

Exhibit A-5(1) to Exhibit A-5

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C.C.S.M. c. C152

## The Commodity Futures Act

(Assented to November 19, 1996)

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Manitoba, enacts as follows:

### PART 1

#### INTERPRETATION AND GENERAL ADMINISTRATION

##### Definitions

1(1) In this Act,

**"advertising"** includes a radio or television commercial, printed or recorded advertisement or promotion, sales literature and all other promotional material generally disseminated, transmitted or made available to the public that furthers or could reasonably be expected to further a trade in a contract; (« publicité »)

**"adviser"** means a person or company engaging in or holding himself, herself or itself out as engaging in, or being held out by a registrant as engaging in, the business of rendering advice as to trading in contracts, and includes a person or company engaging in the publication of newsletters, analyses or reports or broadcasting analyses or reports advising others respecting trading in contracts; (« conseiller »)

**"associate"** means, where used to indicate a relationship with a person or company,

(a) another company of which the person or company beneficially owns, directly or indirectly, voting securities carrying more than 10% of the voting rights attached to all voting securities of the company for the time being outstanding,

(b) a partner of the person or company,

(c) a trust or estate in which the person or company has a substantial beneficial interest or in respect of which the person or company serves as trustee or in a similar capacity,

(d) in the case of an individual,

(i) a spouse, common-law partner or child of the individual,

(ii) a relative of the individual or of his or her spouse or common-law partner, if the relative has the same home as the individual,

and for this purpose, **"common-law partner"** of a particular individual means another individual, who not being married to the particular individual, is cohabiting with him or her in a conjugal relationship of some permanence; (« liens »)

**"call"** means a commodity futures option under which

(a) the buyer, upon payment of a premium, obtains the right to assume a long position in a commodity futures contract at a specified strike price before the expiry of the option, and

(b) the seller, upon receipt of the premium, assumes the obligation to enter into a short position in the commodity futures contract at the specified strike price before the expiry of the option, in accordance with the terms and conditions of the option; (« option d'achat »)

**"clearing house"** means an association or organization, whether incorporated or unincorporated or part of a commodity futures exchange, through which trades in contracts entered into on a commodity futures exchange are guaranteed, matched or cleared and through which those contracts are settled; (« chambre de compensation »)

**"commission"** means The Manitoba Securities Commission continued under *The Securities Act*; (« Commission »)

**"commodity"** means

- (a) whether in its original or a processed state, an agricultural product, forest product, product of the sea, mineral, metal, hydrocarbon fuel or precious stone or other gem,
- (b) a currency, index, financial instrument, rate of interest or other financial benchmark, and
- (c) any good, article or service, right or interest, or a class or combination of them, designated as a commodity under the regulations or the rules; (« marchandise »)

**"commodity futures contract"** means a contract to make or take delivery of a specified quantity and quality, grade or size of a commodity during a specified future month at a price agreed upon by the parties when the contract is entered into on a commodity futures exchange pursuant to standardized terms and conditions set out in the exchange's internal regulations; (« contrat à terme de marchandises »)

**"commodity futures exchange"** means an organization, whether incorporated or unincorporated, operated for the purpose of providing the facilities necessary for the trading of contracts by a competitive bid and offer or by open auction or order matching process utilizing an electronic trading system; (« bourse de contrats à terme de marchandises »)

**"commodity futures option"** means a right acquired for a consideration or an obligation incurred in exchange for a consideration received, to assume a long position or short position in a commodity futures contract at a specified strike price by buying or selling a call or a put that must be exercised within a specified period of time in accordance with the terms and conditions of the option as set out in the internal regulations of the commodity futures exchange upon which the option trades; (« option sur contrat à terme de marchandises »)

**"company"** means a corporation, incorporated association, incorporated syndicate or other incorporated organization; (« compagnie »)

**"contract"** means a commodity futures contract and a commodity futures option; (« contrat »)

**"dealer"** means a person or company that trades in contracts in the capacity of principal or agent; (« courtier »)

**"decision"** includes an order, direction or ruling that is or may be made under this Act, the regulations or the rules; (« décision »)

**"delivery"** means the completion of a contract by

- (a) the tender and receipt of the commodity or of an instrument evidencing title to or the right to the commodity pursuant to the procedures established by the commodity futures exchange upon which the contract trades, as set out in the exchange's internal regulations,
- (b) the payment of the cash equivalent of the underlying interest as set out in the exchange's internal regulations, or
- (c) the payment of the difference between the price of the commodity on the delivery date and the settlement price of the contract as determined by the exchange, calculated in accordance with the terms and conditions of the contract as set out in the exchange's internal regulations; (« livraison »)

