is made, serve the order on any person that was involved in the transmission of a communication, including, for greater certainty, a person whose identity was unknown when the application was made.
- (4) A person that is under investigation for an offence referred to in subsection (2) may not be made subject to an order under subsection (1).
- (5) A peace officer named in the order must provide a written report to the judge or justice who made the order as soon as feasible after the person from which the communication originated is identified or after the expiry of the period referred to in subsection (3), whichever occurs first.
- (6) A report under subsection (5) must state the name and address of each person on which the order was served and the date of service.

Production order – transmission data

- 146.07** (1) On application by a peace officer, a judge or justice may order a person to prepare and produce a document containing transmission data that are in the person's possession or control when the person receives the order.
- (2) Before making the order, the judge or justice must be satisfied by information on oath that there are reasonable grounds to suspect that
- (a) an offence under this Act has been or will be committed, and
 - (b) the transmission data are in the person's possession or control and will assist in the investigation of the offence.
- (3) A person that is under investigation for an offence referred to in subsection (2) may not be made subject to an order under subsection (1).

Production order – tracking data

- 146.08** (1) On application by a peace officer, a judge or justice may order a person to prepare and produce a document containing tracking data that are in the person's possession or control when the person receives the order.
- (2) Before making the order, the judge or justice must be satisfied by information on oath that there are reasonable grounds to suspect that
- (a) an offence under this Act has been or will be committed, and
 - (b) the tracking data are in the person's possession or control and will assist in the investigation of the offence.

- (3) A person that is under investigation for an offence referred to in subsection (2) may not be made subject to an order under subsection (1).

Production order – financial data

- 146.09** (1) On application by a peace officer, a judge or justice may order a financial institution to prepare and produce a document containing the following information if that information is in the institution's possession or control when the institution receives the order:
- (a) the account number of a person named in the order or the name of a person whose account number is specified in the order;
 - (b) the type of account;
 - (c) the status of the account;
 - (d) the date on which the account was opened or closed.
- (2) For the purpose of confirming the identity of a person named, or whose account number is specified in the order, an order under subsection (1) may require the financial institution to prepare and produce a document containing the following information that is in the institution's possession or control:
- (a) the date of birth of the person named, or whose account number is specified, in the order;
 - (b) that person's current address;
 - (c) any previous addresses of that person.
- (3) Before making the order, the judge or justice must be satisfied by information on oath that there are reasonable grounds to suspect that
- (a) an offence under this Act has been or will be committed, and
 - (b) the information is in the possession or control of the financial institution and will assist in the investigation of the offence.
- (4) A financial institution that is under investigation for an offence referred to in subsection (3) may not be made subject to an order under subsection (1).

Order for production of names

- 146.10** (1) On application by a peace officer, a judge or justice may order one or more of the following:
- (a) that a clearing agency, exchange or self-regulatory body prepare and produce a document, in the form specified in the order, containing the names of all dealers, other than those who are individuals, that acquired or traded a specified security or derivative during a specified period;
 - (b) that a trade repository prepare and produce a document, in the form specified in the order, containing information that would identify all persons that acquired or traded a specified security or derivative during a specified period;

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- (c) that a dealer, other than a dealer who is an individual, prepare and produce a document, in the form specified in the order, containing the names of all persons on whose behalf the dealer acquired or traded a specified security or derivative during a specified period and the time and date at which the trade took place.
- (2) Before making an order under subsection (1), the judge or justice must be satisfied by information on oath that there are reasonable grounds to suspect that
 - (a) an offence under this Act has been or will be committed,
 - (b) the information that is to be produced will assist in the investigation of the offence, and
 - (c) the clearing agency, exchange, self-regulatory body, trade repository or dealer that is the subject of the order has possession or control of the information that is to be produced.
 - (3) A person that is under investigation for an offence referred to in subsection (2) may not be made subject to an order under subsection (1).

Conditions in preservation and production orders

- 146.11** (1) An order made under sections 146.02 to 146.10 may contain any conditions, restrictions or requirements that the judge or justice considers appropriate, including, for greater certainty, a requirement to protect a communication that is subject to solicitor-client privilege.
- (2) On application by a peace officer, the judge or justice who made the order, or a judge in the judicial district where the order was made, may, on the basis of information on oath, revoke or vary the order.
 - (3) If an order is revoked or varied under subsection (2), the peace officer must give notice of the revocation or variation to the person that is subject to the order as soon as feasible.

Order prohibiting disclosure

- 146.12** (1) On application by a peace officer, a judge or justice may make an order prohibiting a person from disclosing the existence, or some or all of the contents, of a preservation demand made under section 146.01, or a preservation or production order made under sections 146.02 to 146.10, during the period set out in the order.
- (2) Before making the order, the judge or justice must be satisfied by information on oath that there are reasonable grounds to believe that the disclosure during that period would jeopardize the investigation of the offence to which the preservation demand or the preservation or production order relates.
 - (3) A peace officer or a person or financial institution that is subject to an order made under subsection (1) may apply in writing to the judge or justice who made the

order, or to a judge in the judicial district where the order was made, to revoke or vary the order.

Particulars – production orders

- 146.13** (1) An order made under sections 146.04, 146.05 and 146.07 to 146.10 may require a financial institution or other person to produce the document to a peace officer named in the order within the time, at the place and in the form specified in the order.
- (2) An order made under section 146.06 may require a person to produce the document to a peace officer named in the order as soon as feasible after the person is served with the order at the place and in the form specified in the order.
- (3) For greater certainty, an order under sections 146.04 to 146.10 may specify that a document may be produced or transmitted in electronic form.

Application for review of production order

- 146.14** (1) Before a financial institution or other person is required by an order made under sections 146.04 to 146.10 to produce a document, the financial institution or other person may, subject to subsection (2) of this section, apply in writing to the judge or justice who made the order, or to a judge in the judicial district where the order was made, to revoke or vary the order.
- (2) A financial institution or other person may not make an application under subsection (1) unless the financial institution or other person gives notice of their intention to do so to the peace officer named in the order within 30 days after the date on which the order is made.
- (3) A financial institution or other person is not required to prepare or produce the document until a final decision is made with respect to the application to revoke or vary the order.
- (4) A judge or justice may revoke or vary the order if satisfied that
- (a) it is unreasonable in the circumstances to require the applicant to prepare or produce the document, or
 - (b) production of the document would disclose information that is privileged or otherwise protected from disclosure by law.

Requests to preserve data

- 146.15** (1) For greater certainty, no preservation demand, preservation order or production order is necessary for a peace officer to ask a person to
- (a) voluntarily preserve data or information that the person is not prohibited by law from preserving, or
 - (b) voluntarily provide a document to the officer that the person is not prohibited by law from disclosing.

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- (2) For greater certainty, a person that, under subsection (1), preserves data or information or provides a document as described in subsection (1) does not incur any liability for doing so.

Self-incrimination

- 146.16** (1) No person may be excused from complying with an order made under sections 146.04 to 146.10 on the grounds that the document the person is required to produce may tend to incriminate the person or subject the person to a proceeding or penalty.
- (2) A document that an individual is required to prepare may not be used or received in evidence against the individual in a proceeding relating to a contravention of this Act or the regulations that is subsequently instituted against the individual, other than a prosecution for a contravention of section 168.1.

Procedure

- 146.17** Unless a judge or justice otherwise directs, an application for an order under sections 146.02 to 146.12 may be
- (a) made without notice, and
 - (b) heard in the absence of the public.

