

## Index

- accredited investor, 476-482
- adviser, 832-833, 846
- affiliate, 626
- alternative trading systems (ATS),
  - see also* securities industry,
  - generally
  - generally, 81, 834, 903-905
  - trading rules, 907-908
- annual information form (AIF),  
312-313
- arbitrage, limits, 122-124
- asset-backed securities, 48-49
- associate, 626-627
- backdoor underwriting, 445, 451-  
452, 476, 488, 489, 493, 518
- banks
  - generally, 84
  - investment banking
    - market making, 831
    - mergers and acquisitions, 831
    - underwriting
      - allocating savings to  
investment, 830-831
      - financial advice, 829-830
      - insurance against market  
price fluctuations, 830
      - marketing services, 830
  - underwriter, distributions through  
banking groups, 56
- benchmark, 1048-50
- benchmark administrator, 1050
- benchmark contributor, 1050
- blanket orders, 189-190
- blue sky regulation, *see* merit  
discretion
- bonds or debentures
  - call provision, 21
  - convertible, 22
  - generally, 19-21
  - sinking fund, 21
  - warrant, 22-23
- bought deal agreement, 545
- bulletins and websites, 191
- business acquisition reports, 332-  
334
- business combination, 744
- business trusts, units in
  - business trust form vs corporate  
form of association, 35-36
  - defined, 34
  - generally, 33-34
  - trust defined, 34-35
  - types
    - mutual funds, 36-38
    - real estate investment trusts  
(REITs), 38-39
    - resource trusts, 39
    - securitization trusts, 40
- Canadian Public Accountability  
Board (CPAB), 305, 388-389
- churning, 843, 876
- clearing agencies, 73-75, 835-836,  
913-916
- clearing intermediary, 1064-1068
- common (ordinary) shares
  - dividends, right to, 24-25
  - liquidation right, 25-26

- common (ordinary) shares** — *Continued*  
 vote, right to, 24
- continuous disclosure**  
 annual information form (AIF), 312-313  
 benefits, 296  
 best practices, 359  
 business acquisition reports, 332-334  
 certification of annual and interim disclosure, 330-331  
 competing concerns, 296-297  
 financial statements  
   annual, 300-301  
   audit subject to oversight, 305  
   delivery, 303  
   exemptions, 305-308  
   GAAP, 304  
   interim, 301-303  
 generally, 293-294, 298  
 insider reports  
   electronic disclosure by insiders, 341-342  
   insider, meaning, 337-339  
   reporting insider, meaning, 339-341  
   reporting obligations, 335-337  
 investment funds, 970-973  
 management's discussion and analysis (MD&A), 308-311  
 multi-jurisdictional system, 359-360  
 Ontario *Securities Act*, 1042-1043  
 primary purpose, 295-296  
 proxy/information circulars  
   exemptions  
     automatic, 321-325  
     discretionary, 325-326  
   generally, 313-314  
   information required  
     corporate governance disclosure, 321  
     executive compensation disclosure, 317-321  
     general information circular requirements, 316-317  
     National Instrument 54-101, 326-330  
     proxy solicitation requirements, 314-316  
     solicit, meaning of, 315, 324-325  
   reporting insider, 335-341  
   reporting issuers, 298-300  
   secondary market disclosure, increasing emphasis on, 294-295  
 System for Electronic Document Analysis and Retrieval (SEDAR), 360-363  
 timely disclosure  
   confidential reporting, 356  
   detrimental information, 357  
   disclosure, process, 358  
   material information reporting requirements  
     extension to material facts, 343-347  
     regulatory and court decisions on "material" and "change", 350-356  
   reporting material changes, 342-343  
   what must be reported, 347-350  
   proposed changes, 357-358
- control person, 231-232, 517**
- cooling-off period, 240-241**
- core documents, 419-420**

- corporate governance**
  - audit committees
    - authority, 395-396
    - discretionary exemption, 396
    - generally, 390-391
    - issuers that are not venture issuers, 391-393
    - venture issuers, 393-395
  - auditor oversight, 388-390
  - background
    - Dey Report and Toronto Stock Exchange guidelines, 367-369
    - response to enactment of *Sarbanes-Oxley Act of 2002* (US), 369-371
  - disclosure controls and procedures, 396-398
  - disclosure requirements
    - comply or explain disclosure approach, 382-383
    - generally, 371-374
    - issuers other than venture issuers, 374-379
    - venture issuers, 379-382
  - generally, 365-367
  - guidelines
    - board mandate, 383-384
    - code of business conduct and ethics, 384-385
    - compensation committee, 386
    - composition of board and meetings of independent board members, 383
    - enforcement, 387
    - nominating directors, 385-386
    - orientation and continuing education, 384
    - position descriptions, 384
    - regular board assessments, 387
  - internal control over financial reporting, 396-398
  - other governance issues
    - case-by-case orders related to corporate governance issues, 398-400
    - current issues might lead to further regulation, 400-402
    - securities regulation vs court approach, potential differences, 402-403
  - credit rating organizations**
    - generally, 836-837, 917-920
    - regulation of
      - code of conduct provisions, 924-926
      - legislative provisions, 921-923
      - National Instrument 25-101, 923-924
  - credit unions and caisses populaires, 85**
  - Criminal Code, see enforcement mechanisms, insider trading, market manipulation***
  - crowd-funding**
    - exemptions, 469, 494-508, 617
    - Internet offerings and, 52-53
  - dealer, 831-832, 846, 1045**
  - debt finance**
    - accrued liabilities, 17
    - bonds or debentures
      - call, 21
      - convertible, 22
      - generally, 19-21
      - sinking fund, 21
      - warrant, 22-23
    - loans
      - long-term, 18
      - short-term, 17-18
    - notes or commercial paper, 19
    - trade credit, 16

