

Chapter 9

Legislation

9.1.1 Notice of Amendments to the Securities Act and Regulation, and to the Commodity Futures Act

NOTICE OF AMENDMENTS TO THE SECURITIES ACT AND REGULATION, AND TO THE COMMODITY FUTURES ACT

On August 2, 2005, the Government of Ontario announced that the amendments to the *Securities Act* (Act) in respect of civil liability for continuous disclosure (Part XXIII.1 of the Act), as well as fraud and market manipulation (section 126.1 of the Act), and misleading or untrue statements (section 126.2 of the Act), will come into force on December 31, 2005.

Amendments made to the *Commodity Futures Act* respecting fraud and market manipulation, and misleading or untrue statements will also come into on December 31, 2005.

The amendments to the Act and to the *Commodity Futures Act* were enacted under the *Keeping the Promise for a Strong Economy Act (Budget Measures), 2002* (formerly Bill 198). These provisions were subsequently amended by the *Budget Measures Act (Fall), 2004* (formerly Bill 149).

On August 2, 2005, the Government of Ontario also announced amendments to Regulation 1015 under the Act. Some of the amendments made to Regulation 1015 relate to civil liability for continuous disclosure and will come into force on December 31, 2005. Other amendments to Regulation 1015 are housekeeping amendments and came into effect on the date they were filed, July 29, 2005. These housekeeping amendments include:

- amendments to remove “underwriter” as a separate category of registration;
- amendments to correctly reflect applicable sections of OSC Rule 31-505 *Conditions of Registration*;
- amendments to no longer require the filing with the Commission of financial statements and Statement C of Form 9 by mutual fund dealers that are members in good standing with the Mutual Fund Dealers Association of Canada;
- amendments to revoke Form 7 in connection with an application to amend an registration;
- amendments to revoke sections 38 and 79, and Forms 17, 18, and 19 in connection with the Commission’s adoption of National Policy 46-201 *Escrow for Initial Public Offerings* and Form 46-201F1 *Escrow Agreement*; and
- amendments to refer to correct sections of the Act.

For ease of reference, we are publishing:

1. An unofficial consolidated blackline version of Part XXIII.1 of the *Securities Act*. This unofficial consolidation reflects the legislative amendments introduced by Bill 198, as amended by Bill 149.
2. The amendments made to Regulation 1015 relating to the civil liability for secondary market disclosure.
3. An unofficial consolidated blackline version of sections 126.1 and 126.2 of the *Securities Act*, as amended by Bill 149.
4. An unofficial consolidated blackline version of sections 59.1 and 59.2 of the *Commodity Futures Act*, as amended by Bill 149.
5. The housekeeping amendments made to Regulation 1015.

Questions may be referred to:

Rossana Di Lieto
Acting General Counsel
General Counsel's Office
(416) 593-8106
rdilieto@osc.gov.on.ca

Jean-Paul Bureaud
Senior Legal Counsel
General Counsel's Office
(416) 593-8131
jbureaud@osc.gov.on.ca

**PART XXIII.1
CIVIL LIABILITY FOR SECONDARY MARKET DISCLOSURE**

INTERPRETATION AND APPLICATION

Definitions

138.1 In this Part,

“compensation” means compensation received during the 12 month period immediately preceding the day on which the misrepresentation was made or on which the failure to make timely disclosure first occurred, together with the fair market value of all deferred compensation including, without limitation, options, pension benefits and stock appreciation rights, granted during the same period, valued as of the date that such compensation is awarded; (“rémunération”)

“control person” means,

- (a) a person or company who holds a sufficient number of the voting rights attached to all outstanding voting securities of an issuer, or
- (b) each person or company or combination of persons or companies acting in concert by virtue of an agreement, arrangement, commitment or understanding, which holds in total a sufficient number of the voting rights attached to all outstanding voting securities of an issuer,

to affect materially the control of the issuer, and, where a person or company, or combination of persons or companies, holds more than 20 per cent of the voting rights attached to all outstanding voting securities of an issuer, the person or company, or combination of persons or companies, shall, in the absence of evidence to the contrary, be deemed to hold a sufficient number of the voting rights to affect materially the control of the issuer; (“personne qui a le contrôle”)

“core document” means,

- (a) where used in relation to,
 - (i) a director of a responsible issuer who is not also an officer of the responsible issuer,
 - (ii) an influential person, other than an officer of the responsible issuer or an investment fund manager where the responsible issuer is an investment fund, or
 - (iii) a director or officer of an influential person who is not also an officer of the responsible issuer, other than an officer of an investment fund manager, ~~who is not also an officer of the responsible issuer,~~

a prospectus, a take-over bid circular, an issuer bid circular, a directors’ circular, a rights offering circular, management’s discussion and analysis, an annual information form, an information circular, ~~and~~ annual financial statements and interim financial statements of the responsible issuer, ~~or~~

- (b) where used in relation to,
 - (i) a responsible issuer or an officer of the responsible issuer,
 - (ii) an investment fund manager, where the responsible issuer is an investment fund, or
 - (iii) an officer of an investment fund manager, where the responsible issuer is an investment fund,

a prospectus, a take-over bid circular, an issuer bid circular, a directors’ circular, a rights offering circular, management’s discussion and analysis, an annual information form, an information circular, annual financial statements, interim financial statements, and a report required by subsection 75 (2), of the responsible issuer, and

- (c) such other documents as may be prescribed by regulation for the purposes of this definition; (“document essentiel”)

“document” means any written communication, including a communication prepared and transmitted only in electronic form,

Legislation

- (a) that is required to be filed with the Commission, or
- (b) that is not required to be filed with the Commission and,
 - (i) that is filed with the Commission,
 - (ii) that is filed or required to be filed with a government or an agency of a government under applicable securities or corporate law or with any stock exchange or quotation and trade reporting system under its by-laws, rules or regulations, or
 - (iii) that is any other communication the content of which would reasonably be expected to affect the market price or value of a security of the responsible issuer; ("document")

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

"failure to make timely disclosure" means a failure to disclose a material change in the manner and at the time required under this Act; ("non-respect des obligations d'information occasionnelle")

