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**SECURITIES AMENDMENT ACT, 2006****CHAPTER 32***Assented to May 18, 2006*

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) by repealing the definitions of “director”, “insider”, “officer” and “senior officer” and substituting the following:*

“**director**” means a director of a corporation or an individual performing a similar function or occupying a similar position for a corporation or for any other person;

“**insider**” means

- (a) a director or an officer of an issuer,
- (b) a director or an officer of a person that is itself an insider or a subsidiary of an issuer,
- (c) a person that has
  - (i) beneficial ownership of, or control or direction over, directly or indirectly, or
  - (ii) a combination of beneficial ownership of, and control or direction over, directly or indirectly,

securities of an issuer carrying more than 10% of the voting rights attached to all the issuer’s outstanding voting securities, excluding, for the purpose of the calculation of the percentage held, any securities held by the person as underwriter in the course of a distribution,

- (d) an issuer that has purchased, redeemed or otherwise acquired a security of its own issue, for so long as it continues to hold that security,
- (e) a person designated as an insider in an order made under section 3.2, or
- (f) a person that is in a prescribed class of persons;

“**officer**”, with respect to an issuer or a registrant, means

- (a) a chair or vice chair of the board of directors, or a chief executive officer, chief operating officer, chief financial officer, president, vice president, secretary, assistant secretary, treasurer, assistant treasurer or general manager,
- (b) an individual who is designated as an officer under a bylaw or similar authority of the registrant or issuer, or

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- (c) an individual who performs functions similar to those normally performed by an individual referred to in paragraph (a) or (b); ,

**(b) by repealing the definition of “material change” and substituting the following:**

**“material change”** means,

- (a) if used in relation to an issuer other than an investment fund,
  - (i) a change in the business, operations or capital of the issuer that would reasonably be expected to have a significant effect on the market price or value of a security of the issuer, or
  - (ii) a decision to implement a change referred to in subparagraph (i) made by
    - (A) the directors of the issuer, or
    - (B) senior management of the issuer who believe that confirmation of the decision by the directors is probable, and
- (b) if used in relation to an investment fund,
  - (i) a change in the business, operations or affairs of the investment fund that would be considered important by a reasonable investor in determining whether to purchase or continue to hold a security of the investment fund, or
  - (ii) a decision to implement a change referred to in subparagraph (i) made
    - (A) by the directors of the investment fund or the directors of the investment fund manager,
    - (B) by senior management of the investment fund who believe that confirmation of the decision by the directors is probable, or
    - (C) by senior management of the investment fund manager who believe that confirmation of the decision by the directors of the manager is probable; ,

**(c) by adding the following definitions:**

**“economic interest”** means

- (a) a right to receive or the opportunity to participate in a reward, benefit or return from a security or an exchange contract, or
- (b) the exposure to a risk of a financial loss in respect of a security or an exchange contract;

**“related financial instrument”** means

- (a) an instrument, agreement, security or exchange contract the value, market price or payment obligations of which are derived from, referenced to or based on the value, market price or payment obligations of a security, or

- (b) any other instrument, agreement or understanding that affects, directly or indirectly, a person's economic interest in respect of a security or an exchange contract; ,

*(d) by adding the following definitions:*

**“investment fund”** means a mutual fund or a non-redeemable investment fund;

**“investment fund manager”** means a person that directs the business, operations or affairs of an investment fund;

**“non-redeemable investment fund”** means

(a) an issuer

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

(ii) that does not invest

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

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

(iii) that is not a mutual fund,

(b) an issuer designated in an order made under section 3.2, and

(c) an issuer that is in a class of prescribed issuers,

but does not include an issuer, or a class of issuers, described in an order made under section 3.1;

**“securities regulatory authority”** means a person empowered by the laws of a jurisdiction to regulate trading in securities or exchange contracts or to administer or enforce laws respecting trading in securities or exchange contracts; ,

*(e) in the definition of “futures contract” by striking out “that the commission may make” and substituting “made”;*

*(f) in the definition of “mutual fund” by striking out “includes” and substituting “means”;*

*(g) in the definition of “mutual fund” by striking out “that the commission may make” in both places and substituting “made”;*

*(h) in paragraph (b) of the definition of “reporting issuer” by striking out “obtained” and substituting “the executive director has issued”;*

*(i) in paragraph (e) of the definition of “reporting issuer” by striking out “which the commission may make for the purpose of this definition,” and substituting “made under section 3.2,” and*

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*(j) by repealing paragraph (g) of the definition of “underwriter” and substituting the following:*

*(g) a bank with respect to prescribed securities or banking transactions; .*

**2 Section 2 (2) and (3) is repealed.**

**3 Section 3 is amended**

*(a) by striking out “sections 86 and 136” and substituting “sections 57.2 and 136”, and*

*(b) by striking out “a reporting issuer” and substituting “an issuer” and by striking out “the reporting issuer” wherever it appears and substituting “the issuer”.*

**4 Section 3.1 (1) is amended**

*(a) by striking out “or” at the end of paragraph (a),*

*(b) by adding “, or” at the end of paragraph (b), and*

*(c) by adding the following paragraph:*

*(c) an issuer, or a class of issuers, is not a non-redeemable investment fund.*

**5 Section 3.2 (1) is repealed and the following substituted:**

*(1) If the commission considers it to be in the public interest, the commission may, for the purposes of this Act, order that a person is*