- depository institutions, 74-75, 834-835, 913-916**
- derivative, 1038-1039, 1049**
- derivative securities**
  - counterparty risk, 1033-1034
  - derivatives on commodities, 1031
  - designated derivative, defined, 1040
  - excess margin, 1066
  - exchange traded and over-the-counter, 1031-1032
  - generally, 41-48, 1029-1030
  - hedger, 1052-1053
  - hedging, 43-44, 1032-1033
  - interest rate caps, 45-46
  - interest rate swaps, 46-48
  - indirect intermediary, 1065
  - legislation
    - Ontario *Commodities Futures Act*, 1048, 1051-1054
    - Ontario *Securities Act*
      - benchmarks, 1048-1050
      - continuous disclosure, 1042-1043
      - derivative defined, 1038-1040
      - designated derivative defined, 1040
      - enforcement, 1050
      - fraud and market manipulation, 1047-1048
      - generally, 1037
      - insider trading, 1043-1044
      - prospectus requirement, 1041-1042
      - registration, 1045-1046
      - related derivative, 1040
        - security defined, 1039
        - trading in derivatives, 1046-1047
    - Quebec *Derivatives Act*
      - administration and enforcement, 1061-1062
      - dealers and advisers, 1059-1060
      - derivative defined, 1055
      - purpose and focus of Act, 1056
      - qualified persons, 1060-1061
      - regulated entities, 1056-1058
      - margin, 1035-1037
      - national and multilateral instruments
        - generally, 1062-1063
        - Multilateral Policy 91-102 — prohibition of binary options, 1068-1069
        - National Instrument 94-101 — mandatory central counterparty clearing, 1063-1064
        - National Instrument 94-102 — customer clearing and protection of customer collateral, 1064-1068
        - product determination, 1073-1076
        - trade repositories and derivatives data reporting, 1069-1073
      - related derivative, 1040
      - specified derivative, 1075-1076
      - speculative investments, as, 42, 1032-1033
      - stock index options, 44-45
      - trade repositories, 1034-1035
      - use to avoid or hedge against risk, 43-44
      - warrants, 42
  - Dey Report and Toronto Stock Exchange guidelines, 367-369**
  - direct intermediary, 1064-1065**

- direct issue of securities**
- direct contacts, 50
- Internet offerings and crowd funding, 52-53
- private placements, 51-52
- rights offerings, 51
- disclosure**
- continuous, *see* continuous disclosure
- systems
  - integrated, 562-565
  - multi-jurisdictional, 565-569
- disclosure controls and procedures, 397**
- distribution, meaning**
- deemed distributions on resale, 232
- generally, 50-57, 228-232, 517
- resale of securities returned to issuer, 230-231
- sales by control persons, 231-232
- trade in securities not previously issued, 228-230
- distribution process**
- amendment of prospectus, 242
- blue-sky (or merit) discretion, 243-245
- Canada-U.S. multi-jurisdictional offerings, 243
- cooling-off period, 240-242
- comment letter and clearance period, 234
- diagram, 58
- lapse of prospectus, 242
- limitation on selling activities
  - during waiting period
    - generally, 235-236
    - issuer and underwriter concerns, 236-238
- marketing materials, 237-238
- national offerings, 242-243
- road show, 237-238, 544-546
- standard term sheet, 237-238, 544-546
- “testing the waters”, 238-240
- vetting of preliminary prospectus, 233-234
- waiting period, 232-233, 235-238
- document, 419-420**
- efficient market hypotheses (EMH), 98, 104-124**
- Electronic Data Gathering and Retrieval system (EDGAR), 361**
- electronic trading and direct electronic access to marketplaces**
- generally, 78, 908-910
- marketplace participant responsibilities
  - automated order system, 912-913
  - generally, 910-911
- participating dealer responsibilities
  - for direct electronic access, 911-912
- eligible crowdfunding issuer, 497**
- enforcement mechanisms**
- administrative sanctions
  - applications to court, 1011-1012
  - factors considered in imposing, 1016-1017
  - penalty, 1012-1013
  - procedure, 1011
  - scope of powers, 1014-1016
  - settlements, 1017
  - types of orders, 1006-1011
- appeal of decisions of administrators, 1019-1020
- appointment of receiver, trustee or liquidator, 1022

**enforcement mechanisms** — *Continued*

*Charter* issues, 1024-1028  
 civil sanctions, 1017-1018  
 common law civil actions, 1018  
 compliance reviews, 1021-1022  
 financial audits, 1020-1022  
 freezing property, 1022  
 generally, 999  
 inter-jurisdictional cooperation, 1023-1024  
 investigations, financial audits and compliance reviews, 1020-1022  
 penal sanctions  
     compensation or restitution orders, 1004-1005  
     costs of investigation, 1005-1006  
     *Criminal code* sanctions, 1006  
     due diligence defences, 1003  
     limitation periods, 1005  
     offences, 1000-1002  
     officers, directors and others, 1002  
     sanctions, 1003-1004  
 review of decisions by securities regulators, 1019

**England, pre-20th century securities regulation**

development of markets, 133-135  
 early regulation, 135-140  
 mandatory disclosure, 140-142  
 misrepresentation in prospectus, statutory civil liability, 142-143

**equity finance**

business trusts, units in  
     business trust form vs corporate form of association, 35-36  
     defined, 34  
     generally, 33-34

trust defined, 34-35

**types**

    mutual funds, 36-38  
     real estate investment trusts (REITs), 38-39  
     resource trusts, 39  
     securitization trusts, 40  
 common (ordinary) shares  
     dividends, right to, 24-25  
     liquidation right, 25-26  
     vote, right to, 24  
 limited partnership, units in, 32  
 options  
     employee stock options, 31-31  
     stock options created in stock markets, 31  
 preferred shares  
     conversion rights, 27  
     cumulative, 26-27  
     participating, 27  
     redemption/call provision, 28  
     retraction rights, 28  
 restricted shares, 28-29  
 rights offering, 30-31  
 share capital, 23  
 special voting shares, 29-30  
 units consisting of bundle of 2 or more types of securities, 40

**exchange contract, British Columbia, 1040-1041****exemptions**

continuous disclosure  
     financial statements, 305-308  
     proxy/information circulars  
         automatic, 321-325  
         discretionary, 325-326  
 corporate governance audit committees, discretionary exemption, 396  
 crowd-funding, 469, 494-508, 617