**"director"** means, unless the context otherwise requires, the director or a deputy director of the commission; (« directeur »)

**"financial institution"** means

- (a) the Government of Canada, the government of a province or territory of Canada, and any Crown corporation, instrumentality or agency of the federal government or of a provincial or territorial government,
- (b) the Bank of Canada,
- (c) a company that
  - (i) is a bank to which the *Bank Act* (Canada) applies, a Quebec savings bank, a trust company registered under Part XVI (Registration of Bodies Corporate) of *The Corporations Act*, an insurance company licensed under *The Insurance Act* or a central, credit union or caisse populaire under *The Credit Unions and Caisses Populaires Act*,
  - (ii) has a paid-up capital and surplus of not less than \$25,000,000., as stated on its most recent audited balance sheet, and
  - (iii) makes acceptable information with respect to its financial affairs available for inspection by the commission,

- (d) a Canadian city or municipality having a population of not less than 50,000 people, and any fund under the administration of such a city or municipality,
- (e) a mutual fund having total net assets of not less than \$10,000,000.,
- (f) a corporation, other than a dealer, that
  - (i) has a net worth of not less than \$75,000,000., as stated on its most recent audited balance sheet, and
  - (ii) makes acceptable financial information with respect to its business and affairs available for inspection by the commission, or
- (g) a pension fund of, or administered by, an institution referred to in clause (a), (b), (c) or (f); (« institution financière »)

**"floor trader"** means an individual who is employed by a dealer for the purpose of entering into contracts on a commodity futures exchange on behalf of the dealer; (« négociateur en bourse »)

**"hedger"** means a person or company that carries on agricultural, mining, forestry, processing, manufacturing, importing, exporting, investment, financial or other commercial activities or services and, as a necessary part of the activities or services, becomes exposed to risks attendant upon fluctuations in

- (a) the price of a commodity that the person or company owns, produces, manufactures, processes, merchandises or anticipates owning, producing, manufacturing, processing or merchandising,
- (b) the value of liabilities that the person or company owes or anticipates incurring, or
- (c) the value of services that the person or company provides or purchases or anticipates providing or purchasing,

and the person or company offsets the risks by trading in contracts for the commodity or related commodities and the trades are economically appropriate to the reduction of the risks incurred by the person or company in the conduct of the affairs or the operation of the business of the person or company; (« opérateur en couverture »)

**"hedge trade"** means a trade in a contract by a hedger where the trade is economically appropriate to the reduction of the risks incurred or to be incurred by the hedger; (« opération de couverture »)

**"individual"** means a natural person, but does not include an individual in his or her capacity as trustee, executor, administrator or other legal representative; (« particulier »)

**"internal regulations"** means, in relation to a self-regulatory organization, a commodity futures exchange or a clearing house, its by-laws, rules, regulations, and written policies, practices and procedures; (« règlement interne »)

**"liquidating trade"** means

- (a) in relation to a commodity futures contract,
  - (i) effecting settlement of a long position, by assuming an offsetting short position in a commodity futures contract entered into on the same or a related commodity futures exchange for a like quantity and quality, grade or size of the same commodity deliverable during the same designated future month, and
  - (ii) effecting settlement of a short position, by assuming an offsetting long position in a commodity futures contract entered into on the same or a related commodity futures exchange for a like quantity and quality, grade or size of the same commodity deliverable during the same designated future month, and
- (b) in relation to a commodity futures option,
  - (i) effecting settlement of a long position in a call or a put, by assuming an offsetting short position in a call or put on the same or a related commodity futures exchange where the underlying interest of the call or put sold is the same commodity futures contract deliverable during the same designated future month, and
  - (ii) effecting settlement of a short position in a call or a put, by assuming an offsetting long position in a call or put on the same or a related commodity futures exchange where the underlying interest of the call or put purchased is the same commodity futures contract deliverable during the same designated future month; (« liquidation »)

**"local"** means an individual who is self-employed for the purpose of entering into contracts on a commodity futures exchange in Manitoba solely for his or her own account; (« négociateur individuel de parquet »)

**"long position"** means, in relation to a commodity futures contract, to be under an obligation to take delivery; (« position acheteur »)