"forward-looking information" means all disclosure regarding possible events, conditions or results ~~(including future- that is based on assumptions about future economic conditions and courses of action and includes future oriented financial information with respect to prospective results of operations, a prospective financial position or prospective changes in financial position that is based on assumptions about future economic conditions and courses of action)~~ cash flows that is presented as either a forecast or a projection; ("information prospective") **[This definition was moved to s. 1(1) of the Securities Act.]**

"influential person" means, in respect of a responsible issuer,

- (a) a control person,
- (b) a promoter,
- (c) an insider who is not a director or senior officer of the responsible issuer, or
- (d) an investment fund manager, if the responsible issuer is an investment fund; ("personne influente")

"issuer's security" means a security of a responsible issuer and includes a security,

- (a) the market price or value of which, or payment obligations under which, are derived from or based on a security of the responsible issuer, and
- (b) which is created by a person or company on behalf of the responsible issuer or is guaranteed by the responsible issuer; ("valeur mobilière d'un émetteur")

"liability limit" means,

- (a) in the case of a responsible issuer, the greater of,
 - (i) 5 per cent of its market capitalization (as such term is defined in the regulations), and
 - (ii) \$1 million,
- (b) in the case of a director or officer of a responsible issuer, the greater of,
 - (i) \$25,000, and
 - (ii) 50 per cent of the aggregate of the director's or officer's compensation from the responsible issuer and its affiliates,
- (c) in the case of an influential person who is not an individual, the greater of,

- (i) 5 per cent of its market capitalization (as defined in the regulations), and
- (ii) \$1 million,
- (d) in the case of an influential person who is an individual, the greater of,
 - (i) \$25,000, and
 - (ii) 50 per cent of the aggregate of the influential person's compensation from the responsible issuer and its affiliates,
- (e) in the case of a director or officer of an influential person, the greater of,
 - (i) \$25,000, and
 - (ii) 50 per cent of the aggregate of the director's or officer's compensation from the influential person and its affiliates,
- (f) in the case of an expert, the greater of,
 - (i) \$1 million, and
 - (ii) the revenue that the expert and the affiliates of the expert have earned from the responsible issuer and its affiliates during the 12 months preceding the misrepresentation, and
- (g) in the case of each person ~~or company~~ who made a public oral statement, other than an individual ~~under~~referred to in clause (a), ~~(b), (c), (d), (e) or (f)~~, the greater of,
 - (i) \$25,000, and
 - (ii) 50 per cent of the aggregate of the person ~~or company's~~ compensation from the responsible issuer and its affiliates; ~~("limite de responsabilité")~~

"management's discussion and analysis" means the section of an annual information form, annual report or other document that contains management's discussion and analysis of the financial condition and results of operations of a responsible issuer as required under Ontario securities law; ("rapport de gestion")

"public oral statement" means an oral statement made in circumstances in which a reasonable person would believe that information contained in the statement will become generally disclosed; ("déclaration orale publique")

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

"responsible issuer" means,

- (a) a reporting issuer, or
- (b) any other issuer with a real and substantial connection to Ontario, any securities of which are publicly traded; ("émetteur responsable")

"trading day" means a day during which the principal market (as defined in the regulations) for the security is open for trading. ("jour de Bourse")

Application

138.2 This Part does not apply to,

- (a) the ~~acquisition~~purchase of an issuer's security ~~under~~offered by a prospectus during the period of distribution;
- (b) the acquisition of an issuer's security pursuant to an ~~exemption~~a distribution that is exempt from section 53 or 62, except as may be prescribed by regulation;

- (c) the acquisition or disposition of an issuer's security in connection with or pursuant to a take-over bid or issuer bid, except as may be prescribed by regulation; or
- (d) such other transactions or class of transactions as may be prescribed by regulation.

LIABILITY

Liability for secondary market disclosure

Documents released by responsible issuer

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

- (a) the responsible issuer;
- (b) each director of the responsible issuer at the time the document was released;
- (c) each officer of the responsible issuer who authorized, permitted or acquiesced in the release of the document;
- (d) each influential person, and each director and officer of an influential person, who knowingly influenced,
 - (i) the responsible issuer or any person or company acting on behalf of the responsible issuer to release the document, or
 - (ii) a director or officer of the responsible issuer to authorize, permit or acquiesce in the release of the document; and
- (e) each expert where,
 - (i) the misrepresentation is also contained in a report, statement or opinion made by the expert,
 - (ii) the document includes, summarizes or quotes from the report, statement or opinion of the expert, and
 - (iii) if the document was released by a person or company other than the expert, the expert consented in writing to the use of the report, statement or opinion in the document.

Public oral statements by responsible issuer

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

- (a) the responsible issuer;
- (b) the person who made the public oral statement;
- (c) each director and officer of the responsible issuer who authorized, permitted or acquiesced in the making of the public oral statement;
- (d) each influential person, and each director and officer of the influential person, who knowingly influenced,
 - (i) the person who made the public oral statement to make the public oral statement, or
 - (ii) a director or officer of the responsible issuer to authorize, permit or acquiesce in the making of the public oral statement; and

- (e) each expert where,
 - (i) the misrepresentation is also contained in a report, statement or opinion made by the expert,
 - (ii) the person making the public oral statement includes, summarizes or quotes from the report, statement or opinion of the expert, and
 - (iii) if the public oral statement was made by a person other than the expert, the expert consented in writing to the use of the report, statement or opinion in the public oral statement.

Influential persons

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

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

Failure to make timely disclosure

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

- (a) the responsible issuer;
- (b) each director and officer of the responsible issuer who authorized, permitted or acquiesced in the failure to make timely disclosure; and
- (c) each influential person, and each director and officer of an influential person, who knowingly influenced,
 - (i) the responsible issuer or any person or company acting on behalf of the responsible issuer in the failure to make timely disclosure, or
 - (ii) a director or officer of the responsible issuer to authorize, permit or acquiesce in the failure to make timely disclosure.

Multiple roles

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

Multiple misrepresentations

(6) In ~~a proceeding~~ an action under this section,

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

No implied or actual authority

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

Burden of proof and defences

Non-core documents and public oral statements

138.4 (1) In ~~a proceeding~~ an action under section 138.3 in relation to a misrepresentation in a document that is not a core document, or a misrepresentation in a public oral statement, a person or company is not liable, subject to subsection (2), unless the plaintiff proves that the person or company,

- (a) knew, at the time that the document was released or public oral statement was made, that the document or public oral statement contained the misrepresentation;
- (b) at or before the time that the document was released or public oral statement was made, deliberately avoided acquiring knowledge that the document or public oral statement contained the misrepresentation; or
- (c) was, through action or failure to act, guilty of gross misconduct in connection with the release of the document or the making of the public oral statement that contained the misrepresentation.