62 *Section 147 (2) is amended by striking out “the scope of an investigation to be carried out” and substituting “the matter to be investigated”.*

63 *Section 148 is amended*

(a) by adding the following subsection:

- (1.01) For the purpose of protecting the integrity of an investigation authorized under section 143.1, the commission may make an order, which applies for the duration of the investigation, prohibiting a person from disclosing to any person the existence of the investigation, the inquiries made by persons appointed under section 143.1, or the name of any witness examined or sought to be examined in the course of the investigation. , **and**

(b) in subsection (1.1) by adding “or (1.01)” after “subsection (1)”.

64 *Section 149 is amended by striking out “section 142 or 147” and substituting “section 142, 143.1 or 147”.*

65 *Sections 151 and 152 are repealed.*

66 *Section 153 (1) (a) is amended*

(a) in subparagraph (ii) by striking out “or a quotation and trade reporting system” and substituting “, quotation and trade reporting system or trade repository”, and

(b) by striking out “or” at the end of subparagraph (vi), by striking out “and” at the end of subparagraph (vii) and by adding the following subparagraphs:

- (viii) an information processor, or
- (ix) a benchmark administrator, and .

67 Section 155 is amended

(a) by repealing subsection (1) (b) and substituting the following:

- (b) contravenes any of sections 34, 49 to 57, 57.2, 57.3, 57.5, 57.6, 58, 61, 85 (b), 87, 125, 143.2, 148 or 168.1 (1) of this Act; ,

(b) in subsection (1) by adding the following paragraphs:

- (c.1) fails to comply with a demand made under section 146.01;
- (c.2) fails to comply with an order made under sections 146.02 to 146.10; ,

(c) in subsection (2) by striking out “\$3 million” and substituting “\$5 million” and by striking out “3 years” and substituting “5 years”,

(d) by adding the following subsection:

- (2.1) Despite subsection (2),
 - (a) a person that commits an offence referred to in subsection (1) (c.1) is liable to a fine of not more than \$5 000, and
 - (b) a person that commits an offence referred to in subsection (1) (c.2) is liable to a fine of not more than \$250 000, or to imprisonment for not more than 6 months, or both. ,

(e) in subsection (5) by striking out “any profit made” wherever it appears and substituting “any profit made or loss avoided” and by striking out “\$3 million” and substituting “\$5 million”, and

(f) by adding the following subsections:

- (5.1) If, under subsection (5), the court finds that the profit made or loss avoided by all persons because of the contravention cannot be determined based on the facts before it, the fine to which the person is liable is that set out in subsection (2).
- (5.2) Despite subsection (2), if a person has contravened section 57 (2) (a), the person is liable to imprisonment for not less than one year if
 - (a) the total value of the subject matter of the offence and related offences exceeds \$1 million, or
 - (b) the person has previously been convicted of contravening section 57 (2) (a) or (b) and the most recent contravention of section 57 (2) (a) or (b) occurred after the previous conviction.

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- (5.3) Despite section 89 of the *Offence Act*, if a person is convicted of an offence to which subsection (5.2) applies, the court must not suspend the passing of sentence.
- (5.4) Subsection (5.2) does not apply if
- (a) the person that contravened section 57 (2) (a) is Indigenous and there is a unique systemic or background factor that contributed to the person's contravention,
 - (b) the person's moral culpability in contravening section 57 (2) (a) is diminished due to
 - (i) mental infirmity,
 - (ii) cognitive impairment, or
 - (iii) duress caused by, or undue influence of, a spouse, other family member or other person that is in a relationship with the person that is similar to that of a spouse or other family member, or
 - (c) another circumstance exists, or existed at the time of the contravention, that would make a sentence under subsection (5.2) grossly disproportionate.

68 *Section 157 (1) (h) is amended by striking out “an exchange contract” and substituting “a derivative” and by striking out “or exchange contract” and substituting “or derivative”.*

69 *Section 159 is amended*

(a) by renumbering the section as section 159 (1),

(b) in subsection (1) by striking out “section 140” and substituting “section 140 or 140.94”, and

(c) by adding the following subsection:

- (2) If an application, motion or notice is filed with a court in respect of an investigation under section 142, 143.1 or 147 or a substantially similar matter, the running of the limitation period under subsection (1) is suspended on the date of the filing and resumes when
- (a) the court decides the matter that is the subject of the application, motion or notice and,
 - (i) if an appeal of the decision has been filed, any appeals of the matter have been disposed of, or
 - (ii) if an appeal of the decision is not filed, the time to file an appeal of the decision expires, or
 - (b) the matter that is the subject of the application, motion, notice or appeal is abandoned or discontinued and the commission has been notified of that fact.

70 Section 161 (1) is amended

- (a) *in paragraph (a) by striking out “or” at the end of subparagraph (ii),*
- (b) *in paragraph (a) (iii) by striking out “, order or ruling made under a bylaw, rule or other regulatory instrument or policy of a self regulatory body, exchange or quotation and trade reporting system” and substituting “or similar determination made by a clearing agency, exchange, quotation and trade reporting system, self-regulatory body or trade repository”,*
- (c) *in paragraph (a) by adding “, or” at the end of subparagraph (iii) and by adding the following subparagraph:*
- (iv) a bylaw, rule, or other regulatory instrument or policy or a direction, decision or similar determination made by
 - (A) a benchmark administrator that has been designated for the purposes of a regulation referred to in section 183 (2.2), or
 - (B) an information processor that has been designated for the purposes of a regulation referred to in section 183 (2.3); ,
- (d) *in paragraph (d) (iv) by adding “advising or otherwise” after “is prohibited from” and by striking out “market, or” and substituting “or derivatives markets,”*
- (e) *by repealing paragraph (d) (v) and substituting the following:*
- (v) is prohibited from engaging in promotional activities by or on behalf of
 - (A) an issuer, security holder or party to a derivative, or
 - (B) another person that is reasonably expected to benefit from the promotional activity,
 - (vi) is prohibited from engaging in promotional activities on the person’s own behalf in respect of circumstances that would reasonably be expected to benefit the person,
 - (vii) is prohibited from voting a security or exercising a right attaching to a security or a derivative, or
 - (viii) is prohibited from engaging in any activity in relation to the administration of a benchmark or the provision of information to a benchmark administrator in relation to the determination of a benchmark; , *and*
- (f) *in paragraph (e) by striking out “that a registrant, issuer or person engaged in investor relations activities” and substituting “that a person”.*

71 Section 161 is amended**(a) by adding the following subsection:**

(1.1) If the commission makes an order under subsection (1) (g) in respect of a contravention of section 57 (1) or (2), and more than one person participated in the contravention, the commission may order that

- (a) the amount payable is the amount obtained, or payment or loss avoided, directly or indirectly, by all persons as a result of the contravention, and
- (b) each person that participated in the contravention is liable for the payment on a joint and several basis. , **and**

(b) by repealing subsection (5).**72 Section 161 (7) is amended****(a) by repealing paragraph (a) and substituting the following:**

- (a) an exchange, quotation and trade reporting system or any other person that constitutes, maintains or provides a market for transactions in securities or derivatives, ,

(b) by adding the following paragraphs:

- (c.2) a trade repository,
- (c.3) a benchmark administrator,
- (c.4) a benchmark contributor,
- (c.5) a person exempted, in an order made under section 33, from the requirement to be recognized,
- (c.6) a member of a committee established by an investment fund for the purpose of section 130.1 or for a similar purpose under the regulations, ,

(c) in paragraph (d) by adding “or a person exempted from the requirement to be registered under section 34” after “a registrant”,

(d) in paragraph (k) by striking out “insider or control person” and substituting “insider, promoter or control person”, and

(e) by striking out “or” at the end of paragraph (l) and by adding the following paragraphs:

- (n) a person engaged in promotional activities by or on behalf of
 - (i) an issuer, security holder or party to a derivative, or
 - (ii) another person that is reasonably expected to benefit from the promotional activity,
- (o) a person engaged in promotional activities on the person’s own behalf in respect of circumstances that would reasonably be expected to benefit the person,

- (p) a trustee of a reporting issuer, or
- (q) an information processor.