- exemptions** — *Continued*
- investment funds, prospectus requirement, 968-970
- issuer bid regulation
  - de minimis*, 796
  - designated stock exchange issuer bids, 796-797
  - employee, executive officer, director and consultant, 795
  - exemption order, 798
  - foreign issuer bid, 797-798
  - non-reporting issuer, 795-796
  - normal course issuer bid exemption, 797
  - pre-arranged acquisitions, 794
  - security holder controlled acquisition, 795
- mandatory disclosure, 9
- prospectus requirements, *see* prospectus requirement, exemptions
- registration requirements for investment fund managers and mutual fund dealers, 975-976
- securities firm
  - registration, 857-860
- takeover bid rules
  - de minimis* exemption, 757-758
  - exemption applications, 758
  - foreign takeover bid exemption, 756-757
  - generally, 753-754
  - non-reporting issuer exemption, 756
  - normal course purchases, 754
  - private agreement exemption, 754-755
- financial outlook, 200-201, 272, 359**
- forward-looking information, 200, 265, 271-273, 310, 414, 434-435**
- front running, 877-879**
- fund facts document, 937, 957, 963-968**
- future-oriented financial information (FOFI), 200-201, 271, 359, 600**
- futures contract, 136, 144, 221, 1031, 1036, 1038-1042, 1051-1053, 1055**
- GAAP, 304-305**
- generally accepted accounting principles, *see* GAAP**
- government securities, 40-41**
- hedger, 1052-1053**
- history of regulation**
  - Canada
    - early blue sky regulation, 151
    - early prospectus disclosure requirements, 149-150
    - early trading and associations of brokers, 148-149
    - fraud prevention legislation, 151-152
    - interprovincial cooperation, 158-160
    - Kimber Report (1965), 157
    - Merger Report (1970), 158
    - misrepresentation in prospectus, statutory liability, 150
    - prospectus disclosure and broker registration requirements, 1930-1960s, 152-157
  - early evidence of securities and markets, 132
  - England, pre-20th century regulation
    - development of markets, 133-135

**history of regulation** — *Continued*

England, pre-20th century regulation — *Continued*  
 early regulation, 135-140  
 mandatory disclosure, 140-142  
 misrepresentation in  
 prospectus, statutory liability, 142-143  
 generally, 131  
 United States  
 early development of markets, 143  
 early 20th century regulation, 144-146  
 pre-20th century regulation, 143-144  
 self-regulation by brokers, 146-148

**independence,**

of directors, 374  
 of members of mutual fund  
 independent review committee, 947

**initial public offering, testing the waters for, 238-240****inside information, 631, 649, 655-656****insider reports,**

generally, 335-342  
 insider, meaning of, 337-339  
 reporting insider, meaning of, 339-341  
 SEDI, see "system for disclosure by insiders"  
 system for electronic disclosure by insiders, 341-342

**insider trading**

*Criminal Code*  
 informing, 653-655

likely impact of provision and possible purpose, 664-665  
 penal sanction, 656  
 potential liability for  
 organization, 656-661  
 prohibited activity, 645-646  
 provincial securities Acts,  
 compared to  
 accused purchased or sold securities of reporting issuer, 648  
 connection test, 646-648  
 issuers vs reporting issuers, 662-663  
 knowingly using inside information, 649-653  
 types of securities, 663  
 recommending, 655-656  
 detection problems, 667-669  
 detrimental or beneficial?  
 generally, 678-679  
 implications of pre-regulation  
 non-prohibition, 686-690  
 more efficient pricing, 684-686  
 superior compensation, 680-684  
 empirical evidence for prohibition  
 assessments of effect of insider trading in different countries, 698-701  
 effect of insider trading on executive compensation, 694-695  
 effect of insider trading on market liquidity, 697-698  
 effect of insider trading on securities prices, 696-697  
 generally, 702  
 indirect empirical evidence, 694  
 enforcement problems  
 administrative sanctions, 673  
 circumstantial evidence, 670-671



- insider trading** — *Continued*  
enforcement problems — *Continued*  
    civil action for accounting, 672-673  
    civil action for damages, 671-672  
    generally, 668, 669-670, 673-674  
    penal sanctions: burden of proof and compellability, 671  
generally, 10, 621-624, 690-691, 702-703  
generally disclosed, 633-634  
inside information, 631, 649, 655-656  
insider, 337-339, 625  
investment funds, and, 955  
Ontario *Securities Act*, 1043-1044  
market manipulation, as form of, 712-713  
mathematical modeling, 691-694, 702  
regulation by Canadian securities Acts  
    enforcement  
        actions by or on behalf of reporting issuer, 641-643  
        administrative sanctions, 643-644  
        civil actions, 637-641  
        insider reporting, 644  
        penal sanctions, 630-637  
        prohibited activity, 624-625  
        who is prohibited, 625-629  
    victimless crime, as  
        anonymous trading, 674-675  
        if insiders gain someone loses, 677-678  
        limit orders, 676-677  
        market orders, 675-676  
        persons trading in opposite direction, 677
- insurance companies**, 85
- integrated disclosure system**, 562-565
- International Organization of Securities Commissions (IOSCO)**, 161, 194-195
- internationalization of securities markets**, 88-89
- investment banking**  
market making, 831  
mergers and acquisitions, 831  
underwriting  
    allocating savings to investment, 830-831  
    financial advice, 829-830  
    insurance against market price fluctuations, 830  
    marketing services, 830
- investment contract**, 212-224
- investment funds**  
advantages of, 933  
annual information form, 957, 961-963, 968  
continuous disclosure, 970-973  
distribution, generally, 956  
exemptions from prospectus requirement, 968-970  
fund facts document  
    amendment, 968  
    contents, 964-965  
    delivery, 965-967  
    filing, 957  
    generally, 963-964  
    website posting, 967  
    withdrawal rights and rights of action for failure to deliver or send, 967  
fund organization  
    custodian, 931

