

Appendix A

Securities Rules

Amending Instrument

The British Columbia Securities Commission orders that, effective September 28, 2009, the Securities Rules, B.C. Reg. 194/97, is amended as follows:

- 1 The Securities Rules, B.C. Reg. 194/97, is amended in Part 5 by repealing Division 2.***

- 2 Section 14 (2) is repealed and the following substituted:***
 - (2) A registered
 - (a) dealing representative, or
 - (b) advising representative,of a dealer or adviser must deal fairly, honestly and in good faith with the clients of the dealer or adviser.

- 3 Sections 15, 16, 17 and 18 are repealed.***

- 4 Section 19 is amended by adding the following subsection:***
 - (0.1) This section applies to a person registered as an investment dealer, securities dealer, limited dealer or underwriter before September 28, 2009.

- 5 Section 20 is amended by adding the following subsection:***
 - (0.1) This section applies to a person registered as a portfolio manager or investment counsel before September 28, 2009.

- 6 Section 21 is amended by adding the following subsection:***
 - (0.1) This section applies to a person registered as a dealer, underwriter, portfolio manager or investment counsel before September 28, 2009.

- 7 Section 24 is renumbered as section 24 (2) and the following subsection is added:***
 - (1) This section applies to a person registered as an exchange contracts dealer before September 28, 2009.

8 Section 25 is renumbered as section 25 (2) and the following subsection is added:

- (1) This section applies to a person registered as a dealer or adviser before September 28, 2009.

9 Part 5 is amended by repealing Division 5.

10 Sections 43 to 48 are repealed.

11 Section 49 is renumbered as section 49 (2) and the following subsection is added:

- (1) This section applies to a person registered as a dealer or adviser before September 28, 2009.

12 Section 50 is amended

(i) by adding the following subsection:

- (0.1) This section applies to a person registered as a dealer or adviser before September 28, 2009., **and**

(ii) in paragraph (b) by striking out “section 17 of these rules or”.

13 Sections 51 is repealed.

14 Section 52 is amended

(i) by adding the following subsection:

- (0.1) This section applies to a person registered as an adviser before September 28, 2009, **and**

(ii) by repealing subsection (2).

15 Section 53 is amended by adding the following subsection:

- (0.1) This section applies to a person registered as a dealer or adviser before September 28, 2009.

16 Section 54 is renumbered as section 54 (2) and the following subsection is added:

- (1) This section applies to a person registered as a dealer or adviser before September 28, 2009.

17 Sections 55 to 59 are repealed.

18 Part 5 is amended by repealing Divisions 7, 8, 9, 10 and 11.

19 Part 6 is repealed.

Clean Version of Amendments to Parts 5 and 6 of Securities Rules

Part 5 — Registration

Division 1 — General

Interpretation

5 In this Part risk adjusted capital means the amount of risk adjusted capital determined under the Joint Regulatory Financial Questionnaire and Report.

Division 2 — Categories of Dealers and Advisers and Related Provisions

Division 3 — Registration — General

Fair dealing with clients

14 (1) A registrant must deal fairly, honestly and in good faith with the clients of the registrant.

(2) A registered

(a) dealing representative, or

(b) advising representative,

of a dealer or adviser must deal fairly, honestly and in good faith with the clients of the dealer or adviser.

Division 4 — Capital and Bonding

Dealer's and underwriter's risk adjusted capital and working capital

19 (0.1) This section applies to a person registered as an investment dealer, securities dealer, limited dealer or underwriter before September 28, 2009.

(1) An investment dealer must maintain positive risk adjusted capital.

(2) Subject to subsection (4), a securities dealer, exchange contracts dealer or underwriter must maintain positive risk adjusted capital but may calculate risk adjusted capital on the basis of a minimum capital requirement of \$100 000 instead of the minimum of \$250 000 required by the Joint Regulatory Financial Questionnaire and Report.

(3) Subject to subsection (5), a limited dealer, except for a security issuer and exchange contracts dealer, must maintain working capital, calculated in accordance with the required form, equal to, or greater than, \$75 000 plus the maximum amount that is deductible under any bond required under section 21.

(4) An exchange contracts dealer that does not hold client funds or securities and is recognized by the executive director as an introducing broker must maintain positive risk adjusted capital but may calculate risk adjusted capital on the basis of a minimum capital requirement of \$75 000 instead of the minimum of \$100 000 set out in subsection (2).