73 Section 162 is amended

- (a) by renumbering the section as section 162 (1),**
- (b) in paragraph (a) (i) by adding “subject to subsection (2),” before “a provision”, and**
- (c) by adding the following subsection:**

- (2) If the commission, after a hearing,
 - (a) determines that a person has contravened section 57.7, and
 - (b) considers it to be in the public interest to make the order,the commission may order the person to pay the commission an administrative penalty of not more than \$5 million for each contravention.

74 The following sections are added:

Administrative penalty imposed by notice

162.01 If, based on information obtained from a review, investigation or any other source, the executive director

- (a) considers that a person has contravened
 - (i) a prescribed provision of this Act,
 - (ii) a provision of the regulations, or
 - (iii) a decision of the commission or the executive director, whether or not the decision has been filed under section 163, and
- (b) considers it to be in the public interest,

the executive director may give written notice to a person requiring the person to pay an administrative penalty.

Amount of administrative penalty imposed by notice

162.02 (1) In determining the amount of an administrative penalty imposed on a person by notice under section 162.01, the executive director must consider the following:

- (a) the person’s past conduct;
- (b) the seriousness of the conduct;
- (c) factors that mitigate the person’s conduct;
- (d) the need to demonstrate the consequences of inappropriate conduct to those who access the capital markets;
- (e) the need to deter those who participate in the capital markets from engaging in inappropriate conduct;

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- (f) orders made by the commission in similar circumstances in the past;
 - (g) any other matter relevant to the public interest.
- (2) An administrative penalty for which a notice has been issued to a person under section 162.01 must not exceed,
- (a) in the case of an individual, \$100 000 for each contravention set out in the notice, or
 - (b) in the case of a person that is not an individual, \$500 000 for each contravention set out in the notice.

Notice of administrative penalty

162.03 A notice of administrative penalty must specify the following:

- (a) each contravention;
- (b) the amount of the administrative penalty for each contravention;
- (c) a person's option under section 162.04 to either pay or request an opportunity to be heard to dispute the administrative penalty within the 30-day period referred to in that section or within any longer period that the executive director specifies;
- (d) the date on or before which the administrative penalty must be paid under section 162.04 if the person does not exercise the option to request an opportunity to be heard under that section;
- (e) that if the person does either of the following, the person will be deemed to have committed the contravention and the administrative penalty set out in the notice will be payable to the commission:
 - (i) pays the administrative penalty;
 - (ii) fails to pay the penalty or request an opportunity to be heard to dispute the administrative penalty within the 30-day period referred to in that section or within any longer period that the executive director specifies.

Payment or dispute of administrative penalty imposed by notice

162.04 (1) On or before the date set out in a notice of administrative penalty, the person to which the notice was given must do one of the following:

- (a) pay the administrative penalty;
 - (b) give written notice to the executive director requesting an opportunity to be heard to dispute the contravention or the amount of the administrative penalty.
- (2) A person that gives notice under subsection (1) (b) requesting an opportunity to dispute a contravention or the amount of an administrative penalty must include in the notice particulars of the dispute.

- (3) If an opportunity to be heard is requested, the executive director, after providing an opportunity to be heard,
 - (a) must confirm by order whether the person committed each contravention set out in the notice of administrative penalty, and
 - (b) if commission of a contravention is confirmed under paragraph (a), may, by order, with respect to the penalty specified in the notice of administrative penalty,
 - (i) confirm the penalty,
 - (ii) impose a lesser penalty, or
 - (iii) revoke the penalty.
- (4) An order made under subsection (3) must specify the following with respect to each contravention that has been confirmed:
 - (a) the contravention;
 - (b) the amount of the administrative penalty;
 - (c) the date on or before which the penalty must be paid;
 - (d) the person's right, under section 165, to seek a hearing and review by the commission of the executive director's decision.
- (5) The executive director may exercise the powers under subsection (3) in the absence of a person that requests an opportunity to be heard if the person fails to appear at the time scheduled or if the person fails to provide written submissions within the required time.
- (6) The executive director must give a copy of an order made under subsection (3) to the person to which the order relates.

**Administrative penalty against officers
or directors imposed by notice**

162.05 If the executive director considers that a person other than an individual has committed a contravention, an employee, officer, director or agent of that person who authorizes, permits or acquiesces in the contravention is considered to have committed the same contravention, whether or not the executive director has issued to the person a notice of administrative penalty under section 162.01.

**Administrative penalty against investment fund manager
imposed by notice**

162.06 If the executive director considers that an investment fund has committed a contravention, an investment fund manager of that investment fund that authorizes, permits or acquiesces in the contravention is considered to have committed the same contravention, whether or not the executive director has issued to the investment fund a notice of administrative penalty under section 162.01.

Extrajurisdictional orders

162.07 (1) In this section:

“**extrajurisdictional securities commission**” means a securities regulatory authority of a province other than British Columbia;

“**extrajurisdictional securities law**” means the laws of a province other than British Columbia respecting trading in securities or derivatives.

- (2) A reference to an extrajurisdictional securities commission includes, unless otherwise provided,
- (a) its delegate, and
 - (b) any person that, in respect of the extrajurisdictional securities commission, exercises a power or performs a duty that is substantially similar to a power or duty exercised or performed by the executive director under this Act.
- (3) An order made by an extrajurisdictional securities commission imposing a sanction, condition, restriction or requirement on a person applies to the person in British Columbia, without notice to the person and without an opportunity to be heard, as if the order were made by the commission with such modifications as the circumstances require, to the extent that the commission has the power to impose the same sanction, condition, restriction or requirement and for so long as the order remains in effect.
- (4) If a person is subject to a sanction, condition, restriction or requirement pursuant to an agreement with an extrajurisdictional securities commission, the sanction, condition, restriction or requirement applies to the person, without notice to the person and without an opportunity to be heard, as if the agreement had been made with the commission with such modifications as the circumstances require, to the extent that the commission has the power to impose the same sanction, condition, restriction or requirement and for so long as the agreement remains in effect.
- (5) Subsections (3) and (4) do not apply unless the order was made or the agreement was entered into as a result of
- (a) the extrajurisdictional securities commission making a finding that the person contravened extrajurisdictional securities law, or
 - (b) the person making an admission that the person contravened extrajurisdictional securities law.
- (6) Subsections (3) and (4) do not apply with respect to a sanction or requirement in an order requiring the person subject to the order to pay money to the extrajurisdictional securities commission or another person.