*(a) an insider,*

*(b) a mutual fund,*

*(c) a non-redeemable investment fund, or*

*(d) a reporting issuer.*

**6 Section 4 (9.1) is repealed.**

**7 Section 4.1 is repealed and the following substituted:**

**Application of Administrative Tribunals Act to commission**

**4.1** Sections 1 to 6, 7 (1) and (2), 8, 43, 46 and 55 of the *Administrative Tribunals Act* apply to the commission.

**8 Section 12 is repealed.**

**9 Section 15 is amended**

*(a) in subsection (1) by striking out “or” at the end of paragraph (a) and by repealing paragraph (b),*

*(b) in subsection (3) by striking out “as revenue from administrative penalties under section 162” and substituting “under section 155.1 (b), 157 (1) (b) or 162”,*

*(c) by adding the following subsection:*

- (3.1) The commission may not expend money received under section 155.1 (b) or 157 (1) (b) unless the period referred to in section 15.1 (5) has expired. , *and*

*(d) by repealing subsection (4).*

**10** *The following section is added:*

**Claim for wrongful benefit**

- 15.1** (1) The commission must notify the public in accordance with the regulations if the commission receives money from an order made under section 155.1 (b) or 157 (1) (b).
- (2) A person that makes a claim to money held by the commission under this section must file the claim in the Supreme Court within 3 years from the date of the first notification made under subsection (1) and file a copy of the claim with the commission.
- (3) If the commission receives a copy of a claim under subsection (2), it must pay into court all of the money the commission receives from an order made under section 155.1 (b) or 157 (1) (b).
- (4) If the commission has paid money into court under subsection (3), any money remaining after the court has adjudicated all claims made under subsection (2) in relation to the money must be paid to the commission.
- (5) After 3 years from the date of the first notification made under subsection (1), the commission may retain any money not claimed under subsection (2).

**11** *Sections 34 (2) and 37 are repealed.*

**12** *Section 36 (1) (c) is amended by striking out “the registration exemptions described in sections 44 to 46 or any of”.*

**13** *Section 41 is repealed and the following substituted:*

**Surrender of registration**

- 41** (1) If a registrant applies to surrender registration, the executive director must accept the surrender unless the executive director considers it prejudicial to the public interest to do so.
- (2) On receiving an application under subsection (1), the executive director may, without providing an opportunity to be heard, suspend the registration or impose conditions or restrictions on the registration.

**14** *Sections 43 to 47 and 51 (1) are repealed.*

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**15** *Section 49 (3) is amended by striking out “or” at the end of paragraph (a) (ii) and by repealing paragraph (b).*

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

- (2) A person must not make a statement about something that a reasonable investor would consider important in deciding whether to enter or maintain a trading or advising relationship with the person if the statement is untrue or omits information necessary to prevent the statement from being false or misleading in the circumstances in which it is made.

**17** *The following sections are added to Part 7:*

**Insider trading, tipping and recommending**

- 57.2** (1) In this section, “**issuer**” means
- (a) a reporting issuer, or
  - (b) any other issuer whose securities are publicly traded.
- (2) A person must not enter into a transaction involving a security of an issuer, or a related financial instrument of a security of an issuer, if the person
- (a) is in a special relationship with the issuer, and
  - (b) knows of a material fact or material change with respect to the issuer, which material fact or material change has not been generally disclosed.
- (3) An issuer or a person in a special relationship with an issuer must not inform another person of a material fact or material change with respect to the issuer unless
- (a) the material fact or material change has been generally disclosed, or
  - (b) informing the person is necessary in the course of business of the issuer or of the person in the special relationship with the issuer.
- (4) A person who proposes to
- (a) make a take over bid, as defined in section 92, for the securities of an issuer,
  - (b) become a party to a reorganization, amalgamation, merger, arrangement or similar business combination with an issuer, or
  - (c) acquire a substantial portion of the property of an issuer,
- must not inform another person of a material fact or material change with respect to the issuer unless
- (d) the material fact or material change has been generally disclosed, or
  - (e) informing the person is necessary to effect the take over bid, business combination or acquisition.

- (5) If a material fact or material change with respect to an issuer has not been generally disclosed, the issuer, or a person in a special relationship with the issuer with knowledge of the material fact or material change, 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.

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- 57.3** (1) In this section:

**“investor”** means a person

- (a) who has indicated an intention to purchase or trade a security or an exchange contract, 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 or an exchange contract, 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 significantly affect the market price of the security or the exchange contract;

**“order”** means an order to purchase or trade a security or an exchange contract.

- (2) For the purposes of this section, a person is connected to an investor if the person
- (a) is an insider, affiliate or associate of the investor,
  - (b) is an investment fund manager of the investor,
  - (c) is engaging or proposes to engage in a trading or advising relationship with or on behalf of the investor or a person referred to in paragraph (a) or (b),
  - (d) is a director, officer or employee of the investor or of a person described in paragraph (a), (b) or (c),
  - (e) knows of material order information relating to the investor, having acquired the knowledge while in a relationship described in paragraph (a), (b), (c) or (d), or
  - (f) knows of material order information relating to the investor, having acquired the knowledge from another person at a time when
    - (i) that other person was connected to the investor, whether under this paragraph or any of paragraphs (a) to (e), and
    - (ii) the person that acquired knowledge of the material order information from that other person knew or reasonably ought to have known of the connection referred to in subparagraph (i).
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- (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 or an exchange contract that is the subject of the material order information, or
  - (b) a related financial instrument of a security or an exchange contract referred to in paragraph (a).
- (4) A person that is connected to an investor must not inform another person of material order information relating to the investor unless it is necessary in the course of the business of the person or the investor.
- (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 or an exchange contract that is the subject of the material order information, or
  - (b) a related financial instrument of a security or an exchange contract referred to in paragraph (a).