(5) A mutual fund dealer that does not hold client funds or securities and is recognized by the executive director must maintain working capital, calculated in accordance with the required form, equal to, or greater than, \$25 000 plus the maximum amount that is deductible under any bond required under section 21.

Adviser's minimum working capital

20 (0.1) This section applies to a person registered as a portfolio manager or investment counsel before September 28, 2009.

(1) Subject to subsection (2), a portfolio manager or investment counsel must maintain working capital, calculated in accordance with the required form, equal to, or greater than, \$25 000 plus the maximum amount that is deductible under any bond required under section 21.

(2) An investment counsel that does not hold client funds or securities and is recognized by the executive director must maintain working capital, calculated in accordance with the required form, equal to, or greater than, \$5 000 plus the maximum amount that is deductible under any bond required under section 21.

Bonding requirement

21 (0.1) This section applies to a person registered as a dealer, underwriter, portfolio manager or investment counsel before September 28, 2009.

(2) A dealer, other than a security issuer, underwriter, portfolio manager or investment counsel must maintain

(a) bonding in a form and amount that the executive director considers necessary, and

(b) a certified copy of a resolution of the person's partners or directors stating that they consider the amount of bonding adequate to cover insurable business risks.

(3) A partner, director or officer or other employee of a dealer, underwriter, portfolio manager or investment counsel must maintain bonding in a form and amount that the executive director considers necessary.

Notice of change in or claim under bond

22 A registrant must file without delay written notice of any change in, or claim made under, a bond required by the executive director.

Compensation or contingency trust fund

23 (1) A dealer, other than a security issuer or scholarship plan dealer, must participate in and contribute to a compensation fund or contingency trust fund approved by the executive director and established by

- (a) a self regulatory body or an exchange recognized under section 24 (1) or (2) of the Act, or
- (b) a trust company.

(2) A dealer must contribute an amount of money to a fund referred to in subsection (1) equal to the amount that the self regulatory body, exchange or, in the case of a fund established by a trust company, the executive director requires.

(3) The executive director may exempt a dealer that does not hold funds or securities of its clients from the requirements of subsection (1).

Requirements for not holding funds or securities

24 (1) This section applies to a person registered as an exchange contracts dealer before September 28, 2009.

(2) If an exchange contracts dealer is permitted under section 19 (5) to calculate risk adjusted capital on the basis of a lower minimum capital requirement, a mutual fund dealer is permitted under section 19 (6) to maintain a lower level of working capital, an investment counsel is permitted under section 20 (3) to maintain a lower level of working capital or a dealer is exempted under section 23 (3) from the requirement to participate in and contribute to a compensation fund or contingency trust fund, the exchange contracts dealer, mutual fund dealer, investment counsel or dealer must not

- (a) hold funds or securities on behalf of clients;
- (b) receive from clients funds or securities for the payment or settlement of trades in securities or exchange contracts on behalf of the client;
- (c) receive from clients cheques made out to the dealer for the payment of or settlement of trades in securities or exchange contracts on behalf of the client;
- (d) receive from other persons funds payable to the client on account of the sale of or settlement of trades in securities or exchange contracts on behalf of the client, or
- (e) receive from other persons cheques made out to the dealer on account of the sale of securities or exchange contracts or settlement of trades in securities or exchange contracts on behalf of the client.

Subordination agreement

25 (1) This section applies to a person registered as a dealer or adviser before September 28, 2009.

(2) If a registrant borrows in order to maintain positive risk adjusted capital or to meet the minimum working capital requirements set out in sections 19 and 20, the registrant and the person from whom the registrant borrowed must enter into a subordination agreement in the required form.

Division 5 — Record Keeping and Reporting

Division 6 — Client Accounts and Statements of Account and Portfolio

Explanation of relevant terms and conditions

49 (1) This section applies to a person registered as a dealer or adviser before September 28, 2009.

(2) If a dealer trades or proposes to trade an exchange contract on behalf of a client or a dealer or adviser gives advice about an exchange contract to a client, the dealer or adviser must, on the client's request,

- (a) explain the terms and conditions of the exchange contract, and
- (b) state where the client may get a copy, or view the terms and conditions, of the exchange contract.

Information about registrant available on client's request

50 (0.1) This section applies to a person registered as a dealer or adviser before September 28, 2009.