75 *Section 162.1 (1) is amended*

- (a) *by striking out* “section 160, 162 or 174” *and substituting* “section 160, 161 (1) (g), 162, 162.01, 162.04 or 174”,

(b) by striking out “or is about to” and substituting “or is likely to”, and

(c) by striking out “money be paid to the commission” and substituting “third party pay the debt to the commission”.

76 *Section 162.2 is amended by adding “or the executive director” after “The commission”.*

77 *Section 163 is amended*

(a) by repealing subsection (1) and substituting the following:

- (1) If the commission has made a decision under section 161 or 162, or if the executive director has made a decision under section 161, the commission or the executive director, as applicable, may file the decision at any time in a Supreme Court registry by filing a certified copy of the decision. ,

(b) by adding the following subsection:

- (1.01) If the executive director has issued a notice under section 162.01, or made an order under section 162.04, the executive director may file the notice or the order in a Supreme Court registry at any time by filing,

(a) in the case of a notice under section 162.01, a certified copy of the notice together with a certificate setting out the unpaid amount of the administrative penalty, or

(b) in the case of an order under section 162.04, a certified copy of the order. ,
and

(c) in subsection (2) by striking out “subsection (1), (1.1) or (1.2)” and substituting “subsection (1), (1.01), (1.1) or (1.2)”.

78 *The following sections are added:*

Amount owing forms lien

163.1 (1) An amount owing under an order made under section 155.1 (b), 157 (1) (b) or 161 (1) (g) by a person named in the order forms a lien and charge in favour of the commission on the entire property of the person or the estate of the person in the hands of any receiver, receiver manager or trustee and has priority over all other claims of every person, except

(a) claims secured by liens, charges or encumbrances registered before,

(i) if the order is made after a hearing, the date that notice of the hearing was issued, or

(ii) if the order is made in the circumstances contemplated by section 162.2,

(A) if notice of a hearing in respect of the matter was issued, the date of the notice, or

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- (B) if notice of a hearing in respect of the matter has not been issued, the date of the order, or
- (b) claims arising under the *Employment Standards Act* or the *Family Maintenance Enforcement Act*.
- (2) A lien and charge created by this section and its priority are not lost or impaired
- (a) by any neglect, omission or error of the commission, a member of the commission or a servant, agent, officer or employee of the commission,
- (b) by taking or failing to take proceedings to recover the amount owing,
- (c) by tender or acceptance of a partial payment of the amount owing, or
- (d) by want of registration.

Debtor's licences and number plates

- 163.2** (1) If a person is in default of an order under section 155, 155.1, 157, 161 (1) (g), 162 or 162.04, or is in default of a notice under section 162.01, and the amount owing is \$3 000 or more, the commission or the executive director may do either or both of the following:
- (a) forward to the Insurance Corporation of British Columbia a notice stating that the person is in default and that action under this section is to be taken in relation to the person's driver's licence;
- (b) forward to the Insurance Corporation of British Columbia a notice stating that the person is in default and that action under this section is to be taken in relation to a licence and corresponding number plates for any motor vehicle or trailer owned by the person.
- (2) At least 30 days before forwarding a notice to the Insurance Corporation of British Columbia under subsection (1) (a), the commission or the executive director must, in the manner prescribed by the regulations,
- (a) give the person notice that action under this section will be taken in relation to the person's driver's licence, and
- (b) give the person an opportunity to be heard.
- (3) At least 60 days before forwarding a notice to the Insurance Corporation of British Columbia under subsection (1) (b), and again at least 30 days before forwarding the notice under subsection (1) (b), the commission or the executive director must give the person notice, in the manner prescribed by the regulations, that action under this section will be taken in relation to a licence and corresponding number plates for any motor vehicle or trailer owned by the person.
- (4) On receipt of a notice under subsection (1) (a), the Insurance Corporation of British Columbia, for the applicable period under subsection (6), must not issue or renew a driver's licence of the person.

- (5) On receipt of a notice under subsection (1) (b), the Insurance Corporation of British Columbia, for the applicable period under subsection (6), must not issue or renew a licence and corresponding number plates for a motor vehicle or trailer owned by the person.
- (6) Subsections (4) and (5) apply in relation to the person from the date the Insurance Corporation of British Columbia receives the applicable notice under subsection (1) until the earliest of the following:
 - (a) the date the Insurance Corporation of British Columbia is advised by the commission or the executive director that the order
 - (i) has been withdrawn, or
 - (ii) is no longer in arrears;
 - (b) the date the commission or the executive director directs the Insurance Corporation of British Columbia under section 163.3 to disregard that notice.
- (7) The commission or the executive director may, as a condition for acting under subsection (6) (a) (ii), enter into a payment arrangement with the person.
- (8) If, with respect to a payment arrangement under subsection (7), the person falls into arrears for more than 10 consecutive days under the arrangement, the commission or the executive director may prepare and forward to the Insurance Corporation of British Columbia a further notice under subsection (1) without further notice to the person under subsection (2) or (3), as applicable.
- (9) Action by the Insurance Corporation of British Columbia under subsection (4) or (5) is not a bar to the bringing of other proceedings under this Part to enforce payment under the order made under section 155, 155.1, 157, 161 (1) (g), 162 or 162.04 or under a notice under section 162.01.

Withdrawing the notice

- 163.3** (1) The commission or the executive director must direct the Insurance Corporation of British Columbia to disregard a notice given under section 163.2 if the person referred to in that section satisfies the commission or the executive director that
- (a) the notice is based on a significant error,
 - (b) the lack of anything referred to in section 163.2 (4) or (5) will significantly reduce the person's ability to pay under the order under section 155, 155.1, 157, 161 (1) (g), 162 or 162.04, or under a notice under section 162.01, and the person has entered into an arrangement that is satisfactory to the commission or the executive director to report the person's financial circumstances from time to time, or
 - (c) the person has entered into a payment arrangement under section 163.2 that is satisfactory to the commission or the executive director.
- (2) If the commission or the executive director refuses to act under subsection (1), the court, on application by the person, may summarily determine whether the

refusal was unreasonable and, if the refusal is found to be unreasonable, may order the commission or the executive director to act under subsection (1).

79 *Section 164 is amended*

(a) *in subsection (1) by striking out* “in a specified security or exchange contract or in a class of security or class of exchange contract” *and substituting* “in a specified security or derivative or in a class of securities or derivatives”, *and*

(b) *in subsection (2) by striking out* “, the exchange on which the exchange contract is traded”.