Same

(2) A plaintiff is not required to prove any of the matters set out in subsection (1) in ~~a proceeding~~ an action under section 138.3 in relation to an expert.

Failure to make timely disclosure

(3) In ~~a proceeding~~ an action under section 138.3 in relation to a failure to make timely disclosure, a person or company is not liable, subject to subsection (4), unless the plaintiff proves that the person or company,

- (a) knew, at the time that the failure to make timely disclosure first occurred, of the change and that the change was a material change;
- (b) at the time or before the failure to make timely disclosure first occurred, deliberately avoided acquiring knowledge of the change or that the change was a material change; or
- (c) was, through action or failure to act, guilty of gross misconduct in connection with the failure to make timely disclosure.

Same

(4) A plaintiff is not required to prove any of the matters set out in subsection (3) in ~~a proceeding~~ an action under section 138.3 in relation to,

Legislation

- (a) a responsible issuer;
- (b) an officer of a responsible issuer;
- (c) an investment fund manager; or
- (d) an officer of an investment fund manager.

Knowledge of the misrepresentation or material change

(5) A person or company is not liable in ~~a proceeding~~an action under section 138.3 in relation to a misrepresentation or a failure to make timely disclosure if that person or company proves that the plaintiff acquired or disposed of the issuer's security,

- (a) with knowledge that the document or public oral statement contained a misrepresentation; or
- (b) with knowledge of the material change.

Reasonable investigation

(6) A person or company is not liable in ~~a proceeding~~an action under section 138.3 in relation to,

- (a) a misrepresentation if that person or company proves that,
 - (i) before the release of the document or the making of the public oral statement containing the misrepresentation, the person or company conducted or caused to be conducted a reasonable investigation, and
 - (ii) at the time of the release of the document or the making of the public oral statement, the person or company had no reasonable grounds to believe that the document or public oral statement contained the misrepresentation; or
- (b) a failure to make timely disclosure if that person or company proves that,
 - (i) before the failure to make timely disclosure first occurred, the person or company conducted or caused to be conducted a reasonable investigation, and
 - (ii) the person or company had no reasonable grounds to believe that the failure to make timely disclosure would occur.

Factors to be considered by court

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

- (a) the nature of the responsible issuer;
- (b) the knowledge, experience and function of the person or company;
- (c) the office held, if the person was an officer;
- (d) the presence or absence of another relationship with the responsible issuer, if the person was a director;
- (e) the existence, if any, and the nature of any system designed to ensure that the responsible issuer meets its continuous disclosure obligations;
- (f) the reasonableness of reliance by the person or company on the responsible issuer's disclosure compliance system and on the responsible issuer's officers, employees and others whose duties would in the ordinary course have given them knowledge of the relevant facts;
- (g) the period within which disclosure was required to be made under the applicable law;
- (h) in respect of a report, statement or opinion of an expert, any professional standards applicable to the expert;

Legislation

- (i) the extent to which the person or company knew, or should reasonably have known, the content and medium of dissemination of the document or public oral statement;
- (j) in the case of a misrepresentation, the role and responsibility of the person or company in the preparation and release of the document or the making of the public oral statement containing the misrepresentation or the ascertaining of the facts contained in that document or public oral statement; and
- (k) in the case of a failure to make timely disclosure, the role and responsibility of the person or company involved in a decision not to disclose the material change.

Confidential disclosure

(8) A person or company is not liable in a ~~proceeding~~an action under section 138.3 in respect of a failure to make timely disclosure if,

- (a) the person or company proves that the material change was disclosed by the responsible issuer in a report filed on a confidential basis with the Commission under subsection 75 (3);
- (b) the responsible issuer had a reasonable basis for making the disclosure on a confidential basis;
- (c) where the information contained in the report filed on a confidential basis remains material, disclosure of the material change was made public promptly when the basis for confidentiality ceased to exist;
- (d) the person or company or responsible issuer did not release a document or make a public oral statement that, due to the undisclosed material change, contained a misrepresentation, and
- (e) where the material change became publicly known in a manner other than the manner required under this Act, the responsible issuer promptly disclosed the material change in the manner required under this Act.

Forward-looking information

(9) A person or company is not liable in a ~~proceeding~~an action under section 138.3 for a misrepresentation in forward-looking information if the person or company proves ~~that all of the following things:~~

- (a) ~~the 1.~~ The document or public oral statement containing the forward-looking information contained, proximate to the forward-looking~~that~~ information,
 - (i)~~2~~ reasonable cautionary language identifying the forward-looking information as such, and identifying material factors that could cause actual results to differ materially from a conclusion, forecast or projection in the forward-looking information, and
 - (ii)~~2~~ a statement of the material factors or assumptions that were applied in drawing a conclusion or making a forecast or projection set out in the forward-looking information; and
- (b) ~~the 2.~~ The person or company had a reasonable basis for drawing the conclusions or making the forecasts and projections set out in the forward-looking information.

Same

~~(10) Subsection (9) does not apply to a person or company in respect of forward-looking information contained in the prospectus of the responsible issuer filed in connection with the initial public distribution of securities of the responsible issuer or contained in financial statements prepared by the responsible issuer.~~9.1) The person or company shall be deemed to have satisfied the requirements of paragraph 1 of subsection (9) with respect to a public oral statement containing forward-looking information if the person who made the public oral statement,

- (a) made a cautionary statement that the oral statement contains forward-looking information;
- (b) stated that,
 - (i) the actual results could differ materially from a conclusion, forecast or projection in the forward-looking information, and

Legislation

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

(c) stated that additional information about,

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

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

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

Same

(9.2) For the purposes of clause (9.1) (c), a document filed with the Commission or otherwise generally disclosed shall be deemed to be readily available.