(1) On request, a registrant must provide a client or prospective client with

- (a) the registrant's category and expiry date of registration;
- (b) any conditions of registration that the executive director has imposed under section 36 of the Act, or that a self regulatory body or exchange has imposed, on the registrant;
- (c) any current administrative proceeding by a securities or exchange contracts regulatory authority, or by a self regulatory body or exchange, against the registrant in any jurisdiction;
- (d) any previous administrative proceedings by a securities or exchange contracts regulatory authority, or by a self regulatory body or exchange, against the

registrant in any jurisdiction if an order, ruling or other adverse finding was made against the registrant;

- (i) if the registrant is an individual, for an unlimited period of time, or
 - (ii) if the registrant is not an individual, during the 5 years immediately preceding the client's request,
- (e) the commission and fees the registrant charges and the practices the registrant follows in setting fees;
- (f) if the registrant is an individual, the registrant's education, including which of the courses and examinations required by the executive director or similar courses and examinations required in another jurisdiction the registrant has successfully completed;
- (g) subject to subsection (2), if the registrant is a dealer,
- (i) a copy of the dealer's most recently prepared statement of financial condition in the required form, or, in the alternative, if the dealer is a security issuer, a copy of the dealer's most recently prepared annual financial statements that it has filed under section 145 (1), and
 - (ii) a list of the dealer's partners, directors and officers, prepared and certified as of a date not more than 30 days before the request, and
- (h) any registration or licensing under the Financial Institutions Act or comparable legislation of another jurisdiction.

(2) If a dealer or a class of dealers is subject to conditions of registration or to regulations imposed by a self regulatory body or exchange that requires the dealer to disclose information similar to the information required under subsection (1), the executive director may waive or vary the requirement to comply with subsection (1).

(3) A registered dealer must inform its clients on every statement of account, or by other means that the commission or executive director has approved, that the information referred to in subsection (1) is available to clients on request.

Change in ownership or sale of account

52 (0.1) This section applies to a person registered as an adviser before September 28, 2009.

(1) If there has been a material change in the ownership or control of a portfolio manager or investment counsel, the portfolio manager or investment counsel must provide immediately to each of its clients in British Columbia, in addition to any notice required by Division 10,

- (a) a written explanation of the change, and
- (b) advice of the client's right to close or transfer the client's account.

Disclosure of referral fees and commission splitting

53 (0.1) This section applies to a person registered as a dealer or adviser before September 28, 2009.

(1) Subject to subsection (3), if a registrant

- (a) receives a fee or other compensation from another person for the referral of a client, or
- (b) pays a fee or other compensation to another person for the referral of a client, the registrant must disclose the compensation to the client.

(2) Subject to subsections (3), (4) and (5), if a registrant receives from, or pays to, another person a commission or other compensation related to the purchase or sale of a security or exchange contract on behalf of a client, not otherwise required to be disclosed under subsection (1), the registrant must disclose the compensation to the client on whose behalf the purchase or sale is made.

(3) Subject to subsection (4), the disclosure required under subsections (1) and (2) must

- (a) be made
 - (i) in the circumstances described in subsection (1) (a), before the fee is accepted,
 - (ii) in the circumstances described in subsection (1) (b), before the fee is paid, or
 - (iii) in the circumstances described in subsection (2), at the time the purchase or sale is made or as soon as practicable after that time,
- (b) be in writing, and

(c) contain

- (i) the amount of the fee or, if not determinable, the method of calculating the fee,
- (ii) to whom and by whom the fee is to be paid, and
- (iii) the services for which the fee is payable.

(4) If the payment or receipt of a commission or other compensation referred to in subsection (2) is part of a continuing arrangement between a registrant and another party, the registrant is not required to disclose the compensation each time that the registrant makes a purchase or sale of a security or exchange contract on behalf of a client, provided that the registrant has disclosed the arrangement, and any subsequent material changes in the arrangement, to that client prior to the first purchase or sale under that arrangement.

(5) A registrant is not required to disclose to a client a commission or other compensation under subsection (2) if the commission or other compensation is paid from or to

- (a) the registrant's partners, directors, officers or salespersons,
- (b) another registered dealer, or
- (c) a person registered in the capacity of a dealer in another jurisdiction.

No contingent fees without client's consent

54 (1) This section applies to a person registered as a dealer or adviser before September 28, 2009.

(2) A registrant may only charge contingent commissions or fees based on profits or performance to a client with the client's prior informed written consent.

Division 7 — Proficiency and Qualification Requirements

Division 8 — Registration and Amendments to Registration

Division 9 — Financial Statements and Financial Reports

Division 10 — Registrant Ownership and Diversification Requirements

Division 11 — Registrants' Conflicts of Interest

Part 6 — Exemption from Registration Requirements