**Defences**

- 57.4**
- (1) A person does not contravene section 57.2 (2) or 57.3 (3) if, at the time the person enters into the transaction involving the security, exchange contract or related financial instrument, the person reasonably believes that the other party to the transaction knows of the material fact, material change or material order information.
  - (2) A person does not contravene section 57.2 (3) or (4) or 57.3 (4) if, at the time the person informs the other person of the material fact, material change or material order information, the person reasonably believes that the other person knows of the material fact, material change or material order information.
  - (3) A person does not contravene section 57.2 (2) or 57.3 (3) if the person
    - (a) enters into the transaction under a written automatic dividend reinvestment plan, written automatic purchase plan or other similar written automatic plan, in which the person agreed to participate before obtaining knowledge of the material fact, material change or material order information, or
    - (b) enters into the transaction as a result of a written legal obligation
      - (i) imposed on the person, or
      - (ii) that the person entered into before obtaining knowledge of the material fact, material change or material order information.

- (4) A person does not contravene section 57.2 (2) or 57.3 (3) if the person entered into the transaction
- (a) as agent under the specific unsolicited instructions of the principal,
  - (b) as agent under specific instructions that the agent solicited from the principal before obtaining knowledge of the material fact, material change or material order information,
  - (c) as agent or trustee for another person because of that other person's participation in a written automatic dividend reinvestment plan, written automatic purchase plan or other similar written automatic plan, or
  - (d) as agent or trustee for another person to fulfill a written legal obligation of the other person.
- (5) A person that is not an individual does not contravene section 57.2 (2) or (5) or 57.3 (3) or (5) if no individual involved in making the decision to enter into the transaction or make the recommendation on behalf of the person
- (a) has knowledge of the material fact, material change or material order information, and
  - (b) is acting on the recommendation or encouragement of an individual who has that information.
- (6) A person does not contravene section 57.3 (3), (4) or (5) if, at the time the person
- (a) enters into the transaction involving the security, exchange contract or related financial instrument,
  - (b) informs another person of the material order information, or
  - (c) recommends or encourages another person to enter into a transaction,
- the person reasonably believes that the investor has consented to the person entering into the transaction or informing, recommending or encouraging.

**18** *Sections 63 (3) and (4), 66 to 71 and 73 to 75 are repealed.*

**19** *Section 77 is repealed and the following substituted:*

**List of defaulting reporting issuers**

**77** The commission may publish a list of defaulting reporting issuers.

**20** *Sections 79 and 80 are repealed.*

**21** *Section 81 is amended by striking out “according to the record maintained in section 80.” and substituting “in accordance with the regulations.”*

**22** *Sections 83 and 84.1 are repealed.*

**23 Section 85 is repealed and the following substituted:****Continuous disclosure**

- 85** A reporting issuer must, in accordance with the regulations,
- (a) provide prescribed periodic disclosure about its business and affairs,
  - (b) provide disclosure of a material change, and
  - (c) provide other prescribed disclosure.

**24 Section 86 is repealed.****25 Section 87 is repealed and the following substituted:****Initial and subsequent insider report**

- 87** (1) In this section, “**reporting issuer**” does not include a mutual fund.
- (2) An insider of a reporting issuer must, in accordance with the regulations,
- (a) file reports disclosing the insider’s
    - (i) beneficial ownership of, or control or direction over, directly or indirectly, securities of the issuer, and
    - (ii) interest in, or right or obligation associated with, a related financial instrument of a security of the issuer, and
  - (b) make other prescribed disclosure.

**26 Section 87.1 is repealed.****27 Section 92 is repealed and the following substituted:****Definitions**

**92** In this Part:

“**interested person**” means

- (a) an issuer whose securities are the subject of a take over bid, issuer bid or other offer to acquire,
- (b) a security holder, director or officer of an issuer referred to in paragraph (a),
- (c) an offeror,
- (d) the executive director, and
- (e) any person not referred to in paragraphs (a) to (d) who, in the opinion of the commission or the Supreme Court, as the case may be, is a proper person to make an application under section 114 or 115;

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

- (a) made by the issuer of the security, and
- (b) within a prescribed class of offers, acquisitions or redemptions;

**“take over bid”** means a direct or indirect offer to acquire a security that is

- (a) made by a person other than the issuer of the security, and
- (b) within a prescribed class of offers to acquire.

**28** *Sections 93 to 97 are repealed.*

**29** *Sections 98 and 99 are repealed and the following substituted:*

**Making a bid**

- 98** A person must not make a take over bid or an issuer bid, whether alone or acting jointly or in concert with one or more persons, except in accordance with the regulations.

**Recommendation relating to bid**

- 99** (1) When a take over bid has been made, the directors of the issuer whose securities are the subject of the take over bid must
- (a) determine whether to recommend acceptance or rejection of the take over bid or determine not to make a recommendation, and
  - (b) make the recommendation, or a statement that they are not making a recommendation, in accordance with the regulations.
- (2) An individual director or officer of the issuer whose securities are the subject of a take over bid may recommend acceptance or rejection of the take over bid if the recommendation is made in accordance with the regulations.