**"margin"** means, in respect of a contract, the minimum dollar amount that, under the internal regulations of the commodity futures exchange on which the contract was entered into, is required to be deposited with a member of the exchange for the purpose of ensuring performance of obligations under the contract, or any greater amount directed by the commission to be so deposited, and includes

- (a) the original margin or initial margin, being the amount that must be deposited on entering into the contract, and
- (b) the variation margin or maintenance margin, being the amount that must be deposited during or at the end of a day by a member of the clearing house to restore the margin on deposit to the original margin or initial margin when the margin on deposit falls under the required maintenance level because of adverse movement in the price of the contract; (« marge »)

**"market participant"** means

- (a) a registrant, a person or company exempted by a decision of the commission from a registration requirement under this Act, a recognized commodity futures exchange, a recognized clearing house and a self-regulatory organization,
- (b) a general partner of a person or company referred to in clause (a), and
- (c) any other person or company or member of a class of persons or companies designated by the regulations or the rules; (« participant au marché »)

**"misrepresentation"** means

- (a) an untrue statement of a material fact, or
- (b) an omission to state a material fact that is
  - (i) required to be stated, or
  - (ii) necessary to make a statement not misleading in the light of the circumstances in which it was made; (« présentation inexacte des faits »)

**"officer"** means

- (a) the chairperson or vice-chairperson of the board of directors, the president, vice-president, secretary, assistant secretary, treasurer, assistant treasurer or general manager of a company,
- (b) an individual designated as an officer of a company by or in accordance with a by-law or similar authority, or
- (c) an individual acting in a capacity or carrying out the function of an individual referred to in clause (a) or (b); (« dirigeant »)

**"open commodity futures contract"** means a commodity futures contract for which no liquidating trade has been made or for which delivery has not been effected; (« contrat à terme de marchandises en cours »)

**"open interest"** means

- (a) in relation to commodity futures contracts, the total outstanding long positions or the total outstanding short positions, for each delivery month and in aggregate, in commodity futures contracts relating to a particular commodity entered into on a commodity futures exchange, and
- (b) in relation to commodity futures options, the total number of outstanding calls and puts, for each delivery month, relating to a particular commodity futures contract entered into on a commodity futures exchange; (« intérêts en cours »)

**"person"** means an individual, partnership, unincorporated association, unincorporated syndicate, unincorporated organization and a trust, trustee, executor, administrator or other legal representative; (« personne »)

**"premium"** means, in relation to a commodity futures option, the consideration that the buyer of the option pays and the seller of the option receives for the rights conveyed to the buyer by the seller; (« prime »)

**"put"** means a commodity futures option under which

- (a) the buyer, upon payment of a premium, obtains the right to assume a short position in a commodity futures contract at a specified strike price before the expiry of the option, and

(b) the seller, upon receipt of the premium, assumes the obligation to enter into a long position in the commodity futures contract at the specified strike price before the expiry of the option, in accordance with the terms and conditions of the option; (« option de vente »)

**"record"** means any correspondence, statement, memorandum, book, plan, drawing, diagram, chart, pictorial or graphic work, photograph, film, microfilm, audio tape, audio-video tape, machine readable record and other documentary material regardless of physical form or characteristics, and any copy or portion thereof; (« document »)

**"registered"** means registered under this Act; (« inscrit »)

**"registrant"** means a person or company registered or required to be registered; (« personne ou compagnie inscrite »)

**"regulation"** means, unless the context otherwise requires, a regulation made under this Act; (« règlement »)

**"rule"** means a rule made under section 71; (« règle »)

**"sales literature"** means a record or any other material, regardless of physical form or characteristics, designed for or used in a presentation to a customer or prospective customer, whether it is given, sent, shown or made available to the customer or prospective customer; (« documentation publicitaire »)

**"salesperson"** means an individual who is employed by a dealer for the purpose of making trades in contracts on behalf of the dealer; (« représentant »)

**"secretary"** means the secretary of the commission and includes an individual designated by the commission to act in the capacity of secretary; (« secrétaire »)

**"security"** has the same meaning as in *The Securities Act*; (« valeur mobilière »)

**"settlement price"** means,

(a) in relation to a commodity futures contract, the price that is used by a commodity futures exchange or its clearing house to determine, daily, the net gains or losses in the value of open commodity futures contracts, and

(b) in relation to a commodity futures option, the price that is used by a commodity futures exchange or its clearing house to determine, daily, the net gains or losses in the value of open puts or open calls; (« cours à terme »)