80 *The following Part is added:*

**PART 18.1 – PRESERVATION ORDERS AND
ADDITIONAL COLLECTION REMEDIES**

Division 1 – Interpretation

Definitions

164.01 In this Part:

“**claimable property**” means,

- (a) with respect to a family member of a person referred to in section 164.04 (2),
 - (i) property that was transferred to the family member, at any time, from the person, and
 - (ii) if property referred to in paragraph (a) (i) has been transferred by the family member to another person, other property of the family member that, as of the valuation date, is equivalent in value to the property referred to in paragraph (a) (i), and
- (b) with respect to a third-party recipient of property from a person referred to in section 164.04 (2),
 - (i) the property if the property was transferred to the third-party recipient from the person on or after the specified date, and
 - (ii) if the property referred to in paragraph (b) (i) has been transferred by the third-party recipient to another person, other property of the third-party recipient that, as of the valuation date, is equivalent in value to the property referred to in paragraph (b) (i);

“**family member**” means

- (a) a spouse, former spouse, parent, grandparent, sibling, child or grandchild of a person, and

(b) if a person has a spouse or former spouse, a parent, grandparent, sibling, child or grandchild of the spouse or former spouse;

“forfeiture order” means a court order made under section 164.10 (1) or (2);

“person that contravened securities law” means a person that is subject to an order under section 155.1 (b), 157 (1) (b) or 161 (1) (g);

“person that is subject to an investigation or proceeding” means a person referred to in section 164.04 (2) or (3);

“personal property registry” means the personal property registry established under the *Personal Property Security Act*;

“preservation order” means an order made under section 164.04 (4);

“security interest” means security interest as defined in the *Personal Property Security Act*;

“specified date” means,

(a) in relation to a person that is subject to an order under section 155.1 (b), 157 (1) (b) or 161 (1) (g), the date of the unlawful activity, or

(b) for any other matter referred to in section 164.04 (3), the date referred to in 164.04 (5) (a) or (b), as applicable;

“third-party recipient” means a person that, after the specified date, acquired property from a person referred to in section 164.04 (2), but does not include a family member of a person referred to in section 164.04 (2);

“undervalue benefit” means the amount by which the fair market value of a property at the time of its transfer exceeded the consideration given for the property in respect of the transfer;

“unlawful activity” means an omission or conduct that resulted in an order under section 155.1 (b), 157 (1) (b) or 161 (1) (g);

“valuation date” means the date on which a person referred to in section 164.04 (2) transferred property to a family member or a third-party recipient.

Application

164.02 (1) This Part applies to unlawful activity that occurred before, on or after the coming into force of this section, whether or not an order has been made under section 155.1 (b), 157 (1) (b) or 161 (1) (g) in respect of the unlawful activity.

(2) This Part applies to property, whether or not

(a) the acquisition of the whole or the portion of an interest in the property,

(b) the increase in the value of the whole or the portion of an interest in the property, or

(c) the decrease in the debt obligation,

as referred to in section 164.16, occurred before, on or after the coming into force of this Part.

Remedies not limited

164.03 A remedy exercised under this Part does not limit any remedy otherwise available to the commission by law.

Division 2 – Preliminary and Interim Preservation Orders**Preservation orders**

- 164.04** (1) In the circumstances set out in subsection (2) or (3), the commission may make one or more orders under subsection (4) in relation to
- (a) the whole or a portion of the interest in property of a person referred to in subsection (2),
 - (b) the property in which the whole or a portion of the interest in property of a person referred to in subsection (2) is held,
 - (c) the whole or a portion of the interest in claimable property of a family member or third-party recipient, or
 - (d) the property in which the whole or a portion of the interest in claimable property of a family member or third-party recipient is held.
- (2) The commission may make an order under subsection (4) in respect of a person if any of the following apply:
- (a) the commission proposes to order an investigation under section 142 in respect of the person;
 - (b) an investigation under section 142 or 147 has been ordered in respect of the person;
 - (c) the commission or the executive director proposes to make or has made an order under section 161, 162 or 162.04 in respect of the person;
 - (d) the executive director has given a notice under section 162.01 to the person;
 - (e) criminal proceedings or proceedings in respect of a contravention of this Act or the regulations are about to be or have been commenced against the person, and the commission considers the proceedings to relate to a security or derivative or a matter relating to trading in securities or derivatives, or to relate to any business conducted by the person relating to securities or derivatives;
 - (f) the person fails or neglects to comply with financial conditions applicable to the person under this Act;
 - (g) the commission proposes to apply or has applied to the court for an order under section 157 in respect of the person, or the court has made an order under section 155.1 or 157 in respect of the person.
- (3) The commission may make an order under subsection (4) in respect of a family member or third-party recipient that received claimable property from a person if any of the following apply:

- (a) the commission proposes to order an investigation under section 142 in respect of the person;
 - (b) an investigation under section 142 or 147 has been ordered in respect of the person;
 - (c) the commission or the executive director proposes to make or has made an order under 161 (1) (g) in respect of the person;
 - (d) the commission proposes to apply or has applied to the court for an order under section 157 in respect of the person, or the court has made an order under section 155.1 or 157 in respect of the person.
- (4) In the circumstances set out in subsection (2) or (3), the commission may make one or more of the following orders relating to the preservation, management or disposition of property or the whole or a portion of an interest in property:
- (a) an order restraining the disposition or transmission of the property or the whole or the portion of the interest in property;
 - (b) an order for the possession, delivery to the commission or safekeeping of the property;
 - (c) an order for the disposition of the property or the whole or the portion of the interest in property in order to better preserve the value of the property or the whole or the portion of the interest in property;
 - (d) an order directing that money arising from a disposition of property or the whole or the portion of the interest in property under paragraph (c) be paid to the commission pending the conclusion of any matter or proceeding;
 - (e) an order the commission considers appropriate to prevent the property from being removed from British Columbia;
 - (f) an order the commission considers appropriate for the preservation of
 - (i) the property or the whole or the portion of the interest in property, or
 - (ii) the value of the property or of the whole or the portion of the interest in property.
- (5) In an order under this section in respect of property of a third-party recipient, with respect to the conduct or omission that is the subject of the proposed investigation, investigation or proceeding, the commission must specify,
- (a) in the case of conduct, the date the conduct first occurred or is suspected to have first occurred, or
 - (b) in the case of an omission, the date the person failed to act or is suspected to have failed to act.
- (6) An order of the commission under subsection (4) does not apply to funds, securities, derivatives or other property in a clearing agency or to securities in process of transfer by a transfer agent unless the order expressly states otherwise.

Preservation order made without notice

- 164.05** (1) Subject to subsection (2), the commission may make a preservation order without notice to any person.
- (2) A preservation order made without notice under subsection (1) in respect of a family member or third-party recipient may not be made for a period longer than 60 days.
- (3) The commission may extend a preservation order referred to in subsection (2)
- (a) for any period the commission considers appropriate, if
 - (i) the family member or third-party recipient has been notified under section 164.06, or
 - (ii) the commission is satisfied the family member or third-party recipient
 - (A) is unable to be located, despite reasonable efforts having been made to locate the person, or
 - (B) need not be notified because of exceptional circumstances, or
 - (b) for a period not longer than 90 days if the commission delays giving notice under section 164.06 (3).

Notification of order

- 164.06** (1) Subject to subsection (3) of this section, if the commission makes a preservation order under section 164.05 (1) in respect of property of any person, the commission must, as soon as practicable, notify the person that an order has been made and provide the person with a copy of the order.
- (2) If, under subsection (1), the commission must notify a third-party recipient, the commission must, in the notice,
- (a) state the specified date,
 - (b) explain the relevance of the specified date in determining claimable property that is subject to the preservation order, and
 - (c) include any other information prescribed by regulation.
- (3) The commission may delay notifying a person under subsection (1) if all of the following apply:
- (a) the preservation order is made in respect of a proposed investigation or investigation under section 142 or 147;
 - (b) the existence of the proposed investigation or investigation has not been disclosed to the person that is the subject of the proposed investigation or investigation;
 - (c) the commission considers that the public interest in keeping the proposed investigation or investigation confidential outweighs a person's interest in receiving notice.