**30** *Sections 100 to 113 are repealed.*

**31** *Sections 114 and 115 are repealed and the following substituted:*

**Applications to the commission**

- 114** (1) On application by an interested person, if the commission considers that a person has not complied or is not complying with a requirement under this Part, the commission may make an order
- (a) restraining the distribution of any record used or issued in connection with a take over bid or an issuer bid,
  - (b) requiring an amendment to or variation of any record used or issued in connection with a take over bid or an issuer bid and requiring the distribution of amended, varied or corrected information,
  - (c) directing any person to comply with a requirement under this Part,
  - (d) restraining any person from contravening a requirement under this Part, or
  - (e) directing the directors and officers of any person to cause the person to comply with or to cease contravening a requirement under this Part.

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- (2) On application by an interested person or on the commission's own motion, the commission may order that a person is exempt from any requirement under this Part if the commission considers that it would not be prejudicial to the public interest to do so.

**Applications to the court**

- 115** (1) On application by an interested person, if the Supreme Court is satisfied that a person has not complied with a requirement under this Part, the Supreme Court may make whatever interim or final order the Supreme Court thinks fit, including, without limitation, an order
- (a) compensating any interested person who is a party to the application for damages suffered as a result of a contravention of a requirement of this Part or the regulations,
  - (b) rescinding a transaction with any interested person, including the issue of a security or an acquisition and sale of a security,
  - (c) requiring any person to dispose of any securities acquired in connection with a take over bid or an issuer bid,
  - (d) prohibiting any person from exercising any or all of the voting rights attaching to any securities, or
  - (e) requiring the trial of an issue.
- (2) If, in a proceeding under subsection (1), the executive director is not the applicant, the executive director
- (a) must be given notice of the application, and
  - (b) may appear at the proceeding as a party.

**32** *Section 116 is amended by repealing the definition of "solicit".*

**33** *Sections 120 to 122, 124, 126, 127 and 129 are repealed.*

**34** *Section 123 is repealed.*

**35** *Section 125 is repealed and the following substituted:*

**Standard of care for investment fund manager**

- 125** Every investment fund manager must
- (a) exercise the powers and discharge the duties of its office honestly, in good faith and in the best interests of the investment fund, and
  - (b) exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances.

**36** *Section 128 is repealed.*

**37** *Part 15 is amended by adding the following section:*

**Independent committee for mutual funds**

**130.1** A prescribed requirement of this Part does not apply to a mutual fund or a class of mutual funds, or a responsible person, with respect to a transaction or a class of transactions if, in accordance with the regulations, the mutual fund has established an independent committee and

- (a) the independent committee has approved the transaction, or
- (b) the transaction is within a class of transactions approved by the independent committee.

**38** *Section 130.1 is repealed.*

**39** *Section 131 (1) (b) is amended*

*(a) by repealing subparagraph (ii) and substituting the following:*

- (ii) every underwriter that is in a contractual relationship with the issuer or selling security holder on whose behalf the distribution is made, ,  
*and*

*(b) in subparagraph (iv) by striking out “consent has been filed as prescribed,” and substituting “consent to disclosure of information in the prospectus has been filed,”.*

**40** *Section 132 is amended*

*(a) in subsections (1) and (3) by striking out “sent under Part 13” and substituting “is required to be sent under the regulations and that document”, and*

*(b) by repealing subsection (12).*

**41** *Section 135 is amended*

*(a) in paragraph (a) by striking out “or any amendment to a prospectus was required under section 83” and substituting “was required under the regulations” and by striking out “or amendment”, and*

*(b) in paragraph (b) by striking out “Part 13 to be delivered” and substituting “the regulations to be sent” and by striking out “not delivered,” and substituting “not sent,”.*

**42 Section 136 is repealed and the following substituted:****Liability for insider trading, tipping and recommending**

- 136** (1) If an issuer, or a person in a special relationship with an issuer, contravenes section 57.2, a person referred to in subsection (2) of this section has a right of action against the issuer or the person in a special relationship with the issuer.
- (2) A person may recover losses incurred in relation to a transaction involving a security of the issuer, or a related financial instrument of a security of the issuer, if the transaction was entered into during the period
- (a) starting when the contravention occurred, and
  - (b) ending at the time the material fact or material change is generally disclosed.
- (3) If a court finds a person liable in an action under subsection (1), the amount payable to the plaintiff by the person is the lesser of
- (a) the losses incurred by the plaintiff, and
  - (b) an amount determined in accordance with the regulations.
- (4) For the purposes of subsection (1), in determining the losses incurred by a plaintiff, a court must not include an amount that the defendant proves is attributable to a change in the market price of the security that is unrelated to the material change or the material fact.

**Accounting for benefits**

- 136.1** (1) If a person is an insider, affiliate or associate of an issuer, and if the person contravenes section 57.2, the person must pay to the issuer an amount equal to
- (a) the benefit that the person received as a result of the contravention, and
  - (b) the benefit that any other person received as a result of the contravention.
- (2) If a person contravenes section 57.3, the person must pay to the investor, as defined in that section, an amount equal to
- (a) the benefit that the person received as a result of the contravention, and
  - (b) the benefit that any other person received as a result of the contravention.

**Due diligence defence for insider trading**

- 136.2** A person is not liable under section 136 or 136.1 (1) if, after a reasonable investigation occurring before the person
- (a) entered into the transaction,
  - (b) informed another person of the material fact or material change, or
  - (c) recommended or encouraged a transaction,
- the person had no reasonable grounds to believe that the material fact or material change had not been generally disclosed.

