

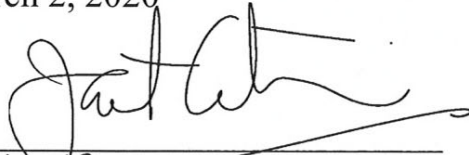
PROVINCE OF BRITISH COLUMBIA

ORDER OF THE LIEUTENANT GOVERNOR IN COUNCIL

Order in Council No. 101

, Approved and Ordered

March 2, 2020

  
Lieutenant Governor

Executive Council Chambers, Victoria

On the recommendation of the undersigned, the Lieutenant Governor, by and with the advice and consent of the Executive Council, orders that, effective March 27, 2020,

- (a) the *Securities Amendment Act, 2019*, S.B.C. 2019, c. 38, is brought into force, except the following:
  - (i) section 1 (h);
  - (ii) section 19 (b);
  - (iii) section 21;
  - (iv) section 78 insofar as it enacts sections 163.2 and 163.3 of the *Securities Act*, R.S.B.C. 1996, c. 418,
- (b) section 47 (f) of the *Securities Amendment Act, 2006*, S.B.C. 2006, c. 32, is brought into force insofar as it amends section 155 (1) (b) of the *Securities Act*, R.S.B.C. 1996, c. 418, by striking out “121, 122, 124”,
- (c) Multilateral Instrument 91-101 *Derivatives: Product Determination*, B.C. Reg. 202/2016, is amended as set out in the attached Schedule A,
- (d) Multilateral Instrument 96-101 *Trade Repositories and Derivatives Data Reporting*, B.C. Reg. 203/2016, is amended in section 1 (5) (a) by striking out “British Columbia,”,
- (e) National Instrument 14-101 *Definitions*, B.C. Reg. 48/97, is amended as set out in the attached Schedule B,
- (f) the *Securities Regulation*, B.C. Reg. 196/97, is amended as set out in the attached Schedule C, and
- (g) the *Securities Rules*, B.C. Reg. 194/97, is amended as set out in the attached Schedule D.

DEPOSITED

March 2, 2020

B.C. REG. 45/2020

  
Minister of Finance and Deputy Premier  
Presiding Member of the Executive Council

(This part is for administrative purposes only and is not part of the Order.)

Authority under which Order is made:

Act and section: *Securities Act*, R.S.B.C. 1996, c. 418, s. 183; *Securities Amendment Act, 2006*, S.B.C. 2006, c. 32, s. 71;  
*Securities Amendment Act, 2019*, S.B.C. 2019, c. 38, s. 101

Other: M244/97

R20387721

## SCHEDULE A

- 1 Section 1 of Multilateral Instrument 91-101 Derivatives: Product Determination, B.C. Reg. 202/2016, is amended*
- (a) in subsection (4) by striking out “British Columbia,” and in paragraph (b) (ii) and (iv) by striking out “British Columbia and”, and*
- (b) in subsection (5) (a) by adding “British Columbia,” after “Alberta,” and in paragraph (b) by striking out “British Columbia.”*

## SCHEDULE B

- 1 Section 1.1 (3) of National Instrument 14-101: Definitions, B.C. Reg. 48/97, is amended by adding the following definition:*
- “exchange contract”** means, in Alberta, British Columbia, New Brunswick, Nova Scotia and Saskatchewan, a derivative
- (a) that is traded on an exchange,*
  - (b) that has standardized terms and conditions determined by that exchange, and*
  - (c) for which a clearing agency substitutes, through novation or otherwise, the credit of the clearing agency for the credit of the parties to the derivative; .*

## SCHEDULE C

- 1 Section 7.1 of the Securities Regulation, B.C. Reg. 196/97, is amended in paragraph (a) of the definition of “eligible applicant” by striking out “section 7.2” and substituting “section 15.1 (1) of the Act”.*
- 2 Section 7.2 is repealed.*
- 3 Section 7.3 (1) is repealed.*
- 4 Section 7.6 is amended by striking out “section 15.1 (5)” and substituting “section 15.1 (1.1)”.*
- 5 Section 9 (1) is repealed.*
- 6 Section 12 is amended by striking out “section 143 (3)” and substituting “section 143 (3) or 143.1 (5)”.*
- 7 Part 5 is repealed.*
- 8 The title of Part 5.1 is amended by striking out “Self Regulatory Bodies” and substituting “Self-regulatory Bodies”.*

- 9 *Section 13.1 is amended by striking out “self regulatory bodies” and substituting “self-regulatory bodies”.*

## **SCHEDULE D**

- 1 *Section 1 (1) of the Securities Rules, B.C. Reg. 194/97, is amended*
- (a) by repealing the definitions of “forward contract” and “market value”, and*
  - (b) in the definition of “NI 52-107” by striking out “Acceptable Accounting Principles, Auditing Standards and Reporting Currency” and substituting “Acceptable Accounting Principles and Auditing Standards”.*
- 2 *Section 23 is amended*
- (a) in subsection (1) (a) by striking out “self regulatory body” and substituting “self-regulatory body” and by striking out “section 24 (1) or (2)” and substituting “section 24 (a) or (b)”, and*
  - (b) in subsection (2) by striking out “self regulatory body” and substituting “self-regulatory body”.*
- 3 *Section 93 is amended by striking out “50 (2)” and substituting “50 (5) (b)”.*
- 4 *Part 18 is amended*
- (a) by adding the following before section 186:*

### **Division 1 – Reactivation , and**

- (b) by repealing section 187.1 and adding the following Division after section 187:*

### **Division 2 – Principles of Penalty Determination**

#### **Prescribed principles**

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

#### **General principles**

- 187.2** The following general principles apply to the calculation of profit made or loss avoided for the purposes of section 155 (5) of the Act:
- (a) that offenders be treated consistently in terms of the determination of profits made or losses avoided;
  - (b) that, in recognition that markets are influenced by many factors, in respect of the determination of profit made or loss avoided, an offender not receive the benefit of, and not bear the burden of, market changes unrelated to the offender’s misconduct;
  - (c) that, in recognition that it may take a period of time for the impact of an offender’s misconduct, or for the information that is the basis for the

misconduct, to be fully reflected in the market valuation of a security or derivative, the determination of profit made or loss avoided be based on market valuations over the period of time necessary to reflect the impact of the misconduct or the information;

- (d) that all direct and indirect profits made, and all direct or indirect losses avoided, be accounted for in the determination.

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

**187.3** For the purposes of section 155 (5) of the Act, unless the calculation is inconsistent with a principle set out in section 187.2 of this regulation, for a sale of securities in contravention of section 57.2 (2) of the Act, other than a short sale, the loss avoided is the aggregate of the losses avoided associated with all securities sold in contravention of that subsection where, for the purposes of the calculation, the loss avoided per security sold is the amount determined by the following formula:

A - B

where

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

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

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

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

A - B

where

A = if the security

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

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

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

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

A - B

where

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

B = if the contravention was

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

**Loss avoided due to front-running – sale of securities**

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

A - B

where

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

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

**Profit made due to front-running – purchase of securities**

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

A - B

where

A = if the security

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

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

#### **Profit made due to front-running – sale of securities**

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

A - B

where

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

B = if the contravention was

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

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

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

A + B

where

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

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

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

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

$A + B$

where

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

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

**Other contraventions**

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

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

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

**Commissions paid**

**187.12** In the case of a person who purchased or traded a security in contravention of the Act, for the purposes of determining the profit made or loss avoided by the person under section 187.3, 187.4, 187.5, 187.6, 187.7, 187.8 or 187.11 of this regulation, a commission paid by the person in relation to the purchase or trade may be excluded from the determination.