Opportunity to be heard

164.07 (1) If a person that is subject to a preservation order requests an opportunity to be heard, the commission, after providing an opportunity to be heard, must revoke the preservation order with respect to an interest in property in either of the following circumstances:

- (a) the person satisfies the commission that
 - (i) the beneficial interest in the property is held in trust,
 - (ii) the beneficiary is not
 - (A) the person that is subject to an investigation or proceeding,
 - (B) a family member of that person, or
 - (C) a third-party recipient, and
 - (iii) the beneficial interest was not transferred to the beneficiary from
 - (A) the person that is subject to an investigation or proceeding,
 - (B) a family member of that person, or
 - (C) a third-party recipient;
- (b) in the case of a family member or third-party recipient, the family member or third-party recipient satisfies the commission that the property was acquired from the person that is subject to an investigation or proceeding for an amount that was equal to or greater than the fair market value of the property on the valuation date.

(2) If a family member or third-party recipient requests an opportunity to be heard, and the family member or third-party recipient satisfies the commission that

- (a) the current fair market value of all property of the family member or third-party recipient that is subject to the order significantly exceeds the total of all undervalue benefits the person realized in respect of claimable property, and
- (b) the current fair market value of the property that is to remain subject to the order is unlikely to diminish in value,

the commission must vary the order so that the current fair market value of all property that remains subject to the order does not significantly exceed the total of all undervalue benefits the person realized.

(3) Before revoking a preservation order under subsection (1) (a), the commission may require that the legal interest in the property, or the control, direction or possession of the property, be transferred to another person.

Powers

164.08 (1) The commission may file an order made under section 164.04 with the Supreme Court.

- (2) An order filed with the Supreme Court under subsection (1) has the same force and effect, and all proceedings may be taken on it, as if it were a judgment of that court.

Division 3 – Civil Actions and Forfeiture Orders

Joint and several liability

- 164.09** (1) If an order is made against a person under section 155.1 (b), 157 (1) (b) or 161 (1) (g), the commission may apply to the Supreme Court for an order under subsection (2) of this section if
- (a) the person transferred property
 - (i) to a family member at any time, or
 - (ii) to a third-party recipient on or after the date the unlawful activity occurred, and
 - (b) the family member or third-party recipient received an undervalue benefit as a result of the transfer.
- (2) In the circumstances described in subsection (1), the Supreme Court must order that the person and the family member, or the person and the third-party recipient, as the case may be, are jointly and severally liable to pay to the commission an amount equal to the lesser of
- (a) the undervalue benefit received by the family member or third-party recipient, and
 - (b) the amount specified in the order made under section 155.1 (b), 157 (1) (b) or 161 (1) (g).
- (3) Subsection (2) does not apply in respect of a third-party recipient if the third-party recipient proves that, at the time of the transfer of the property to the third-party recipient, the third-party recipient and the person were dealing with each other at arm's length.

Application for forfeiture order

- 164.10** (1) If an order is made against a person under section 155.1 (b), 157 (1) (b), 161 or 162, the commission may apply to the Supreme Court for an order forfeiting to the commission
- (a) the whole of an interest in property of the person, or
 - (b) a portion of an interest in property of the person.
- (2) If an order is made against a person under section 155.1 (b), 157 (1) (b) or 161 (1) (g), the commission may apply to the Supreme Court for an order forfeiting to the commission
- (a) the whole of an interest in property that is claimable property of a family member or third-party recipient, or

- (b) a portion of an interest in property that is claimable property of a family member or third-party recipient.
- (3) An application for a forfeiture order under this section applies only with respect to property or an interest in property located in British Columbia.

Parties and notification

164.11 In a proceeding commenced under section 164.10, the commission must do the following:

- (a) name as a party
 - (i) a person that is a registered owner of the whole or the portion of the interest in property that is the subject of the application for forfeiture, and
 - (ii) a person that the commission has reason to believe is an unregistered owner of the whole or the portion of the interest in property that is the subject of the application for forfeiture;
- (b) notify a person if required to do so by the court or the regulations;
- (c) notify a person in accordance with the regulations, unless the court orders a different manner of notification.

Forfeiture order

164.12 Subject to section 164.13,

- (a) if proceedings are commenced under section 164.10 (1), the court must make an order forfeiting to the commission the whole or the portion of an interest in property that the court finds is property of the person, or
- (b) if proceedings are commenced under section 164.10 (2), the court must make an order forfeiting to the commission the whole or the portion of an interest in property that the court finds is claimable property.

Relief from forfeiture

164.13 (1) If a court determines that the forfeiture of property or the whole or a portion of an interest in property under this Division is clearly not in the interests of justice, the court may do any of the following:

- (a) refuse to issue a forfeiture order;
 - (b) limit the application of the forfeiture order;
 - (c) put conditions on the forfeiture order.
- (2) In the case of claimable property, in addition to the grounds set out under subsection (1), the court may grant relief from forfeiture, if the family member or third-party recipient proves,
- (a) in the case of a family member or third-party recipient, the family member or third-party recipient did not, directly or indirectly, acquire the property from the person that contravened securities law,

- (b) in the case of a family member, the family member acquired the property for fair market value, or
- (c) in the case of a third-party recipient,
 - (i) the third-party recipient was the rightful owner of the property before the unlawful activity occurred,
 - (ii) the third-party recipient acquired the property for fair market value, or
 - (iii) at the time of the transfer of the property from the person to the third-party recipient, the third-party recipient and the person were dealing with each other at arm's length.

Effective date of forfeiture order

- 164.14** (1) A forfeiture order made with respect to property or the whole or a portion of an interest in property, as applicable, is effective,
- (a) in the case of real property or an interest in real property registered in the land title office,
 - (i) at the time a notice is filed under section 164.18 (1) with respect to the property or the whole or the portion of the interest in property, or
 - (ii) at the time the forfeiture order is filed in the land title office with respect to the property or the whole or the portion of the interest in property, if no notice is filed under section 164.18 (1), and
 - (b) subject to subsection (2), in the case of personal property that is not cash or the whole or a portion of an interest in personal property that is not cash, at the time a notice is registered under section 164.18 (2) with respect to the property or the whole or the portion of the interest in the property.
- (2) A forfeiture order made with respect to personal property, or the whole or a portion of an interest in personal property, that is cash or is or would be refused registration in the personal property registry by the registrar under the *Personal Property Security Act*, is deemed to be effective on the date that proceedings are commenced under section 164.10 or on the date that an order is made under section 164.04, whichever is earlier, and the forfeiture order is retroactive to the extent necessary to give it force and effect on and after the effective date.

Division 4 – Proceedings, Presumptions and Proof**Proceedings**

- 164.15** The commission may commence proceedings under this Part by
- (a) a petition proceeding or, if Rule 17-1 of the Supreme Court Civil Rules applies, a requisition proceeding, or
 - (b) an action.

Determination respecting property

164.16 In a proceeding under this Part, proof that a person

- (a) acquired the whole or the portion of an interest in property that is the subject of the proceedings,
- (b) caused an increase in the value of the interest or the portion of the interest in property that is the subject of the proceedings, or
- (c) caused a decrease of a debt obligation secured against the interest or the portion of the interest in property that is the subject of the proceedings,

is proof, in the absence of evidence to the contrary, that the whole or the portion of the interest in property that is the subject of the proceedings is property of the person.

Presumption of advancement

164.17 For the purposes of this Part, the presumption of advancement does not apply to a transfer of property or of an interest or a portion of an interest in property.