**43 Section 137 is amended**

- (a) *by striking out* “the reporting issuer” *wherever it appears and substituting* “the issuer”,
- (b) *in subsection (1) (b) (i) by striking out* “(2) or (3)”,
- (c) *in subsection (1) by striking out* “136 (5)” *wherever it appears and substituting* “136.1 (1)”,
- (d) *in subsection (2) by striking out* “136 (4)” *wherever it appears and substituting* “136.1 (2)”,
- (e) *in subsections (2), (7) and (8) by striking out* “mutual fund” *wherever it appears and substituting* “investor”,
- (f) *in subsections (3) to (5) by striking out* “136 (4) or (5)” *and substituting* “136.1 (1) or (2)”, *and*
- (g) *in subsection (6) by striking out* “a reporting issuer” *and substituting* “an issuer”.

**44 Section 139 is repealed.****45 Section 141 (2) is amended**

- (a) *by repealing paragraph (e) and substituting the following:*
  - (e) an investment fund manager or a custodian of assets, shares or units of an investment fund; , *and*
- (b) *by repealing paragraph (g) (i) and substituting the following:*
  - (i) from section 61, or.

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

- (a) *by repealing subparagraph (v) and substituting the following:*
  - (v) an investment fund manager or a custodian of assets of an investment fund, or, *and*
- (b) *in subparagraph (vi) by striking out* “a mutual fund” *and substituting* “an investment fund”.

**47 Section 155 (1) (b) is amended**

- (a) *by adding, in numerical order, “57.2,” and “57.3,”*
- (b) *by striking out* “70 (1),”,
- (c) *by striking out* “85,” *and substituting* “85 (b),”,
- (d) *by striking out* “86 to 87.1,” *and substituting* “87,”
- (e) *by striking out* “100 to 112,”
- (f) *by striking out* “121, 122, 124,” *and* “127,” *and*
- (g) *by striking out* “128,”.

**48 Section 155 is amended****(a) by repealing subsection (2) and substituting the following:**

(2) A person that commits an offence under this Act is liable to a fine of not more than \$3 million, or to imprisonment for not more than 3 years, or both. ,

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

(4.1) If an investment fund commits an offence under subsection (1), the investment fund manager commits the same offence whether or not the investment fund is convicted of the offence. ,

**(c) in subsection (5) by striking out “57.1 or 86 (1)” wherever it appears and substituting “57.1, 57.2 or 57.3”,****(d) in subsection (5) (a) by striking out “that” and substituting “any”,****(e) in subsection (5) (b) (i) by striking out “\$1 million,” and substituting “\$3 million,”****(f) in subsection (5) (b) (ii) by striking out “that” and substituting “any”, and****(g) by repealing subsections (6) and (7) and substituting the following:**

(7) For the purposes of subsection (5), “**profit**” means the amount determined in accordance with the regulations.

**49 The following sections are added:****Additional remedies**

**155.1** If the court finds that a person has committed an offence under section 155, the court may make an order that

- (a) the person compensate or make restitution to another person, or
- (b) the person pay to the commission any amount obtained, or payment or loss avoided, as a result of the offence.

**Enforcement of court orders**

**155.2** (1) A person to whom the court awards compensation or restitution under section 155.1 (a) may file the order with the Supreme Court.

(2) The commission may file an order made under section 155.1 (a) or (b) with the Supreme Court.

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

**50 Section 157 (1) is amended**

- (a) *in paragraph (a) (ii) by striking out “senior”, and*
- (b) *in paragraph (b) by striking out “minister for payment into the consolidated revenue fund” and substituting “commission”.*

**51 Section 161 is amended**

- (a) *in subsection (1) (a) by striking out “senior”,*
- (b) *by repealing subsection (1) (c) and substituting the following:*
  - (c) that any or all of the exemptions set out in the regulations do not apply to a person; , *and*
- (c) *by adding the following subsection:*
  - (6) The commission or the executive director may, after providing an opportunity to be heard, make an order under subsection (1) in respect of a person if the person
    - (a) has been convicted of a criminal offence arising from a transaction, business or course of conduct related to securities or exchange contracts,
    - (b) has been found by a court to have contravened a requirement of this Act or the regulations, or
    - (c) has been found by a securities regulatory authority or court in another jurisdiction to have contravened the laws of the jurisdiction respecting trading in securities or exchange contracts.

**52 Section 162 is repealed and the following substituted:****Administrative penalty**

- 162** If the commission, after a hearing,
- (a) determines that a person has contravened
    - (i) a provision of this Act or of the regulations, or
    - (ii) a decision, whether or not the decision has been filed under section 163, 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 \$1 million for each contravention of this Act or the regulations.

**53 Section 162.1 (1) is amended by striking “160 or 162” and substituting “160, 162 or 174”.****54 Section 165 (1) (c) is repealed.**

55 *The following Part is added:*

## **PART 19.1 – INTERJURISDICTIONAL COOPERATION**

### **Definitions**

**167.1** (1) In this Part:

“**British Columbia authority**” means a power or duty referred to in section 167.2 (1) (a) or (b);

“**extraprovincial authority**” means a power or duty of an extraprovincial securities commission under the extraprovincial securities laws under which the extraprovincial securities commission operates;

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

“**extraprovincial securities laws**” means the laws of a province other than British Columbia respecting trading in securities or exchange contracts.

(2) A reference to an extraprovincial securities commission includes, unless otherwise provided,

(a) its delegate, and

(b) any person who in respect of that extraprovincial 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.

### **Delegation and acceptance of authority**

**167.2** (1) If authorized to do so by regulation, the commission

(a) may delegate a power or duty under this Act to an extraprovincial securities commission,

(b) may authorize an extraprovincial securities commission to exercise any power, or perform any duty, of the executive director under this Act, including, but not limited to, a power referred to in section 184 (2) (e), and

(c) may accept a delegation of, an authorization to exercise or perform, or any other form of transfer of, an extraprovincial authority.