- investment funds** — *Continued*
- fund organization — *Continued*
  - distribution, 930
  - generally, 929-930
  - manager, 930
  - portfolio adviser, 930
- generally, 86-87, 927-935
- investment companies, 87
- mutual funds, generally
  - distinguished from non-redeemable investment funds, 928-929
  - fees, 935
  - generally, 86-87
  - purchasing, 933-934
  - sales charges, 934-935
- registration requirements for
  - investment fund managers and mutual fund dealers
    - exemptions, 975-976
    - generally, 973
    - registration, 974-975
    - requirements
      - compliance, 981
      - integrity, 977-980
      - proficiency, 980-981
      - solvency, 976-977
  - requirements
    - conflict of interest restrictions
      - independent review
        - committee (IRC), 947-949
      - manager fiduciary duties, 946-947
      - other prohibited
        - transactions, 944-945
      - prohibited investments for dealer-managed mutual funds, 941-943
      - prohibited transactions for mutual funds generally, 943-944
  - contractual plans, 953
  - custodianship, 953-955
  - fundamental changes, 949-952
  - generally, 935-936, 955-956
  - incentive fees, 952-953
  - insider trading, 955
  - investment restrictions
    - generally, 936, 937-938
      - initial investment in new mutual fund, 936-937
      - investments in other investment funds, 940
      - other restrictions, 941
      - restrictions against
        - controlling or running business, 938-939
      - restrictions on illiquid assets, 939
  - sales practices — concerns
    - bonus commissions, 984-985
    - cooperative advertising, 984
    - generally, 981-982
    - marketing incentive programs, 983
    - reciprocal commissions, 983
    - reimbursement of expenses, 985
    - Stromberg Report (1995),
      - questionable mutual sales practices, 982-983, 985
    - trailer fee split payments, 983-984
    - trailer fees, 982
    - trips and other non-cash sales incentives, 984
  - sales practices — response to
    - concerns
      - exemption, 998
      - internal dealer incentive
        - practices, 996-997
      - other sales practices, 995-996

- investment funds** — *Continued*  
 sales practices — response to concerns — *Continued*  
   prospectus and point of sale disclosure, 997-998  
   reciprocal commissions, 994-995  
   restrictions on payments, benefits, reimbursement of expenses, 986-994  
 simplified prospectus, 957, 958-961, 968  
 types of funds, 86, 931-933
- Investment Industry Regulatory Organization of Canada (IIROC)**  
 administrative sanctions, 900  
 generally, 901-902  
 proficiency requirements set out by, 893
- issuer, defined, 229**
- issuer bid regulation**  
 basic rules, 790-794  
 exemptions  
   *de minimis*, 796  
   designated stock exchange issuer bids, 796-797  
   employee, executive officer, director and consultant, 795  
   exemption order, 798  
   foreign issuer bid, 797-798  
   non-reporting issuer, 795-796  
   normal course issuer bid exemption, 797  
   pre-arranged acquisitions, 794  
   security holder controlled acquisition, 795
- Kimber Report (1965), 148, 157, 162, 163, 164, 165, 167, 243, 294, 295, 335, 571, 623, 644, 667-668, 728**
- limited partnership, units in, 32**
- looting, 731-732, 743-747, 801-802, 816**
- major investors in Canadian securities market**  
 banks, 84  
 credit unions and caisses populaire, 85  
 individuals, 87  
 insurance companies, 85  
 investment funds  
   investment companies, 87  
   mutual funds, 86-87  
 pension funds, 85-86  
 sovereign wealth funds, 87  
 trust companies, 84-85
- management's discussion and analysis (MD&A), 308-311**
- managerialism (empire building), motivation for takeover, 801**
- mandatory disclosure, reassessment of,**  
 adverse selection and mandatory disclosure, 581-587  
 effects  
   comments on studies, 577-580  
   generally, 571-572  
   new issue (or prospectus) disclosure, empirical evidence, 572-577  
   more recent empirical evidence, 597-598  
   secondary market disclosure — financial statements, empirical evidence, 577
- interest group theories  
 generally, 614-615

- mandatory disclosure, reassessment of, — *Continued***
- interest group theories — *Continued*
- interests within securities
    - regulatory organizations, 616-617
  - merit discretion, 619-620
  - possible interest group influences, 615
  - rhetorical conventions, 618
- market failures as justification for mandatory disclosure, credible commitment theory, 594-596
- irrational behaviour as support for mandatory disclosure, 597
  - overinvestment in production of information, 589-590
  - social gains from reducing securities price inaccuracies, 591-593
  - standardization of information presentation, 594
  - too little information, 588-589
- proposals for reform
- changes in emphasis, 598-606
  - investor regulation, 611
  - issuer choice proposals, 606-610
  - reduced and better disclosure based on investor behaviour theory, 611-613
  - regulation by securities exchanges, 610-611
  - social disclosure, 613-614
  - supplementary disclosure with more controls on corporate behaviour, 613
- prospectus disclosure, 7-8
- margin trading, 81-82, 137-138, 219-221, 890, 941, 1035-1037, 1053, 1066-1067**
- market manipulation**
- generally, 10-11, 705-707
  - insider trading as market manipulation, 712-713
  - manipulation, defined, 705, 712-713
  - Ontario *Securities Act*, under, 1047-1048
  - regulation under securities legislation and *Criminal Code*
    - dissemination of false information, 715-716
    - false market signals from high volume trading, 717-718
    - general provisions, 718-719
    - sanctions for violations of provincial securities Act, 720-721
    - trading in advance of favourable or unfavourable commentary (scalping), 716-717
    - wash sales and matched orders, 714-715
  - types of
    - dissemination of false information, 710
    - false market signals from high volume trading, 711-712
    - insider trading, 712-713
    - matched orders, 709-710
    - trading in advance of favourable or unfavourable commentary (scalping), 710-711
    - wash sales, 707-709
- market microstructure, 124-125**
- marketplace, 909-910**