Exception

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

Expert report, statement or opinion

(11) A person or company, other than an expert, is not liable in ~~a proceeding~~ an action under section 138.3 with respect to any part of a document or public oral statement that includes, summarizes or quotes from a report, statement or opinion made by the expert in respect of which the responsible issuer obtained the written consent of the expert to the use of the report, statement or opinion if the consent had not been withdrawn in writing before the document was released or the public oral statement was made, if the person or company proves that,

- (a) the person or company did not know and had no reasonable grounds to believe that there had been a misrepresentation in the part of the document or public oral statement made on the authority of the expert; and
- (b) the part of the document or oral public statement fairly represented the report, statement or opinion made by the expert.

Same

(12) An expert is not liable in ~~a proceeding~~ an action under section 138.3 with respect to any part of a document or public oral statement that includes, summarizes or quotes from a report, statement or opinion made by the expert, if the expert proves that, the written consent previously provided was withdrawn in writing before the document was released or the public oral statement was made.

Release of documents

(13) A person or company is not liable in ~~a proceeding~~ an action under section 138.3 in respect of a misrepresentation in a document, other than a document required to be filed with the Commission, if the person or company proves that, at the time of release of the document the person or company did not know and had no reasonable grounds to believe that the document would be released.

Derivative information

(14) A person or company is not liable in ~~a proceeding~~ an action under section 138.3 for a misrepresentation in a document or a public oral statement, if the person or company proves that,

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

before the release of the document or the public oral statement made by or on behalf of the responsible issuer;

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

Where corrective action taken

(15) A person or company, other than the responsible issuer, is not liable in a ~~proceeding~~ an action under section 138.3 if the misrepresentation or failure to make timely disclosure was made without the knowledge or consent of the person or company and, if, after the person or company became aware of the misrepresentation before it was corrected, or the failure to make timely disclosure before it was disclosed in the manner required under this Act,

- (a) the person or company promptly notified the board of directors of the responsible issuer or other persons acting in a similar capacity of the misrepresentation or the failure to make timely disclosure; and
- (b) if no correction of the misrepresentation or no subsequent disclosure of the material change in the manner required under this Act was made by the responsible issuer within two business days after the notification under clause (a), the person or company, unless prohibited by law or by professional confidentiality rules, promptly and in writing notified the Commission of the misrepresentation or failure to make timely disclosure.

DAMAGES

Assessment of damages

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

1. In respect of any of the securities of the responsible issuer that the person or company subsequently disposed of on or before the 10th trading day after the public correction of the misrepresentation or the disclosure of the material change in the manner required under this Act, assessed damages shall equal the difference between the average price paid for those securities (including any commissions paid in respect thereof) and the price received upon the disposition of those securities (without deducting any commissions paid in respect of the disposition), calculated taking into account the result of hedging or other risk limitation transactions.
2. In respect of any of the securities of the responsible issuer that the person or company subsequently disposed of after the 10th trading day after the public correction of the misrepresentation or the disclosure of the material change in the manner required under this Act, assessed damages shall equal the lesser of,
 - i. an amount equal to the difference between the average price paid for those securities (including any commissions paid in respect thereof) and the price received upon the disposition of those securities (without deducting any commissions paid in respect of the disposition), calculated taking into account the result of hedging or other risk limitation transactions, and
 - ii. an amount equal to the number of securities that the person disposed of, multiplied by the difference between the average price per security paid for those securities (including any commissions paid in respect thereof determined on a per security basis) and,
 - A. if the issuer's securities trade on a published market, the trading price of the issuer's securities on the principal market (as those terms are defined in the regulations) for the 10 trading days following the public correction of the misrepresentation or the disclosure of the material change in the manner required under this Act, or
 - B. if there is no published market, the amount that the court considers just.
3. In respect of any of the securities of the responsible issuer that the person or company has not disposed of, assessed damages shall equal the number of securities acquired, multiplied by the difference between the

average price per security paid for those securities (including any commissions paid in respect thereof determined on a per security basis) and,

- i. if the issuer's securities trade on a published market, the trading price of the issuer's securities on the principal market (as those terms are defined in the regulations) for the 10 trading days following the public correction of the misrepresentation or the disclosure of the material change in the manner required under this Act, or
- ii. if there is no published market, the amount that the court considers just.

Same

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

1. In respect of any of the securities of the responsible issuer that the person or company subsequently acquired on or before the 10th trading day after the public correction of the misrepresentation or the disclosure of the material change in the manner required under this Act, assessed damages shall equal the difference between the average price received upon the disposition of those securities (deducting any commissions paid in respect of the disposition) and the price paid for those securities (without including any commissions paid in respect thereof), calculated taking into account the result of hedging or other risk limitation transactions.
2. In respect of any of the securities of the responsible issuer that the person or company subsequently acquired after the 10th trading day after the public correction of the misrepresentation or the disclosure of the material change in the manner required under this Act, assessed damages shall equal the lesser of,
 - i. an amount equal to the difference between the average price received upon the disposition of those securities (deducting any commissions paid in respect of the disposition) and the price paid for those securities (without including any commissions paid in respect thereof), calculated taking into account the result of hedging or other risk limitation transactions, and
 - ii. an amount equal to the number of securities that the person disposed of, multiplied by the difference between the average price per security received upon the disposition of those securities (deducting any commissions paid in respect of the disposition determined on a per security basis), and
 - A. if the issuer's securities trade on a published market, the trading price of the issuer's securities on the principal market (as those terms are defined in the regulations) for the 10 trading days following the public correction of the misrepresentation or the disclosure of the material change in the manner required under this Act, or
 - B. if there is no published market, the amount that the court considers just.
3. In respect of any of the securities of the responsible issuer that the person or company has not acquired, assessed damages shall equal the number of securities that the person or company disposed of, multiplied by the difference between the average price per security received upon the disposition of those securities (deducting any commissions paid in respect of the disposition determined on a per security basis) and,
 - i. if the issuer's securities trade on a published market, the trading price of the issuer's securities on the principal market (as such terms are defined in the regulations) for the 10 trading days following the public correction of the misrepresentation or the disclosure of the material change in the manner required under this Act, or
 - ii. if there is no published market, then the amount that the court considers just.

Same

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

Proportionate liability

138.6 (1) In a ~~proceeding~~an action under section 138.3, the court shall determine, in respect of each defendant found liable in the action, the defendant's responsibility for the damages assessed in favour of all plaintiffs in the action, and each such defendant shall be liable, subject to the limits set out in subsection 138.7 (1), to the plaintiffs for only that portion of the aggregate amount of damages assessed in favour of the plaintiffs that corresponds to that defendant's responsibility for the damages.