(2) Subsection (1) does not apply to a power or duty under Part 2 or 3, this Part or section 184 or 187.

### **Subdelegation**

**167.3** (1) Subject to a restriction or condition imposed by an extraprovincial securities commission with respect to a delegation, authorization or transfer referred to in section 167.2 (1) (c), the commission may delegate or subdelegate an extraprovincial authority in the manner and to the extent that the commission or the executive director may, under this Act, delegate or subdelegate, or authorize another person to exercise, a British Columbia authority.

- (2) Subject to a restriction or condition imposed by the commission with respect to a delegation or an authorization under section 167.2 (1) (a) or (b), nothing in this Part prevents the extraprovincial securities commission from delegating or sub-delegating the British Columbia authority in the manner and to the extent that the extraprovincial securities commission may delegate or subdelegate, or authorize another person to exercise, an authority under the extraprovincial securities laws under which it operates.

**Revocation**

- 167.4** (1) If an extraprovincial securities commission is exercising or intends to exercise a power provided to it under section 167.2 (1) (a) or (b) to make a decision, the commission may withdraw from the extraprovincial securities commission any matter that is before the extraprovincial securities commission for its decision.
- (2) The commission or the executive director, as the case may be, may decide a matter that the commission has withdrawn under subsection (1).

**Adoption or incorporation of extraprovincial securities laws**

- 167.5** (1) Subject to the regulations, the commission may, by order, adopt or incorporate by reference all or any provisions of any extraprovincial securities laws to be applied to
- (a) a person or class of persons whose primary jurisdiction is the extraprovincial jurisdiction, or
  - (b) a trade, intended trade, security or exchange contract involving a person or class of persons referred to in paragraph (a).
- (2) An order made under subsection (1) may adopt or incorporate the extraprovincial securities laws as they are amended from time to time, before or after the making of the order.

**Exercise of discretion, interprovincial reliance**

- 167.6** (1) Subject to the regulations, if the commission, the executive director or a designated organization is empowered under this Act to make a decision regarding a trade, intended trade, security, exchange contract or person, the commission, executive director or designated organization may make the decision on the basis that the commission, executive director or designated organization, as the case may be, considers that an extraprovincial securities commission has made the same or a substantially similar determination regarding the trade, intended trade, security, exchange contract or person.
- (2) Subject to the regulations, despite any provision of this Act, the commission, executive director or designated organization may make a decision referred to in subsection (1) without giving a person affected by the decision an opportunity to be heard.

**Review of extraprovincial decision**

**167.7** If an extraprovincial commission delegates or subdelegates a British Columbia authority, section 165 (3) to (6) applies to a decision made under that authority as if the decision were a decision of the executive director under this Act.

**Appeal of decision of an extraprovincial securities commission**

- 167.8** (1) Except as provided in section 167.7, section 167 applies to a decision of an extraprovincial securities commission made under a British Columbia authority.
- (2) The extraprovincial securities commission is a respondent to an appeal under this section.

**Appeal of determination of the commission**

- 167.9** (1) In this section, “**delegated authority**” means any extraprovincial authority that the commission accepts under section 167.2 (1) (c).
- (2) A person directly affected by a determination of the commission under a delegated authority has the same rights under section 167 as if the determination were a decision under this Act.
- (3) Subsection (2) does not apply to a determination
- (a) refusing to exempt a person or class of persons from a requirement of extraprovincial securities laws, or
  - (b) made by a person to whom the commission has delegated or subdelegated the extraprovincial authority under which the determination is made.
- (4) A person that has a right to appeal a determination under this section may, subject to any direction of the Court of Appeal, exercise that right of appeal whether or not that person may have a right to appeal that determination to a court in another jurisdiction.
- (5) If a determination referred to in subsection (2) is being appealed to a court in another jurisdiction, the Court of Appeal may stay an appeal under this section until the determination of the appeal in the other jurisdiction.

**56 The following section is added to Part 19.1:****Enforcement of extraprovincial court order**

- 167.91** (1) If a decision of an extraprovincial securities commission made under a British Columbia authority is appealed to a court in the jurisdiction of that commission, a person affected by an order of the court may at any time file a copy of the order, certified by the court that made the order, in a Supreme Court registry.
- (2) On being filed under subsection (1), a certified order has the same force and effect, and all proceedings may be taken on it, as if it were a judgment of the Supreme Court.

**57 Section 168.2 is amended**

*(a) by renumbering the section as section 168.2 (1), and*

*(b) by adding the following subsection:*

- (2) If an investment fund contravenes a provision of this Act or of the regulations, or fails to comply with a decision, the investment fund manager also contravenes the provision or fails to comply with the decision, as the case may be.

**58 Section 169 (4) is repealed and the following substituted.**

- (4) The commission may hold in confidence all or part of a record required to be filed under this Act if the commission considers that
- (a) a person whose information appears in the record would be unduly prejudiced by disclosure of the information, and
  - (b) the person's privacy interest outweighs the public's interest in having the information disclosed.