- marketplace participant**, 903, 910-911
- material change**, 134, 157, 264-265, 294-295, 342-358, 360, 423-424, 433-434, 631, 633-636, 973, 1043
- material fact**, 199, 263-265, 343-346, 350, 631-636,
- memoranda of understanding (MOU)**, 188-189
- Merger Report (1970)**, 148, 158, 295
- merit discretion**,  
critique, 619  
discretion, 243-245, 619-620  
funding portal and, 500  
history, 144-145, 148, 151  
interest group theory of, 619-620
- misrepresentation**, 142-143, 150, 253-288, 405-440, 1000-1003, 1017-1018
- multi-jurisdictional disclosure**  
additional Canadian disclosure, 569  
mechanics of MJDS offering, 568-569  
permitted offerings using US documentation, 566-567  
reasons for, 565-566
- multilateral instruments (MI)**, 186
- Mutual Fund Dealers Association of Canada (MFDA)**  
administrative sanctions, 900  
generally, 901-902
- mutual funds**, 36-38, 86-87, *see also* investment funds
- National Instruments (NI)**  
credit rating organizations, NI 25-101, 923-924
- customer clearing and protection of customer collateral and positions, NI 94-102, 1064-1068
- electronic trading and direct electronic access, NI 23-103, 906, 908-913
- generally, 186
- independent review committee (IRC), NI 81-107, 945, 947-949, 951
- investment fund continuous disclosure, NI 81-106, 970-973
- investment fund prospectus exemptions, NI 45-106, 968-970
- investment fund requirements, NI 81-102, 935-944, 950, 952-953, 955
- mandatory central counterparty clearing, NI 94-101, 1063-1064
- marketplace operation, NI 21-101, 905-906
- mutual funds, NI 81-105, 985-998
- poison rights plans, NI 62-104, amendments to, 787-788
- prospectus requirements, NI 81-101, 957, 967, 968, 970
- proxy/information circulars, NI 54-101, 326-330
- registration requirements, NI 31-103, 846-849, 852, 855-858, 860, 862, 864, 869, 871, 879, 881, 886, 895-898, 973, 976-981
- trading rules, NI 23-101, 906-908
- underwriter conflicts, NI 33-105, 872-876
- national securities regulatory regime, efforts to create**  
cooperative capital market regulatory system, 176-180  
pre-1996 proposals, 172-173  
proposed federal *Canadian Securities Act*, 173-176

- options**
  - employee stock options, 31-31
  - stock options created in stock markets, 31
- pension funds, 85-86**
- policy statements**
  - companion policies, 188
  - generally, 186-188
  - local policies, 187-188
  - multi-lateral policies, 187-188
  - uniform policy statements, 190-191
- Porter Report, 294**
- preferred shares**
  - conversion rights, 27
  - cumulative, 26-27
  - participating, 27
  - redemption/call provision, 28
  - retraction rights, 28
- PREP (post receipt pricing) procedures**
  - concerns with, 560-562
  - eligibility, 558
  - generally, 556-558, 559
- private issuer, 482-483**
- private placement, 51-52**
- prospectus distribution process, see distribution process**
- prospectus, misrepresentation in**
  - contractual claims, 253-254
  - due diligence defence
    - case law considering, 274-288
    - role of securities lawyer, 288-291
  - generally, 253
  - other statutory sanctions, 291
  - liability for in secondary market
    - disclosure, see secondary market disclosure sanctions
- statutory civil liability
  - common law liability, expansion, 259-260
  - common law rights preserved, 273-274
  - damages, 273
  - defences
    - directors, underwriters and persons signing prospectus, 269-270
    - experts, 270-271
    - forward-looking information, 271-272
  - generally, 268-269
  - issuer's defences, 269
  - statutory standard of reasonableness, 271
  - limitation period, 273
  - persons liable, 267
  - what plaintiff must prove
    - generally, 260-261
    - misrepresentation, 261-265
    - proof of reliance not required, 266
- tort claims
  - fraudulent misrepresentation or deceit, 255-256
  - negligent misstatement, 256-259
- prospectus requirement**
  - amendment and lapse, 242
  - blue sky (merit) discretion, 243-245
  - Canada-US multi-jurisdictional offerings, 243
  - contents, 198-201
  - cooling-off period, 240-242
  - delivery of prospectus, 240-242
  - distribution, meaning
    - deemed distributions on resale, 232
    - resale of securities returned to issuer, 230-231

- prospectus requirement** — *Continued*
  - distribution, meaning — *Continued*
    - sales by control persons, 231-232
    - trade in securities not previously issued, 228-230
  - distribution process
    - comment letter and clearance period, 234
    - diagram, 58
    - limitation on selling activities during waiting period generally, 235-236
    - issuer and underwriter concerns, 236-238
    - vetting of preliminary prospectus, 233-234
    - waiting period, 232-233
  - exemptions, see prospectus requirement, exemptions
  - failure to deliver
    - administrative sanctions, 247
    - civil sanctions, 247-248
    - penal sanction, 246
  - failure to file
    - administrative sanctions, 248-249
    - civil sanctions, 249-252
    - penal sanction, 248
  - generally, 197, 224
  - initial public offering, testing the waters for, 238-240
  - national offerings, 242-243
  - trade, meaning
    - open-ended nature of definition, 228
    - pre-sale activities — acts in furtherance of a trade, 226-227
    - sale for valuable consideration, 225
    - trades on behalf of others, 225-226
  - when required, 201-202
    - investment contract, meaning, 212-224
    - security defined
      - catch-all provisions, 210-212
      - common types of securities, 203-209
      - less common securities, 209
- prospectus requirement, exemptions**
- accredited investor, 476-482
  - affiliates, 488-490
  - capital raising exemptions
    - accredited investor, 476-482
    - affiliates, 488-490
    - crowd-funding exemptions, 494-508
    - family, friends and business associates, 487-488
    - minimum amount investment, 493-494
    - offering memorandum, 490-493
    - private issuer, 482-487
    - rights offering, 473-476
  - closed system concept
    - generally, 446
    - response to uncertainty and gap in regulation, 445
    - trading outside closed market, 446-448
    - trading within closed market, 446
  - weaknesses in previous system
    - continuous disclosure requirements, 444-445
    - “to the public”, uncertainty of meaning, 442-444
  - control block exemptions, 516-517