Same

(2) Despite subsection (1), where, in a ~~proceeding~~an action under section 138.3 in respect of a misrepresentation or a failure to make timely disclosure, a court determines that a particular defendant, other than the responsible issuer, authorized, permitted or acquiesced in the making of the misrepresentation or the failure to make timely disclosure while knowing it to be a misrepresentation or a failure to make timely disclosure, the whole amount of the damages assessed in the action may be recovered from that defendant.

Same

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

Same

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

Limits on damages

138.7 (1) Despite section 138.5, the damages payable by a person or company in a ~~proceeding~~an action under section 138.3 is the lesser of,

- (a) the aggregate damages assessed against the person or company in the action, and,
- (b) the liability limit for the person or company less the aggregate of all damages assessed after appeals, if any, against the person or company in all other actions brought under section 138.3, and under comparable legislation in other provinces or territories in Canada in respect of that misrepresentation or failure to make timely disclosure, and less any amount paid in settlement of any such actions.

Same

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

PROCEDURAL MATTERS

Leave to proceed

138.8 (1) No ~~proceeding~~an action may be commenced under section 138.3 without leave of the court granted upon motion with notice to each defendant. The court shall grant leave only where it is satisfied that,

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

Same

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

Same

(3) The maker of such an affidavit may be examined on it in accordance with the rules of court.

Same

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

Notice

138.9 A person or company that has been granted leave to commence ~~a proceeding~~ an action under section 138.3 shall,

- (a) promptly issue a news release disclosing that leave has been granted to commence ~~a proceeding~~ an action under section 138.3;
- (b) send a written notice to the Commission within seven days, together with a copy of the news release; and
- (c) send a copy of the statement of claim or other originating document to the Commission when filed.

Restriction on discontinuation, etc., of proceeding ~~action~~

138.10 ~~A proceeding~~ An action under section 138.3 shall not be ~~stayed, discontinued, abandoned or settled or dismissed for delay~~ without the approval of the court given on such terms as the court thinks fit including, without limitation, terms as to costs, and in determining whether to approve the settlement of the ~~proceeding~~ action, the court shall consider, among other things, whether there are any other ~~proceedings~~ actions outstanding under section 138.3 or under comparable legislation in the other provinces or territories in Canada in respect of the same misrepresentation or failure to make timely disclosure.

Costs

138.11 Despite the *Courts of Justice Act* and the *Class Proceedings Act, 1992*, the prevailing party in a ~~proceeding~~ action under section 138.3 is entitled to costs determined by a court in accordance with applicable rules of civil procedure.

Power of the Commission

138.12 The Commission may intervene in a ~~proceeding~~ action under section 138.3 and in an application for leave under section 138.8.

No derogation from other rights

138.13 The right of action for damages and the defences to a ~~proceeding~~ action under section 138.3 are in addition to, and without derogation from, any other rights or defences the plaintiff or defendant may have in a ~~proceeding~~ action brought otherwise than under this Part.

Limitation period

138.14 No ~~proceeding~~ action shall be commenced under section 138.3,

- (a) in the case of misrepresentation in a document, later than the earlier of,
 - (i) three years after the date on which the document containing the misrepresentation was first released, and
 - (ii) six months after the issuance of a news release disclosing that leave has been granted to commence ~~a proceeding~~ an action under section 138.3 or under comparable legislation in the other provinces or territories in Canada in respect of the same misrepresentation;
- (b) in the case of a misrepresentation in a public oral statement, later than the earlier of,
 - (i) three years after the date on which the public oral statement containing the misrepresentation was made, and

- (ii) six months after the issuance of a news release disclosing that leave has been granted to commence ~~a proceeding~~ an action under section 138.3 or under comparable legislation in another province or territory of Canada in respect of the same misrepresentation; and
- (c) in the case of a failure to make timely disclosure, later than the earlier of,
 - (i) three years after the date on which the requisite disclosure was required to be made, and
 - (ii) six months after the issuance of a news release disclosing that leave has been granted to commence ~~a proceeding~~ an action under section 138.3 or under comparable legislation in another province or territory of Canada in respect of the same failure to make timely disclosure.

**CHANGES MADE TO REGULATION 1015
IN RESPECT OF CIVIL LIABILITY FOR SECONDARY MARKET DISCLOSURE**

**ONTARIO REGULATION
MADE UNDER THE
SECURITIES ACT
AMENDING REG. 1015 OF R.R.O. 1990
(GENERAL)**

Note: Regulation 1015 has previously been amended. Those amendments are listed in the Table of Regulations – Legislative History Overview which can be found at www.e-laws.gov.on.ca.

.

19. The Regulation is amended by adding the following Part:

**PART XVI
CIVIL LIABILITY FOR SECONDARY MARKET DISCLOSURE**

248. In this Part,

“equity security” has the same meaning as it has in subsection 89 (1) of the Act.

249. For the purposes of Part XXIII.1 of the Act, “market capitalization” means, in respect of an issuer, the amount determined as follows:

1. For each class of equity securities for which there is a published market, determine the sum of the number of outstanding securities of the class at the close of trading on each of the 10 trading days before the day on which the misrepresentation was made or the failure to make timely disclosure first occurred.
2. Divide the sum determined under paragraph 1 by 10.
3. Multiply the quotient determined under paragraph 2 for each class by the trading price of the securities of the class on the principal market for the securities for the 10 trading days before the day on which the misrepresentation was made or the failure to make timely disclosure first occurred.
4. Add the amounts determined under paragraph 3 for each class of equity securities for which there is a published market.
5. For each class of equity securities not traded on a published market, determine the fair market value of the outstanding securities of that class as of the day on which the misrepresentation was made or the failure to make timely disclosure first occurred.
6. Add the amounts determined under paragraph 5 for each class of equity securities not traded on a published market.
7. Add the amount determined under paragraph 4 to the amount determined under paragraph 6 to determine the market capitalization of the issuer.