**59 Section 169.1 is repealed and the following substituted.****Information collection and sharing**

- 169.1** (1) For the purposes of administering this Act or assisting in the administration of the securities laws of another jurisdiction, the commission may, directly or indirectly, collect information from, and use information collected from,
- (a) an exchange, quotation and trade reporting system or clearing agency,
  - (b) a self regulatory body,
  - (c) a registrant or issuer, or
  - (d) a law enforcement agency, government, governmental authority, securities regulatory authority or financial regulatory authority,
- in British Columbia or elsewhere.
- (2) For the purposes of administering this Act or assisting in the administration of the securities laws of another jurisdiction, the commission may disclose information to, or share information with,
- (a) a person recognized under section 24,
  - (b) a law enforcement agency, government, governmental authority, securities regulatory authority or financial regulatory authority, or
  - (c) a person with whom the commission has entered into an arrangement or agreement that relates to or includes the sharing of information,
- in British Columbia or elsewhere.

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- (3) For the purposes of administering its bylaws, rules or other regulatory instruments or policies, assisting in the administration of the bylaws, rules or other regulatory instruments or policies of another exchange, quotation and trade reporting system, clearing agency or self regulatory body, or assisting in the administration of this Act or the securities laws of another jurisdiction, a person recognized under section 24 may, directly or indirectly, collect information from, and use information collected from,
- (a) an exchange, quotation and trade reporting system or clearing agency,
  - (b) a self regulatory body,
  - (c) a registrant or issuer, or
  - (d) a law enforcement agency, government, governmental authority, securities regulatory authority or financial regulatory authority,
- in British Columbia or elsewhere.
- (4) For the purposes of administering its bylaws, rules or other regulatory instruments or policies, assisting in the administration of the bylaws, rules or other regulatory instruments or policies of another exchange, quotation and trade reporting system, clearing agency or self regulatory body, or assisting in the administration of this Act or the securities laws of another jurisdiction, a person recognized under section 24 may disclose information to, or share information with,
- (a) an exchange, quotation and trade reporting system or clearing agency,
  - (b) a self regulatory body, or
  - (c) a law enforcement agency, government, governmental authority, securities regulatory authority or financial regulatory authority,
- in British Columbia or elsewhere.
- (5) For the purposes of this section, “**securities laws**” means laws of a jurisdiction respecting the trading of securities or exchange contracts.

**60 Section 170 (1) is amended**

- (a) *by striking out “or” at the end of paragraph (a),*
- (b) *by adding “or” at the end of paragraph (b),*
- (c) *by adding the following paragraph:*
  - (b.1) a delegation or authorization referred to in section 167.2 (1) (a) or (b), , *and*
- (d) *by adding “including a duty or power referred to in section 167.2 (1) (c),” after “under this Act or the regulations,”.*

**61 Section 172 is amended by adding “, restrictions or requirements” after “impose any conditions”.**

**62 Section 180 is amended**

- (a) *in subsection (1) by adding “, prescribed by the regulations,” after “by this Act”, and*
- (b) *in subsection (5) by striking out “3 consecutive occasions,” and substituting “2 consecutive occasions,”.*

**63 Section 183 is amended**

- (a) *in paragraph (6) by striking out “and” at the end of subparagraph (vi), by adding “, and” at the end of subparagraph (vii) and by adding the following subparagraph:*
- (viii) circumstances in which
- (A) a person or class of persons is not required to be registered under section 34, or
- (B) a person or class of persons is deemed to be registered for the purposes of this Act,
- including the circumstance in which a person or class of persons is registered under the laws of another jurisdiction respecting trading in securities or exchange contracts; ,
- (b) *in paragraph (8) by adding “, surrender” after “suspension”,*
- (c) *by repealing paragraph (10),*
- (d) *in paragraph (12) by adding the following subparagraph:*
- (iv.1) prescribing circumstances in which
- (A) section 61 does not apply to a person or class of persons, or
- (B) a receipt is deemed to have been issued for the purposes of this Act,
- including the circumstance in which a receipt has been issued for a preliminary prospectus or prospectus under the laws of another jurisdiction respecting trading in securities or exchange contracts; ,
- (e) *by adding the following paragraph:*
- (12.1) prescribing circumstances in which a person that purchases a security under a distribution may cancel the purchase, including
- (i) prescribing the period in which the purchaser may cancel the purchase,
- (ii) prescribing the principles for determining the amount of the refund if the purchaser cancels the purchase,
- (iii) specifying the persons responsible for making and administering the payment of the refund and prescribing the period in which the refund must be paid, and
- (iv) prescribing different circumstances, periods, principles or persons for different classes of securities, issuers or purchasers; ,

**(f) by repealing paragraph (13) (i) and substituting the following:**

- (i) respecting their use in connection with any distribution under an exemption from section 61, and ,

**(g) in paragraph (19)**

- (i) in subparagraph (i) by striking out “issuer” and substituting “person” and by striking out “issuers” and substituting “persons”,**

**(ii) by repealing subparagraph (ii) and substituting the following:**

- (ii) prescribing how a security or class of securities of a reporting issuer, or a related financial instrument or class of related financial instruments of a security of a reporting issuer, must be reported in an insider report filed under section 87, , **and**

**(iii) by repealing subparagraph (v) and substituting the following:**

- (v) prescribing different classes of requirements for different classes of persons; ,

**(h) by adding the following paragraph:**

(19.1) respecting the governance of an issuer or a class of issuers, including, but not limited to,

- (i) prescribing the powers, duties and functions of a person responsible for governance, and
- (ii) specifying transactions, investments or arrangements of an issuer that a person responsible for governance must review or approve; ,

**(i) in paragraph (20) by striking out “and” after subparagraph (ii), by adding “, and” after subparagraph (iii) and by adding the following subparagraph:**

- (iv) prescribing a method for determining the amount under section 136 (3) (b); ,