**prospectus requirement, exemptions**

— *Continued*

crowd-funding exemptions, 494-508

employee, executive officer, director and consultant exemptions, 512-515

exemption orders, 527-528

family, friends and business associates, 487-488

generally, 441

investment fund exemptions, 512

minimum amount investment, 493-494

miscellaneous exemptions

dividends and distributions, 518-519

exercise of conversion, exchange or purchase rights, 524-525

generally, 517-518

government issued or government guaranteed debt, 520-521

isolated trades, 518

not for profit educational, benevolent, fraternal, charitable, religious, recreational, 524

short-term debt, 521-522

underwriters, 519-520

variable insurance contracts and mortgages, 522-524

mortgages, 523-524

offering memorandum, 490-493

other exemptions, 525-526

private issuer, 482-487

public, distribution to the, 442-444, 465, 485

reasons for exemptions

generally, 454

information provided in other documents

amalgamations, 462

takeover bids, 461-462

little or no new information

reinvestment plans, 461

rights offering, 458-460

stock dividends, 460-461

modified disclosure based on continuous disclosure, 470-471

no need to know

close connection with

issuer (common bonds), 457-458

institutional investors and sophisticated investors, 455-456

large purchases, 456

wealthy investors, 456

promotion of specific

investments or activities, 472

regulated under another regime, 470

safe investments, 462-463

small business/venture capital, 464-470

small number of investors and small monetary value, 463-464

usual prospectus information and continuous disclosure not helpful, 463

reporting requirement, 526

resale restrictions

conditions for resale without prospectus or reliance in exemption, 449-454

deemed distribution, 449

rights offering, 458-460, 473-476

transaction exemptions

asset acquisition, 510



- prospectus requirement, exemptions**
  - *Continued*
- transaction exemptions — *Continued*
  - business combination and reorganization, 509-510
  - issuer acquisition or redemption, 510-511
  - takeover bids and issuer bids, 511-512
- variable insurance contract exemption, 522-523
- provincial regulation, 168-172**
- proxy/information circulars**
- exemptions
  - automatic, 321-325
  - discretionary, 325-326
- form of proxy, 313
- generally, 313-314
- information required
  - corporate governance disclosure, 321
  - executive compensation disclosure, 317-321
  - general information circular requirements, 316-317
- National Instrument 54-101, 326-330
- proxy solicitation requirements, 314-316
- public, distribution to the, 228, 442-444, 465, 485**
- public offering, 51**
- purpose of securities regulation**
  - generally, 161-162
  - International Organization of Securities Commissions (IOSCO), 161
  - investor protection, 163
  - link between investor protection and optimal allocation of financial resources, 164-165
  - method of achieving public confidence and optimal allocation of resources, 166-167
  - not at excessive cost, 166
  - optimal allocation of financial resources, 163-164
  - promoting confidence in market, achieving objectives by
    - allocation of savings to investment promotes economic growth, 166
    - link between confidence in secondary and primary markets, 165-166
    - public confidence, 165
  - reduction of systemic risk, 167-168
- purpose of selling securities, 2-4**
- quotation and trade reporting system (QTRS), 902-903**
- real estate investment trusts (REITs), 38-39**
- Regal test, 779-780**
- regulation generally, see also securities firms**
  - derivative securities, 14
  - International Organization of Securities Commissions (IOSCO), 161, 194-195
  - investment fund, 13-14
  - main sources
    - blanket orders, 189-190
    - bulletins and websites, 191
    - decisions and rulings, 189
    - memoranda of understanding (MOU), 188-189
    - multilateral instruments (MI), 186

- regulation generally, see also securities firms — Continued**
- main sources — *Continued*
  - national instruments (NI), 186
  - notices, 188
  - policy statements, 186-188
  - provincial and territorial securities Acts, 180-182
  - provincial regulations and rules, 182-186
  - uniform policy statements, 190-191
- securities exchanges, 191-193
- securities industry, 12-13
- securities regulatory authority
  - review, 193-194
- self-regulatory organizations (SRO), 191, 193
- related party, 745-747**
- related party transactions, 746-747, 839-841**
- reporting insider, 335-341, 671**
- resource trusts, 39**
- restricted shares, 28-29**
- rights offering, 30-31, 51, 420, 458-460, 473-476**
- road show, 237-238, 544-546**
- Sarbanes-Oxley Act of 2002 (US), response to enactment of, 369-371***
- scalping (trading in advance of favourable/unfavourable commentary), 710-711, 716-717**
- secondary market disclosure sanctions**
  - administrative sanctions, 406-407
  - common law civil sanctions, 407-409
  - core document, 419-420
  - document 419-420
  - penal sanctions, 405
  - prospectus misrepresentation, 405-409, 420
  - statutory civil sanctions
    - control against unwarranted litigation or settlements, 417-418
    - coverage and basis for liability, 411-412
    - defences, 413-414
    - failure to make timely disclosure, 411, 414, 421-426, 429-439
    - generally, 409-410
    - liability for misrepresentation or failure to disclose, 413
    - limit on damages, 415-417
    - misrepresentation, 418-440
    - public oral statements, 408, 412, 418-435, 439
    - what plaintiff is required to prove
      - negligence or causation, no proof required, 412-413
      - reliance, no proof required, 412
  - statutory civil sanctions, misrepresentation in prospectus
    - defences
      - confidential disclosure, 433-434
      - due diligence, 430
      - expert withdrawal of consent
        - non-causation, 435-
        - non-consent and corrective action, 432
      - plaintiff's knowledge, 430

- secondary market disclosure sanctions** — *Continued*
- statutory civil sanctions, misrepresentation in prospectus — *Continued*
- *Continued*
- presence of system to ensure continuous disclosure, 430-431
  - protection for forward-looking information, 434-435
  - reliance on disclosure by other issuers or public official, 432-433
  - reliance on expert's report, 431
  - generally, 418-419
  - leave to proceed with action and to discontinue, abandon or settle, 438-439
  - liability for misrepresentation or failure to disclose, 425-429
  - liability where documents incorporated by reference in prospectus, 440
  - limit on damages, 436-437
  - limitation period, 439-440
  - proportionate liability, 437-438
  - what plaintiff is required to prove
    - elements of actions, 421-424
    - negligence or causation, no proof required, 425
    - reliance, no proof required, 425
    - written communications, distinction between core documents, defined, 420
    - documents defined, 419-420
    - public oral statements defined, 420-421
- securities exchange, 902**
- securities firms**
- complaint handling, 898-899
  - compliance, promotion of and monitoring, 895-897
  - enforcement
    - administrative sanctions, 900
    - civil actions, 901
    - penal sanctions, 899
  - generally, 833, 845
  - honesty/integrity concerns
    - conflicts of interest, 839-843, 864-879
    - handling of client accounts, 879-890
    - pressure selling, 890-892
  - professional competence
    - education and experience requirements, 893
    - generally, 843-844, 892-893
    - know your client and suitability requirements, 894-895
  - registration
    - application at discretion of administrator, 853-854
    - business trigger for registration as dealer or adviser, 849-853
    - exemptions, 857-860
    - subcategories of registration for firms, 847-849
    - subcategories of registration for individuals, 847
    - surrender, 857
    - suspension and revocation, 855-856
    - who must register, 845-847