**"short position"** means, in relation to a commodity futures contract, to be under an obligation to make delivery; (« position vendeur »)

**"strike price"** means, in respect of a commodity futures option, the price at which the purchaser of the option has the right to assume a long position or short position in relation to the commodity futures contract that is the subject of the option; (« prix d'exercice »)

**"trade" or "trading"** includes

(a) entering into a contract, whether as principal or agent,

(b) offering to enter into a contract, whether as principal or agent,

(c) acting as a floor trader or local,

(d) a receipt by a registrant of an order to effect a transaction in a contract,

(e) an assignment or other disposition of rights under a contract except a disposition arising from the death of an individual, and

(f) an act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of an activity or thing referred to in clauses (a) to (e). (« opération »)

#### **Related exchanges**

1(2) For the purpose of this Act, a commodity futures exchange is related to another commodity futures exchange when the exchanges are parties to a mutual offset trading arrangement.

#### **Affiliated company**

1(3) For the purpose of this Act, a company is an affiliate of another company if one of them is the subsidiary of the other, or if both are subsidiaries of the same company, or if each of them is controlled by the same person or company.

#### **Controlled company**

1(4) For the purpose of this Act, a company is controlled by another person or company or by two or more companies if

- (a) voting securities of the first-mentioned company carrying more than 50% of the votes for the election of directors are held, otherwise than by way of security only, by or for the benefit of the other person, company or companies; and
- (b) the votes carried by the securities are entitled, if exercised, to elect a majority of the board of directors of the first-mentioned company.

**Subsidiaries**

- 1(5) For the purpose of this Act, a company is a subsidiary of another company if
- (a) it is controlled by
    - (i) the other company,
    - (ii) the other company and one or more companies each of which is controlled by the other company, or
    - (iii) two or more companies each of which is controlled by the other company; or
  - (b) it is a subsidiary of a company that is the other company's subsidiary.

**Beneficial ownership by person**

- 1(6) A person is deemed to beneficially own securities beneficially owned by a company that is controlled by him or her or by an affiliate of the company.

**Beneficial ownership by company**

- 1(7) A company is deemed to beneficially own securities that are beneficially owned by its affiliates.

S.M. 2008, c. 42, s. 9; S.M. 2011, c. 35, s. 7.

**Commission to administer Act**

- 2(1) The commission is responsible for the administration of this Act.

**Hearings**

- 2(2) The commission may hold hearings in or outside Manitoba in conjunction with any other body empowered by statute to administer or regulate trading in contracts and may consult with the other body during the course of a hearing.

**Powers and duties of commission members**

- 2(3) The chairperson, vice-chairperson or any member of the commission may exercise the powers and shall perform the duties that are vested in or imposed upon the commission by this Act or the regulations, and that are assigned to him or her by the commission.

**Agreements for assistance**

- 2(4) The commission may enter into agreements with other regulatory authorities for the sharing of information and for assistance in the exercise of its investigative powers under this Act, and the commission may assist another regulatory authority in the exercise of its investigative powers.

**Powers and duties of director**

- 3 The director may exercise the powers and shall perform the duties that
- (a) are vested in or imposed upon the director by this Act, the regulations or the rules; or
  - (b) are vested in or imposed upon the commission by this Act or the regulations and assigned to the director by the commission.

**Secretary**

- 4(1) The secretary may
- (a) accept service of a notice or other document on behalf of the commission;
  - (b) when authorized by the commission, sign a decision made by the commission;
  - (c) certify under his or her hand a decision made by the commission or a document, record or thing used in respect of a hearing by the commission; and
  - (d) exercise any other power and perform any duty vested in or imposed upon the secretary by this Act, the regulations or the rules or by the commission.

**Certification by secretary**

4(2) A certificate purporting to be signed by the secretary is, without proof of the office or signature certifying, admissible in evidence, so far as it is relevant, for any purpose in an action, proceeding or prosecution.

**Appointment of experts**

5(1) The commission may appoint one or more experts to assist the commission in any manner it considers necessary or advisable.

**Powers relating to submission to expert**

5(2) The commission may submit an agreement, contract, financial statement, report or other document to one or more experts appointed under subsection (1) for examination, and the commission has the power to summon and enforce the attendance of witnesses before the expert and to compel them to produce documents, records and things that is vested in an investigator under subsections 6(3) and (4), which apply with necessary modifications.