Filing notice in registries

- 164.18** (1) After making an order under section 164.04 or commencing a proceeding under section 164.10 that relates to real property or the whole or a portion of an interest in real property registered in the land title office, the commission may file, in the prescribed manner, in the land title office the prescribed form of notice setting out that proceedings under this Act may affect the real property or the whole or a portion of an interest in the real property referred to in the notice.
- (2) After making an order under section 164.04 or commencing a proceeding under section 164.10 that relates to personal property or the whole or a portion of an interest in personal property, the commission may register, in the prescribed manner, in the personal property registry the prescribed form of notice setting out that proceedings under this Act may affect the personal property or the whole or a portion of an interest in the personal property referred to in the notice.
- (3) The commission may amend, extend or cancel a notice referred to in subsection (1) or (2) by filing or registering, in the same manner as the notice was filed or registered, the amendment, extension or cancellation in the land title office or the personal property registry, as applicable.
- (4) The registrar under the *Land Title Act* must register a notice referred to in subsection (1), and an amendment, extension or cancellation of the notice, if
- (a) the notice, amendment, extension or cancellation is filed in the prescribed manner, and
 - (b) the prescribed fee, if any, is paid to the registrar.
- (5) A notice and an amendment or extension of a notice registered under subsection (4) has the same effect as a certificate of pending litigation registered under the *Land Title Act*.

Division 5 – General Provisions

Dealing with property

164.19 The commission may administer and dispose of property or the whole or a portion of an interest in property under this Act in accordance with the orders of the court, this Act and the regulations.

Obligations of commission on forfeiture

164.20 If property or the whole or a portion of an interest in property is forfeited under this Act, the commission does not, as a result of the forfeiture, assume responsibility for any covenants, debts or other obligations under an encumbrance, lien or other security interest to which the property or the whole or the portion of the interest in property is subject.

81 *Section 165 is amended*

(a) *in subsection (8) by adding “, trade repository” after “quotation and trade reporting system”, and*

(b) *by adding the following subsection:*

(9) On application or on its own motion, the commission may extend the period in subsection (2) or (3) to a date the commission considers appropriate.

82 *Section 166 (3) is amended by adding “and (9)” after “section 165 (2) to (5)”.*

83 *Section 167.7 is amended by adding “and (9)” after “section 165 (3) to (6)”.*

84 *The following sections are added:*

Aiding, abetting and counselling contraventions

168.01 A person must not do or omit to do anything the person knows or reasonably should know aids, abets or counsels a contravention of the Act, the regulations or a decision of the commission or the executive director.

Custody of property

168.02 If a person is required under this Act to hold another person’s property in trust or separate and apart from the person’s own property, the person must not convert the other person’s property or any part of it to a use that is not permitted under this Act.

Conspiracy

168.03 A person must not conspire with another person to contravene this Act, the regulations or a decision of the commission or the executive director.

Protection of employee from reprisals

- 168.04** (1) A person must not take any of the following measures of reprisal against another person, or counsel or direct that any of the following measures of reprisal be taken against the other person, solely by reason that the other person has, in good faith, sought advice about making a disclosure, expressed an intent to make a disclosure or made a disclosure to the commission, a recognized self-regulatory body or a law enforcement agency, gave evidence at a hearing or similar proceeding, or cooperated with a review, investigation, examination or inspection under this Act, in relation to criminal law relating to securities or derivatives or under the bylaws or similar instruments of a recognized self-regulatory body:
- (a) a disciplinary measure;
 - (b) a demotion;
 - (c) a termination of employment or a contract;
 - (d) any measure that adversely affects the other person's employment or working conditions;
 - (e) a threat to take any of the measures referred to in paragraphs (a) to (d).
- (2) In a proceeding relating to a contravention of subsection (1), it is not necessary to prove that the other person
- (a) made, may have made or intended to make a disclosure, or
 - (b) cooperated with a review, investigation, examination or inspection.

Civil remedies not limited

- 168.05** Section 168.04 does not limit a person's right to any other remedy that the person may have, including, in the case of an employee, the employee's right to a remedy available to the employee under a collective agreement or another contract.

85 Section 168.1 (1) is amended

- (a) *in paragraph (a) by striking out "submit or give information under this Act" and substituting "submit or give information", and*
- (b) *in paragraph (b) by striking out "required to be" and by striking out "under this Act" and substituting "under this Act, or in relation to a service provided by the commission,".*

86 Section 169.1 is amended

- (a) *in subsection (1) by adding the following paragraphs:*
 - (a.2) a benchmark administrator,
 - (a.3) a benchmark contributor,
 - (a.4) an information processor,
 - (a.5) a trade repository, ,

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- (b) in subsection (3) by striking out “clearing agency or self regulatory body,” and substituting “clearing agency, self-regulatory body or trade repository,”*
- (c) in subsection (3) (a) by striking out “trade reporting system or clearing agency” and substituting “trade reporting system, clearing agency or trade repository,”*
- (d) in subsection (4) by striking out “clearing agency or self regulatory body,” and substituting “clearing agency, self-regulatory body or trade repository,” and*
- (e) in subsection (4) (a) by striking out “trade reporting system or clearing agency” and substituting “trade reporting system, clearing agency or trade repository.”*

87 *The following section is added:*

Compulsion protection

170.1 A member, officer, employee or agent of the commission must not be required to testify or produce evidence in any proceeding, other than a criminal proceeding or a proceeding under this Act, respecting information or a record or thing obtained in the exercise or intended exercise of a power or the performance or intended performance of a duty under this Act.

88 *Section 175 (1) (a) is amended by striking out “section 142” and substituting “section 142 or 143.1”.*

89 *The following section is added:*

Receiver manager

- 179.1**
- (1) If any of the circumstances referred to in section 164.04 (2) or (3) exist, the commission may apply to the Supreme Court for an order appointing a person to act as a receiver, receiver manager or trustee for property or the whole or a portion of an interest in property of a person.
 - (2) A person appointed to act as a receiver, receiver manager or trustee under this section is the receiver, receiver manager or trustee of the property or the whole or a portion of the interest in property specified by the court.
 - (3) If directed by the court, a receiver, receiver manager or trustee
 - (a) may receive and hold property or the whole or a portion of an interest in property and dispose of property or the whole or a portion of an interest in property in the ordinary course of business,
 - (b) has the authority to manage the business and affairs conducted in relation to the property or the whole or a portion of the interest in property of the person named, and
 - (c) has all the incidental powers necessary to hold and manage the property or the whole or a portion of the interest in property.

- (4) The commission may make an application under this section without notice to any other person and, in that event, the court may make a temporary order under subsection (2) appointing a receiver, receiver manager or trustee for a period not longer than 15 days.

90 *Section 181 is amended by adding “in this Act” after “a reference to a specific record”.*

91 *The following section is added:*

Reference to administration includes enforcement

181.1 For greater certainty, in this Act, a reference to the administration of this Act includes the enforcement of this Act.