**securities firms** — *Continued*

## solvency concerns

- bonding or insurance, 862
- compensation fund, 863
- competence, 864
- financial disclosure to
  - regulator, 863
- generally, 838-839, 860-861
- know your client, 863
- minimum net free capital, 861-862
- risk of securities firm failures, 838-839

**securities industry, generally**

## advising

- investment counselling, 832
- market commentaries, 833
- portfolio management, 833

## alternative trading systems (ATS)

- generally, 834, 903-905
- trading rules, 907-908

## basic functions

- channelling savings to
  - investment, 826-827
  - diagram, 828
- facilitating trading, 827

## brokerage, 831

## clearing agencies, 835-836, 913-916

## credit rating organizations

- generally, 836-837, 917-920

## regulation of

- code of conduct provisions, 924-926
- legislative provisions, 921-923
- National Instrument 25-101, 923-924

## dealing, 831-832

## depository institutions, 834-835, 913-916

## electronic trading and direct

## electronic access to marketplaces

- generally, 78, 908-910
- marketplace participant
  - responsibilities
    - automated order system, 912-913
- generally, 910-911
- National Instrument 23-103, 906, 908-913
- participating dealer
  - responsibilities for direct
    - electronic access, 911-912

## exchanges, 902

## investment banking

- market making, 831
- mergers and acquisitions, 831
- underwriting

- allocating savings to
  - investment, 830-831

- financial advice, 829-830

- insurance against market

- price fluctuations, 830

- marketing services, 830

## marketplace operation — National Instrument 21-101, 905-906

## problems in securities industry

## activities

- conflicts of interest, 839-843
- financial responsibility and risk
  - of securities firm failures, 838-839
- generally, 837-838
- pressure selling, 843
- professional competence, 843-844

## quotation and trade reporting system, 902-904

securities exchanges, 833, *see also*

## stock exchanges

securities firms, 833, *see also*

## securities firms

- securities industry, generally** —
  - Continued*
  - self-regulatory organizations, IIROC and MFDA, 901-902
  - trading rules — National Instrument 23-101, 906-908
- securities market efficiency**
  - evidence on forms of efficient market hypothesis
    - anomalous results
      - explanations, 117-119
      - generally, 113-114
      - market microstructure, 124-125
      - “noise” theory, 119-124
    - fundamental vs informational efficiency, 115-116
    - joint hypothesis problem 111-113
    - smaller, less liquid markets, application to, 116
  - fundamental efficiency, factors affecting, 99-104
  - generally, 98-99
  - how efficient are securities markets
    - semi-strong efficiency, 108-109
    - strong form efficiency, 109-110
    - weak form efficiency, 104-108
  - informational efficiency vs fundamental efficiency, 99
  - significance of
    - policy perspective, 126-128
    - practical perspective, 128-129
- securities regulatory authority, 181**
- securitization trusts, 40**
- security, defined**
  - bond, 203-208
  - catch-all provisions, 210-212
  - commonly known as a security, 209
  - common types of securities, 203-209
  - debenture, 203-208
  - evidence of indebtedness, 203-208
  - generally, 4-6, 202-203
  - interest in capital, assets, property, profits, earnings, or royalties, 210-211
  - interest in a portfolio, 208
  - investment contract, 212-224
  - less common securities, 209
  - loan, 203-208
  - note, 203-208
  - option, 208
  - profits sharing agreement, 211-212
  - subscription, 208
- self-regulatory organizations (SRO), 191, 193**
- shelf offering prospectus**
  - at-the-market distributions, 553-554
  - civil liability, 555-556
  - disclosure, 548-552
  - distributions of novel derivatives and asset-backed securities, 554
  - eligibility, 548
  - generally, 529-533
  - market following, 552
  - PREP (post receipt pricing) procedures
    - concerns with, 560-562
    - eligibility, 558
    - generally, 556-558
  - prospectus procedure
    - concerns with, 560-562
    - principle behind, 558-560
  - shelf offerings
    - generally, 546-547
    - origins in Canada, 547
  - variable term debt securities, 552-553
- short form prospectus**
  - civil liability, 543-544
  - contents, 543