250. For the purposes of Part XXIII.1 of the Act,

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

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

251. For the purposes of Part XXIII.1 of the Act, “trading price” means, in respect of a security of a class of securities for which there is a published market, the amount determined under the following rules:

1. Subject to paragraphs 2 and 3, the trading price of the security is the volume weighted average price of securities of that class on the published market during the period for which the trading price is to be determined.
2. Subject to paragraph 3, if there was trading in the securities of that class in the published market on fewer than half of the trading days during the period for which the trading price of the securities is to be determined, the trading price of the security is determined as follows:
 - i. Calculate the sum of the average of the highest bid and lowest ask prices for each trading day in the period on which there were no trades in securities of that class in the published market.
 - ii. Divide the amount determined under subparagraph i by the number of trading days on which there were no trades in securities of that class in the published market.
 - iii. Add to the amount determined under subparagraph ii the volume weighted average price of securities of that class on the published market for those trading days on which securities of that class were traded.
 - iv. Divide by two the amount determined under subparagraph iii.
3. If there were no trades of securities of that class in the published market during the period for which the trading price is to be determined, the trading price of the security is the fair market value of the security.

252. (1) Part XXIII.1 of the Act applies to the acquisition of an issuer’s security pursuant to an exemption from section 53 or 62 of the Act that is set out in clause 72 (7) (b) of the Act, which exemption is prescribed for the purposes of clause 138.2 (b) of the Act.

(2) Part XXIII.1 of the Act applies to the acquisition or disposition of an issuer’s security in connection with or pursuant to a take-over bid described in clause 93 (1) (a), (b) or (e) of the Act or an issuer bid described in clause 93 (3) (e), (f) or (h) of the Act, which bids are prescribed for the purposes of clause 138.2 (c) of the Act.

.

23.(1) Subject to subsection (2), this Regulation comes into force on the day it is filed.

(2) Section 19 comes into force on the day that section 185 of the *Keeping the Promise for a Strong Economy Act (Budget Measures), 2002* comes into force.

SECTIONS 126.1 AND 126.2 OF THE SECURITIES ACT

Fraud and market manipulation

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

- (a) results in or contributes to a misleading appearance of trading activity in, or an artificial price for, a security or derivative of a securities; or
- (b) perpetrates a fraud on any person or company.

Misleading or untrue statements

126.2(1) A person or company shall not make a statement that the person or company knows or reasonably ought to know,

- (a) in a material respect and at the time and in the light of the circumstances under which it is made, is misleading or untrue or does not state a fact that is required to be stated or that is necessary to make the statement not misleading; and
- (b) ~~significantly affects, or would reasonably be expected to have a significant effect on,~~ the market price or value of a security.

Same

(2) A breach of subsection (1) does not give rise to a statutory right of action for damages otherwise than under Part XXIII or XXIII.1.

SECTIONS 59.1 AND 59.2 OF THE COMMODITY FUTURES ACT

Fraud and market manipulation

59.1 A person or company shall not, directly or indirectly, engage or participate in any act, practice or course of conduct relating to commodities or contracts that the person or company knows or reasonably ought to know,

- (a) results in or contributes to a misleading appearance of trading activity in, or an artificial price for, a commodity or contract; or
- (b) perpetrates a fraud on any person or company.

Misleading or untrue statements

59.2 A person or company shall not make a statement that the person or company knows or reasonably ought to know,

- (a) in a material respect and at the time and in the light of the circumstances under which it is made, is misleading or untrue or does not state a fact that is required to be stated or that is necessary to make the statement not misleading; and
- (b) ~~significantly affects, or~~ would reasonably be expected to have a significant effect on, the market price or value of a commodity or contract.

**CHANGES MADE TO REGULATION 1015
IN RESPECT OF HOUSEKEEPING AMENDMENTS**

**ONTARIO REGULATION
MADE UNDER THE
SECURITIES ACT
AMENDING REG. 1015 OF R.R.O. 1990
(GENERAL)**

Note: Regulation 1015 has previously been amended. Those amendments are listed in the Table of Regulations – Legislative History Overview which can be found at www.e-laws.gov.on.ca.

1. Section 38 of Regulation 1015 of the Revised Regulations of Ontario, 1990 is revoked.

2. Section 79 of the Regulation is revoked.

3. Section 100 of the Regulation is revoked and the following substituted:

100. (1) The registration of a mutual fund dealer, scholarship plan dealer or securities issuer authorizes the dealer or issuer to act as an underwriter for the sole purpose of distributing the securities that the dealer or issuer is registered to trade but not for any other purpose.

(2) The registration of a limited market dealer, international dealer or financial intermediary dealer authorizes the dealer to act as an underwriter for the sole purpose of making a distribution that the dealer is authorized to make by section 208 or 209 or Ontario Securities Commission Rule 31-503 *Limited Market Dealers*, as the case may be, but not for any other purpose.

4. (1) Subsection 104 (1) of the Regulation is amended by striking out the portion before clause (a) and substituting the following:

(1) A registrant who is a registered dealer or adviser or a partner or officer of a registered dealer or adviser and who proposes to acquire, directly or indirectly, beneficial ownership of or control or direction over any security of another registered dealer or adviser shall give written notice of the proposed acquisition to the Director at least 30 days before the acquisition and shall provide with the notice all relevant facts to permit the Director to determine if the acquisition,

.....

(2) Clause 104 (4) (a) of the Regulation is revoked and the following substituted:

(a) a partner or officer of a registered dealer or adviser who, alone or in combination with any other person or company, proposes to acquire securities that, together with the securities already beneficially owned or over which control or direction is already exercised, do not exceed more than 5 per cent of any class or series of securities of any other registered dealer or adviser that are listed and posted for trading on a stock exchange anywhere in the world;

(3) Clause 104 (4) (d) of the Regulation is revoked and the following substituted:

(d) an acquisition by a registered dealer in the ordinary course of its business of trading in securities.

5. Subsection 107 (5) of the Regulation is revoked.

6. (1) Subsection 108 (3) of the Regulation is amended by striking out “every security issuer, every adviser and every underwriter” and substituting “every security issuer and every adviser”.

(2) Subsection 108 (4) of the Regulation is amended by striking out “dealer, adviser or underwriter” in the portion before clause (a) and substituting “dealer or adviser”.

(3) Subsection 108 (6) of the Regulation is revoked and the following substituted:

(6) The Director may exempt registrants who are members of a recognized self-regulatory organization referred to in section 21.1 of the Act or a recognized stock exchange from compliance with subsection (4) if the Director is satisfied that the registrant is subject to requirements imposed by that organization or exchange that provide at least equal protection for clients to the protection provided under subsection (4).