92 *Section 183 is amended*

(a) by adding the following paragraphs:

- (2.1) respecting any matter necessary or advisable to regulate derivatives, including, but not limited to,
- (i) rules that refer to a derivative, or a class of derivatives, designated by the commission,
 - (ii) prohibiting a derivative, or a class of derivatives, from being traded, or
 - (iii) prescribing different requirements, restrictions or prohibitions for different classes of persons involved in trading derivatives;
- (2.2) respecting any matter necessary or advisable to regulate benchmarks, benchmark administrators or benchmark contributors, including, but not limited to,
- (i) regulations that refer to a benchmark or benchmark administrator, or a class of benchmarks or benchmark administrators, designated by the commission,
 - (ii) the methodology or method used by a benchmark administrator to determine or distribute a benchmark,
 - (iii) prohibiting a person or class of persons from using a benchmark that has not been designated by the commission under section 187,
 - (iv) prescribing different requirements or restrictions for different classes of benchmark administrators, benchmark contributors or benchmark users, or
 - (v) requiring a person or class of persons to provide information to a benchmark administrator;
- (2.3) respecting any matter necessary or advisable to regulate information processors, including, but not limited to, regulations that refer to an information processor or class of information processors, designated by the commission; ,
-

(b) by adding the following paragraph:

- (5.01) respecting expenditures under section 15 (3) (e), (f) or (g), including
- (i) prescribing circumstances in which money may be expended,
 - (ii) restricting the amount that may be paid to a person,
 - (iii) prohibiting expenditures to a class of persons or prohibiting all expenditures under subsection (3) (e), (f) or (g) of that section, or
 - (iv) prescribing different restrictions or prohibitions for or in respect of different classes of persons; ,

(c) in paragraph (9) by striking out “securities and funds” and substituting “securities, derivatives or funds”;

(d) by adding the following paragraph:

- (12.2) prescribing different requirements, restrictions or prohibitions for different classes of persons engaging in promotional activities; ,

(e) in paragraph (21) by striking out “or trading a security before,” and substituting “or trading a security or entering into a transaction involving a related financial instrument before,”;

(f) in paragraph (21) by striking out “and” at the end of subparagraph (iii), by adding “, and” at the end of subparagraph (iv) and by adding the following subparagraph:

- (v) prescribing circumstances in which an offer to acquire, acquisition, redemption, business combination or related party transaction must not proceed without the approval of the issuer’s security holders or a specified class or group of security holders, and defining for specified types of circumstances what constitutes approval by the security holders; ,

(g) in paragraph (22) by striking out “and” at the end of subparagraph (i), by adding “, and” at the end of subparagraph (ii) and by adding the following subparagraph:

- (iii) prescribing restrictions or requirements relating to the solicitation, collection, submission, tabulation or validation of proxy votes and voting instructions; ,

(h) by adding the following paragraph:

- (22.1) prescribing matters relating to conflicts of interest requiring approval of a reporting issuer’s security holders and what constitutes approval by the security holders for different types of matters, including prescribing classes of security holders that are, or are not, entitled to participate in the determination of security holder approval with respect to a matter; ,

(i) by repealing paragraph (24) and substituting the following:

(24) prescribing the principles for determining the market value, market price or closing price of a security or derivative, the financial exposure of a person under a derivative or the net asset value of a security;

(24.01) authorizing the commission to determine the market value, market price or closing price of a security or derivative, the financial exposure of a person under a derivative or the net asset value of a security; ,

(j) in paragraph (27.1) by adding “or loss” after “profit”,**(k) in paragraph (36.1) by striking out “transparency or the clearing” and substituting “transparency, the consolidation of data relating to the trading in securities or derivatives or the clearing”, and****(l) by adding the following paragraphs:**

(49.1) respecting the registration under the *Personal Property Security Act* of a notice under section 164.18 (2) of this Act, and the legal effect of that registration;

(49.2) respecting the disposition of

(i) a property forfeited to the commission or a property in which an interest in property or a portion of an interest in property is forfeited to the commission, or

(ii) an interest in property or a portion of an interest in property that is forfeited to the commission; .

93 Section 184 (2) is amended

(a) in paragraph (b) by striking out “sections 143 (4) and 183” and substituting “sections 141 (2) (y), 143 (4), 143.1 (6), 162.01, 163.2 (2) and (3), 164.06 (2) (b), 164.18 (1), (2) and (4) (b) and 183”, and

(b) in paragraph (c) by striking out “section 183 (1), (2), (6) to (25),” and substituting “section 183 (1), (2), (2.1), (2.2), (2.3), (6) to (24), (25),”.

94 Section 187 (1) is amended by striking out “and” at the end of paragraph (c) and by adding the following paragraph:

(c.1) designate

(i) a derivative or class of derivatives for the purposes of a rule contemplated by section 183 (2.1) (i),

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- (ii) a benchmark, benchmark administrator, class of benchmarks or class of benchmark administrators for the purposes of a rule contemplated by section 183 (2.2) (i),
- (iii) an information processor or class of information processors for the purposes of a rule contemplated by section 183 (2.3),
- (iv) a credit rating organization or class of credit rating organizations for the purposes of a rule contemplated by section 183 (9.1), or
- (v) a person or class of persons for the purposes of a rule contemplated by section 183 (41) (ii), and .

95 *The provisions listed in Column 1 of the Schedule are amended by striking out “exchange contracts” wherever it appears and substituting “derivatives”.*

96 *The provisions listed in Column 2 of the Schedule are amended by striking out “exchange contract” wherever it appears and substituting “derivative”.*

97 *The provisions listed in Column 3 of the Schedule are amended by striking out “self regulatory” wherever it appears and substituting “self-regulatory”.*

Consequential and Related Amendments

Court Order Enforcement Act

98 *The Court Order Enforcement Act, R.S.B.C. 1996, c. 78, is amended in section 71.3 (3) by striking out “or” at the end of paragraph (c), by adding “or” at the end of paragraph (d) and by adding the following paragraph:*

- (e) to an enforcement process arising from an order made under the *Securities Act*.

Limitation Act

99 *The Limitation Act, S.B.C. 2012, c. 13, is amended in section 3 (1) by adding the following paragraph:*

- (o) fines or penalties under the *Securities Act* or a claim for an amount payable pursuant to an order made under section 155.1 (b), 157 (1) (b), 161 (1) (g) or 164.09 of that Act.

Mortgage Brokers Act

100 *The Mortgage Brokers Act, R.S.B.C. 1996, c. 313, is amended in section 7 (8) by striking out “section 152” and substituting “section 179.1”.*

Commencement

101 This Act comes into force by regulation of the Lieutenant Governor in Council.

SCHEDULE

(Sections 95 to 97)

Column 1 Provision	Column 2 Provision	Column 3 Provision
1 (1), in the definitions of “dealer”, “private mutual fund”, “salesperson” and “securities regulatory authority”	1 (1), in paragraph (a) of the definition of “related financial instrument” and in paragraph (c) of the definition of “trade”	1 (1), in the definition of “auditor oversight body”
4 (9)	34 (1) (a)	24 (a)
25.1	48 (1) (a)	26 (1)
27 (1) (d)	49 (2) and (5) (b)	28 (2) (b) and (3) (a)
35 (2) (a)	60 (1) (a)	32 (2), (3) and (4) (a) and (b)
36 (1) (b)	157 (1) (d), (e) and (f)	141.2 (1) (c)
48 (1) (b)	161 (1) (b)	153 (1) (a)
49 (3) (a) (i) and (5) (a) and (c)	167.5 (1) (b)	161 (6) (c) and (d) and (7) (b)
60 (1) (b)	167.6 (1)	163 (1.1) to (1.3)
141 (1)	183	165 (8)
142 (1)	187	169.1
147 (1)		183 (6)
153 (2)		
157 (1) (c)		
161 (1) (b) and (6)		
167.1 (1), in the definition of “extraprovincial securities laws”		
169.1 (5)		
176 (1) (b)		
183		
184 (1)		
187		