**short form prospectus** — *Continued*

## eligibility criteria

## alternative criteria

designated-rating non-convertible securities, 537-539

issuers of asset-backed securities, 542-543

issuers of guaranteed convertible debt securities, 541-542

issuers of guaranteed non-convertible debt securities, 539-540

basic qualification criteria, 534-537

generally, 533

generally, 529-533

## prospectus procedure

concerns with, 560-562

principle behind, 558-560

solicitations of expressions of interest, 544-546

**short selling**, 83, 135-136,

**short-term securitized product**, 492

**specified derivative**, 1075-1076

**standard term sheet**, 237-238, 544-546, 890

**stock exchanges**

development of stock exchange

trading, 59-64

generally, 833

**regulation**, 903-913

trading through

communication, 65-66

electronic securities trading, 78

exchange  
bearer certificate exchange  
diagram, 69

payment, 66

registered certificate

exchange diagram, 72

transfer of ownership, 67-71

generally, 64-65

simplification of process

broker inventories,

nominee owners,

security certificate

depository, 74-75

clearing agency, 73-74

exchange with clearing and

depository institution

diagram, 77

uncertificated securities, 76

traders, specialist or registered, 76

**South Sea Bubble**, 137-140

**sovereign wealth funds**, 87

**special voting shares**, 29-30

**Stromberg Report (1995)**,

questionable mutual sales

practices, 982-983, 985

**synergy, motivation for takeover**, 800

**System for Electronic Document Analysis and Retrieval (SEDAR)**, 360-363, 563-564

**takeover bids**

anti-avoidance provisions

acting jointly or in concert, 759-761

direct or indirect offers, 762-763

generally, 758-759

linked bids, 763

rights to acquire securities in future, 761-762

application of rules

- takeover bids** — *Continued*
- application of rules — *Continued*
    - exceptions to application
      - de minimis* exemption, 757-758
    - exemption applications, 758
    - foreign takeover bid
      - exemption, 756-757
      - generally, 753-754
      - non-reporting issuer
        - exemption, 756
      - normal course purchases, 754
      - private agreement
        - exemption, 754-755
    - takeover bid defined, 752-753
  - basic rules
    - commencing takeover bid, 736-737
    - disclosure requirements, 737-741
    - financing, 748
    - “first-come first-served” offers
      - prohibited, 741-742
    - looting — formal valuation
      - requirements, 743-747
    - pressure to tender, 750-752
    - purchases during bid period, 749-750
    - sales during bid period, 750
    - take-up and payment, 748-749
    - unequal consideration
      - prohibited, 743
    - withdrawal rights, 742
  - defences
    - court challenges to
      - basis of action and
        - standing to sue, 770-772
      - best interests test, 773
      - proper purpose test, 772
    - proportionality test, 774-776
    - generally, 766-769
    - National Policy 62-202 and
      - responses to defensive
        - tactics, 776-777
    - poison rights plans, response of
      - securities commissions
        - factors approach, 782-783
        - generally, 777-779
        - if or when a rights plan
          - should go, 783-787
      - National Instrument 62-104, amendments to, 787-788
      - proposed National
        - Instrument on Rights
          - Plans not adopted, 788-790
      - Regal test, 779-780
      - security holder approval,
        - significance, 780-782
    - early warning disclosure, 763-765
    - exemption from prospectus
      - requirements, 461-462, 511-512
    - friendly and hostile takeovers, 725
    - generally, 11-12, 724
    - issuer bid regulation, *see* issuer bid
      - regulation
    - methods of effecting takeover, 724
    - Multilateral Instrument 61-101, 744-747, 792
    - offer to acquire, defined, 753
    - regulation, reasons for
      - bidder purchase of target
        - securities during bid period, 733
      - bidder sales during bid period, 733-734
      - “first-come first-served” offers,
        - pressure on security holders
          - to tender early, 729

- takeover bids** — *Continued*
- regulation, reasons for — *Continued*
    - generally, 727-728
    - insufficient information/gap in disclosure requirements, 728-729
    - insufficient time to respond, 729
    - lock-up of tendered securities, 729-730
    - looting, 731-732
    - opportunity for target directors to comply with fiduciary duties, 735
    - pressure on target security holders to tender, 734
    - take-up and payment, 733
    - unequal consideration, 731
  - regulation policy debate
    - alternative approaches to regulation
      - corporate charter approach, 821-824
      - generally, 818
    - undistorted choice or sole shareholder approach, 819-821
    - argument against regulation, 802-808
    - arguments in favour and related evidence
      - non-socially beneficial takeovers, 809-816
      - social efficiency benefits of competitive bidding, 817
    - motivations for takeovers
      - empire building (managerialism), 801
      - generally, 799
      - hubris, 802
      - inefficient management, 800
      - looting (expropriation), 801-802
      - market power, 800
      - synergy, 800
      - tax considerations, 800
      - undervaluation, 800-801
    - related party, 745-746
    - related party transaction, 746-747
    - securities commission or court, applications to, 765
    - takeover defined, 724
    - takeover bid, defined, 725-726, 752-753, 761
    - tender offer, 725-726
  - trade,**
    - generally, 224
    - open-ended nature of definition, 228
    - acts in furtherance of a trade, 226-227
    - derivatives, trading in, 1046-1047
    - presale activities, *see* acts in furtherance of a trade
    - sale for valuable consideration, 225
    - trades on behalf of others, 225-226
  - trading securities**
    - development of stock exchange trading, 59-64
    - generally, 58-59
    - margin trading, 81-82
    - short selling, 83
    - stock exchange, use of
      - communication, 65-66
      - electronic securities trading, 78
    - exchange
      - bearer certificate exchange diagram, 69
      - payment, 66
      - registered certificate exchange diagram, 72



- trading securities** — *Continued*
- stock exchange, use of — *Continued*
- *Continued*
- transfer of ownership, 67-71
    - generally, 64-65
    - simplification of process
      - broker inventories,
        - nominee owners,
          - security certificate depository, 74-75
        - clearing agency, 73-74
      - exchange with clearing and depository institution diagram, 77
      - uncertificated securities, 76
    - traders, specialist or registered, 76
- trading off the exchange
  - alternative trading systems, 81
  - block trades, 79
  - over-the-counter trades, 79-80
  - private trades, 78-79
- trust, 34-35**
- trust companies, 84-85**
- underwriter/underwriting**
- alternative prospectus procedures, concern with, 562
  - backdoor underwriting, 445, 451-452, 476, 488, 489, 493, 518
  - conflicts, NI 33-105, 872-876
  - defined, 829
  - function,
    - as part of channelling of investment, 826, 830-831
    - insurance and marketing, 830
  - generally, 12, 53-57, 826, 830-831
  - independent reviewers, as, 585
  - investment banking, and, 829-831
  - misrepresentation in prospectus
    - defences, 269-270, 274
    - liability for damages, 273
  - prospectus requirement
    - exemptions, 519-520
- underwriter, distributions through**
- banking groups, 56
- generally, 53-57**
- liability for misrepresentation in a prospectus, 259-282, 287-288**
- prospectus exemption for, 519-520**
- selling group, 56-57
  - syndicated underwriting, 56
  - underwriting agreements
    - best efforts underwriting, 54-55
    - firm commitment, 53-54
    - generally, 55-56
    - range of possibilities, 55
    - standby underwriting, 55
- United States, history of securities regulation**
- early development of markets, 143
  - early 20<sup>th</sup> century regulation, 144-146
  - pre-20<sup>th</sup> century regulation, 143-144
  - self-regulation by brokers, 146-148
- valuation of securities**
- analyzing securities
    - fundamental analysis, 96
    - technical analysis, 97-98
  - discounting, 93
  - risk, 93-95
  - source of value, 92-93
- variable insurance contract, 522-523**
- venture issuer, 379-382**
- waiting period, 232-233, 235-238, 545, 890, 957, 980**