**(j) by repealing paragraph (21) and substituting the following:**

(21) in relation to any matter necessary or advisable for regulating offers to acquire securities, acquisitions or redemptions of securities, business combinations or related party transactions, including, but not limited to,

- (i) prescribing requirements or prohibitions relating to the conduct or management of the affairs of an issuer and its directors and officers before, during or after an offer to acquire, acquisition, redemption, business combination or related party transaction,
- (ii) prohibiting a person from purchasing or trading a security before, during or after an offer to acquire, acquisition, redemption, business combination or related party transaction,
- (iii) prescribing records required to be filed or delivered to a person, and
- (iv) prescribing different requirements or prohibitions for different classes of persons; ,

- (k) *in paragraph (23) by striking out “, including commodity pools,”*
- (l) *in paragraph (32) by adding “laws,” after “adopting,”*
- (m) *in paragraph (38) by striking out “this paragraph;” and substituting “this paragraph, including, with respect to an exemption in a regulation or a commission rule, a condition that the executive director’s consent be obtained before the exemption applies;”*
- (n) *by repealing paragraph (41) and substituting the following:*
- (41) prescribing circumstances and conditions for the purpose of an exemption under paragraph (40), including circumstances and conditions
    - (i) relating to the laws of another jurisdiction or relating to an exemption from those laws granted by a securities regulatory authority in that jurisdiction, or
    - (ii) that refer to a person or a class of persons designated by the commission; ,
- (o) *by adding the following paragraphs:*
- (41.1) prescribing circumstances in which a person or a class of persons is prohibited from trading or purchasing securities or exchange contracts, or a particular security or exchange contract, including the circumstance in which a securities regulatory authority in a jurisdiction other than British Columbia has ordered that
    - (i) a person is prohibited from trading or purchasing securities or exchange contracts, or a particular security or exchange contract, or
    - (ii) trades or purchases of a particular security or exchange contract cease;
  - (44.1) requiring a person to certify the content of a record required under this Act, including requiring different certificates for different classes of persons; ,  
*and*
- (p) *in paragraph (45) by adding “and” at the end of subparagraph (iii) and by repealing subparagraph (iv).*

**64 Section 183 is amended in paragraph (12)**

- (a) *by adding “and” at the end of subparagraph (vii),*
- (b) *by striking out “and” at the end of subparagraph (viii), and*
- (c) *by repealing subparagraph (ix).*

**65 Section 184 is amended**

- (a) *in subsection (2) (b), by striking out “34 (2),”*

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**(b) in subsection (2) by adding the following paragraph:**

(b.1) respecting those matters for which regulations may be made under sections 26, 34 (1), 51 (3), 56 (2), 63 (2), 65 (2), 118 (3), 130.1, and 169 (2);,

**(c) in subsection (2) (c) by striking out “(41), (44) and (45)” and substituting “(41), (41.1), (44), (44.1), (45) and (46)”**,

**(d) in subsection (2) (d) by adding “laws,” after “adopting”**,

**(e) in subsection (3) by striking out “the commission may refer the matter to the executive director for decision.” and substituting “the executive director may decide the matter.” and**

**(f) in subsection (4) by striking out “(46)” and substituting “(47)”**.

**66 Section 184 (2) (b.1) is amended**

**(a) by adding, in numerical order, “81,” “85,” “87 (2),” “98,” “99,” and “155 (7),” and**

**(b) by striking out “130.1.”**

**67 Section 187 is amended**

**(a) by renumbering the section as section 187 (1), and**

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

(2) For the purposes of subsection (1) (a) and (c), the commission may include conditions, restrictions or requirements in the order, including conditions, restrictions or requirements relating to

(a) the laws of another jurisdiction respecting trading in securities or exchange contracts, or

(b) an exemption from a requirement under the laws referred to in paragraph (a) granted by a securities regulatory authority in that jurisdiction.

### **Consequential Amendments**

#### ***Cooperative Association Act***

**68 Section 153 of the Cooperative Association Act, S.B.C. 1999, c. 28, is amended**

**(a) in subsection (1) (b) (v) and (vi) by striking out “mutual fund in British Columbia” and substituting “British Columbia investment fund”, and**

**(b) by adding the following subsections:**

- (5) For the purposes of subsection (1), “**British Columbia investment fund**” means
- (a) an investment fund that is a reporting issuer, or
  - (b) an investment fund that is organized under the laws of British Columbia, but does not include a private mutual fund.
- (6) For the purpose of subsection (5), “**investment fund**”, “**private mutual fund**” and “**reporting issuer**” have the same meanings as in the *Securities Act*.

***Trustee Act***

**69** *The Trustee Act, R.S.B.C. 1996, c. 464, is amended in sections 15.1 (1) and 15.5 (7) by striking out “a mutual fund” and substituting “an investment fund”.*

***Utilities Commission Act***

**70** *Section 54 (1) of the Utilities Commission Act, R.S.B.C. 1996, c. 473, is amended in the definition of “take over bid” by striking out “in the Securities Act;” and substituting “in section 92 of the Securities Act;”.*

**Commencement**

**71** The provisions of this Act referred to in column 1 of the following table come into force as set out in column 2 of the table:

Item	Column 1 Provisions of Act	Column 2 Commencement
1	Anything not elsewhere covered by this table	The date of Royal Assent
2	Sections 1 (a), (c) and (j), 2, 3, 12, 14 to 31, 33, 36, 38 to 44, 47, 48 (c), (d), (f) and (g), 50 (a), 51 (a) and (b), 54, 56, 63 (i), 64, 66 and 70	By regulation of the Lieutenant Governor in Council