7. Subsection 110 (1) of the Regulation is revoked and the following substituted:

(1) Every dealer, other than a security issuer, shall participate in a compensation fund or contingency trust fund approved by the Commission and established by,

- (a) a recognized self-regulatory organization referred to in section 21.1 of the Act;
- (b) a recognized stock exchange; or
- (c) a trust corporation registered under the *Loan and Trust Corporations Act*.

8. (1) Paragraph 8 of subsection 113 (3) of the Regulation is amended by striking out “Subject to subsection 114 (4)” at the beginning and substituting “Subject to section 1.5 of Ontario Securities Commission Rule 31-505 Conditions of Registration”.

(2) Subparagraph 8 iii of subsection 113 (3) of the Regulation is revoked and the following substituted:

- iii. in the case of a margin account, a properly executed margin agreement containing the signature of the owner and the guarantor, if any, and the additional information obtained under section 115 of this Regulation and sections 1.2, 1.5 and 1.6 of Ontario Securities Commission Rule 31-505 *Conditions of Registration*,

9. Subsection 132 (1) of the Regulation is amended by striking out “dealer, adviser or underwriter” and substituting “dealer or adviser”.

10. Sections 135, 137 and 138 of the Regulation are revoked.

11. Section 139 of the Regulation is revoked and the following substituted:

REPORTING TO ONTARIO SECURITIES COMMISSION

139. Every mutual fund dealer who is not a member in good standing of a self-regulatory organization that is recognized by the Commission under section 21.1 of the Act, every adviser and every scholarship plan dealer shall deliver to the Commission, not more than 90 days after the end of each financial year of the dealer or adviser, a copy of its financial statements for the year.

12. Sections 141 and 142 of the Regulation are revoked and the following substituted:

141. Every mutual fund dealer who is not a member in good standing of a self-regulatory organization that is recognized by the Commission under section 21.1 of the Act and every scholarship plan dealer shall deliver a report prepared in accordance with Statement C of Form 9 to the Commission not more than 90 days after the end of each financial year of the dealer.

142. Every securities dealer who is not a member in good standing of a self-regulatory organization that is recognized by the Commission under section 21.1 of the Act shall deliver a report prepared in accordance with Form 9 to the Commission not more than 90 days after the end of each financial year of the dealer.

13. Subsection 145 (1) of the Regulation is amended by striking out “self-regulatory body referred to in section 20 of the Act” in the portion before clause (a) and substituting “self-regulatory organization that is recognized by the Commission under section 21.1 of the Act or a recognized stock exchange”.

14. Section 146 of the Regulation is revoked and the following substituted:

146. Every audit under section 21.10 of the Act shall satisfy the audit requirements published by the Commission, in addition to the requirements in that section, and in the event of a conflict, the requirements of section 21.10 prevail.

15. (1) Subsection 147 (1) of the Regulation is revoked.

(2) Subsection 147 (2) of the Regulation is amended by striking out “an audit under section 21 of the Act” at the end and substituting “an audit under section 21.10 of the Act”.

16. Subsection 212 (2) of the Regulation is revoked.

17. (1) Subsection 230 (1) of the Regulation is amended by striking out “other than sections 221 and 222”.

(2) Subsection 230 (5) of the Regulation is revoked.

18. Section 232 of the Regulation is amended by striking out “sections 221 and 222” and substituting “section 2.1 of Ontario Securities Commission Rule 31-505 *Conditions of Registration*”.

.....

20. Form 3 is revoked and the following substituted:



Ontario
Securities
Commission

**Form 3
Securities Act**

**Application for Registration as
Dealer or Adviser**

NOTE: Should any space be insufficient for your answers, a statement may be attached and marked as an exhibit cross-referencing each statement to the item to which it pertains provided it is initialled by the applicant and the Commissioner taking the affidavit.

Application is made for registration under the *Securities Act*

(**NOTE:** Refer to sections 98 and 99 of the Regulation to confirm the appropriate category of registration.)

in the category of

1. (a) Name of Applicant
- (b) Head Office Business Address
Telephone No. Postal Code
- (c) Address for Service in Ontario:
Telephone No. Postal Code
2. The applicant maintains accounts at the following bank(s): (State bank and branches through which business is transacted)
3. Is applicant applying for registration of any branch offices?
If so, state addresses:

INSTRUCTION: Answer "Yes" or "No" to the following questions. If "Yes", give particulars.

4. Has the applicant, or to the best of the applicant's information and belief, has any affiliate of the applicant,
 - (a) been registered in any capacity under any *Securities Act* of Ontario?
 - (b) applied for registration, in any capacity, under any *Securities Act* of Ontario?
5. Is the applicant, or to the best of the applicant's information and belief, is any affiliate of the applicant, now, or has any such person or company been,
 - (a) registered or licensed in any capacity in any other province, state or country which requires registration or licensing to deal or trade in securities?
 - (b) registered or licensed in any other capacity in Ontario or any other province, state or country under any legislation which requires registration or licensing to deal with the public in any capacity? (e.g., as an insurance agent, real estate agent, used car dealer, mortgage broker, etc.)
 - (c) refused registration or a licence mentioned in 5(a) or (b) above or has any registration or licence been suspended or cancelled in any category mentioned in 5(a) or (b) above?
 - (d) denied the benefit of any exemption from registration provided by any *Securities Act* of Ontario, or similar exemption provided by securities acts or regulations of any other province, state or country?
6. Is the applicant, or to the best of the applicant's information and belief is any affiliate of the applicant, now, or has any such person or company been,
 - (a) a member of any Stock Exchange, Association of Investment Dealers, Investment Bankers, Brokers, Broker-Dealers, or similar organization, in any province, state or country?

Legislation

- (b) refused membership in any Stock Exchange, Association of Investment Dealers, Investment Bankers, Brokers, Broker-Dealers, or similar organization, in any province, state or country?
 - (c) suspended as a member of any Stock Exchange, Association of Investment Dealers, Investment Bankers, Brokers, Broker-Dealers, or similar organization, in any province, state or country?
7. Has the applicant, or to the best of the applicant's information and belief, has any affiliate of the applicant, operated under, or carried on business under, any name other than the name shown in this application?
8. Has the applicant, or to the best of the applicant's information and belief, has any affiliate of the applicant,
- (a) ever been convicted under the law of any province, state or country, excepting minor traffic violations?

Is there currently an outstanding charge or indictment against the applicant or affiliate?

INSTRUCTION: Question 8(a) refers to all laws, e.g., Criminal, Immigration, Customs, Liquor, etc. of any province, state or country in any part of the world. You are not required to disclose any convictions for which a pardon has been granted under the Criminal Records Act (Canada), and which pardon has not been revoked.

- (b) ever been the defendant or respondent in any proceedings in any civil court in any jurisdiction in any part of the world wherein fraud was alleged?
 - (c) at any time declared bankruptcy, or made a voluntary assignment in bankruptcy? (If "Yes", give particulars and also attach a certified copy of discharge.)
 - (d) ever been refused a fidelity bond?
9. Set out in the space provided, the name of the applicant, or the name of and position held by each officer or partner of the applicant seeking or holding registration.

(In addition to last name, give full first and middle names)	Office Held	(In addition to last name, give full first and middle names)	Office Held
1.		5.	
2.		6.	
3.		7.	
4.		8.	

10. Attach and mark as an exhibit:
- (a) a completed Form 4 for each partner or officer of the applicant seeking or holding registration, unless the information required by Form 4 has previously been filed by such person and remains unchanged;
 - (b) for each person or company who is a partner, officer or director of the applicant and not referred to in clause (a), the information required by Form 4 excluding questions 4, 7 and 10 and Part D thereof unless such information has previously been filed with the Commission and remains unchanged; and
 - (c) in the case of applicants for registration as investment counsel only, a letter from each person who, on behalf of the applicant will give investment advice, outlining directly related experience of such person so as to justify designation by the Director of such person to so act.

11. A - Capitalization of Company:

Other than a Security Issuer, complete below or attach marked as an exhibit to the application a statement containing the information called for below, to provide information with respect to the financial structure and control of the applicant company.

- (a) The authorized and issued capital of the company, stating:

	Preferred Shares (State number of shares <u>and dollar value</u>) Shares \$	Common Shares (State number of shares <u>and dollar value</u>) Shares \$
(1) authorized capital		
(2) issued		
(3) total dollar value of other securities:		
(i) Bonds		
(ii) Debentures		
(iii) Any other loans, state source and maturity dates		
\$		
TOTAL \$		

(b) The names, addresses and usual place of residence of registered, and direct, and indirect, beneficial owners of each class of security or obligation issued, and if a trust is the beneficial owner, the names, addresses and usual place of residence of each person or company having a beneficial interest in the trust, and the nature and extent of the holdings and percentage of interest attributable to each security holder, lender or *cestui que* trust (beneficiary).

(c) State name and address of every depository holding any of the assets of the company:

INSTRUCTION: Answer "Yes" or "No" to the following questions. If "Yes", give particulars.

(d) Has any person or company undertaken to act as a guarantor in relation to the financial or other undertakings of the applicant?

(e) Has a subordination agreement been executed by the creditor(s) in relation to loans owing by the applicant?

(f) Is there any person or company whose name is not disclosed in the statement called for by (b) above who has any direct or indirect interest in the applicant, either beneficially or otherwise?

B - Capitalization of a Partnership or Proprietorship:

Attach, marked as an exhibit to the application, a statement containing the information called for below with respect to the assets of the partnership or proprietorship, and demonstrate therein the degree of control (voting power) of each of the participants in the applicant.

(a) Amount of paid-in capital \$

(b) Description of the assets:

(c) State name and address of every depository holding any of the assets:

(d) Source, amount and maturity date of any obligations owing by the partnership, if any:
(Where applicable, give names and addresses of creditors).

INSTRUCTION: Answer "Yes" or "No" to the following questions. If "Yes", give particulars.

(e) Has any person or company undertaken to act as guarantor in relation to the financial or other undertakings of applicant?

(f) Has a subordination agreement been executed by the creditor(s) in relation to loans owing by the applicant?

(g) Is there any person or company whose name is not disclosed above who has any interest in the applicant, either beneficially or otherwise?

Legislation

DATED at

(Name of applicant)

This day of, 20.....

By _____
(Signature of applicant, partner or officer)

(Official capacity)

AFFIDAVIT
In the matter of the Securities Act

Province of Ontario

)

I, _____

(Name in full)

..... of

)

of the

To Wit:

)

in the County of

MAKE OATH AND SAY:

1. I am the applicant (or a partner or officer of the applicant) herein for registration and I signed the application.
2. The statements of fact made in the application are true.

SWORN before me at the

)

in the of

)

This day of, 20.....

)

(Signature of Deponent)

(A Commissioner, etc.)

)

It is an offence under the Securities Act to file an application containing a statement that, at the time and in light of the circumstances in which it is made, is a misrepresentation.

21. Form 5 is revoked and the following substituted:



Ontario Securities Commission

Form 5 Securities Act

Application for Renewal of Registration as Dealer or Adviser

Note: This form is not to be used for the reporting of amendments.

Application is made for renewal of registration under the Securities Act as: _____

in the category of:

1. Name of Applicant:

2. Head Office Business Address:

Telephone No:

Postal Code:

3. Attached as an exhibit is a statement giving the full particulars of all changes in the information given in my last application for registration under the Securities Act particulars of which have not been filed previously as an application for amendment or renewal of registration.

DATED at

(Name of applicant)

This day of, 20.....

By _____
(Signature of applicant, partner or officer)

(Official capacity)

AFFIDAVIT In the matter of the Securities Act

Province of Ontario)

I, _____
(Name in full)

..... of)

of the

To Wit:)

in the County of

MAKE OATH AND SAY:

- 1. I am the applicant (or a partner or officer of the applicant) herein for renewal of registration and I signed the application for renewal of registration.
2. The statements of fact made in the application for renewal of registration are true.

SWORN before me at the)

in the of)

This day of, 20.....)

(Signature of Deponent)

(A Commissioner, etc.))

It is an offence under the *Securities Act* to file an application containing a statement that, at the time and in light of the circumstances in which it is made, is a misrepresentation.

22. Forms 7, 17, 18 and 19 are revoked.

23.(1) Subject to subsection (2), this Regulation comes into force on the day it is filed.

(2) Section 19 comes into force on the day that section 185 of the *Keeping the Promise for a Strong Economy Act (Budget Measures), 2002* comes into force.