**Payment of experts**

5(3) The commission may determine the amounts payable to experts for services and expenses, subject to any limit prescribed by the regulations.

## PART 2 INVESTIGATIONS

**Investigation order**

6(1) The Commission may, by order, appoint one or more persons to make any investigation it considers necessary or advisable

- (a) for the due administration of Manitoba commodity futures law or the regulation of the commodity futures markets in Manitoba; or
- (b) to assist in the due administration of the commodity futures laws or the regulation of the commodity futures markets in another jurisdiction.

**Contents of order**

6(2) An order under this section shall describe the matter to be investigated.

**Scope of investigation**

6(3) A person appointed to make an investigation under this section may investigate and inquire into,

- (a) the affairs of the person or company in respect of which the investigation is being made, including any trades, communications, negotiations, transactions, investigations, loans, borrowings or payments to, by, on behalf of, or in relation to or connected with the person or company and any property, assets or things owned, acquired or alienated in whole or in part by the person or company or by any other person or company acting on behalf of or as agent for the person or company; and
- (b) the assets at any time held, the liabilities, debts, undertakings and obligations at any time existing, the financial or other conditions at any time prevailing in or in relation to or in connection with the person or company, and any relationship that may at any time exist or have existed between the person or company and any other person or company by reason of investments, commissions promised, secured or paid, interests held or acquired, the loaning or borrowing of money, stock or other property, the transfer, negotiation or holding of stock, interlocking directorates, common control, undue influence or control or any other relationship.

**Right to examine**

6(4) A person appointed to make an investigation under this section may examine any documents or other things, whether they are in the possession or control of the person or company in respect of which the investigation is ordered or of any other person or company.

**Financial examination order**

7(1) The Commission may, by order, appoint one or more persons to make any examination of the financial affairs of a market participant it considers necessary or advisable,

- (a) for the due administration of Manitoba commodity futures law or the regulation of the commodity futures markets in Manitoba; or
- (b) to assist in the due administration of the commodity futures laws or the regulation of the commodity futures markets in another jurisdiction.

**Contents of order**

7(2) An order under subsection (1) shall describe the matter to be examined.

**Right to examine**

7(3) A person appointed to conduct an examination under this section may examine any documents or other things, whether they are in the possession or control of the market participant or any other person or company.

**Power of investigator or examiner**

8(1) A person making an investigation or examination under section 6 or 7 has the same power to summon and enforce the attendance of any person and to compel him or her to testify on oath or otherwise, and to summon and compel any person or company to produce documents and other things, as is vested in the Court of Queen's Bench for the trial of civil actions, and the refusal of a person to attend or to answer questions or of a person or company to produce such documents or other things as are in his, her or its custody or possession makes the person or company liable to be committed for contempt by the Court of Queen's Bench as if in breach of an order of that court, and this section applies despite subsection 48(4) (bank and officers when bank not party) of *The Manitoba Evidence Act*.

**Rights of witness**

8(2) A person or company giving evidence under subsection (1) may be represented by counsel and may claim any privilege to which the person or company is entitled.

**Inspection**

8(3) A person making an investigation or examination under section 6 or 7 may, on production of the order appointing him or her, enter the business premises of any person or company named in the order during business hours and inspect any documents or other things that are used in the business of that person or company and that relate to the matters specified in the order, except those maintained by a lawyer in respect of his or her client's affairs.

**Authorization to search**

8(4) A person making an investigation or examination under section 6 or 7 may apply to a provincial judge in the absence of the public and without notice for an order authorizing the person or persons named in the order to enter and search any building, receptacle or place specified and to seize anything described in the authorization that is found in the building, receptacle or place and to bring it before the judge granting the authorization or another judge to be dealt with by him or her according to law.

**Grounds**

8(5) No authorization shall be granted under subsection (4) unless the judge to whom the application is made is satisfied on information under oath that there are reasonable and probable grounds to believe that there may be in the building, receptacle or place to be searched anything that may reasonably relate to the order made under section 6 or 7.

**Power to enter, search and seize**

8(6) A person named in an order under subsection (4) may, on production of the order, enter any building, receptacle or place specified in the order between 6 a.m. and 9 p.m., search for and seize anything specified in the order, and use as much force as is reasonably necessary for that purpose.

**Expiration**

8(7) Every order under subsection (4) shall name the date that it expires, and the date shall be not later than fifteen days after the order is granted.

**Copying**

9(1) Any thing seized or produced under this Part shall be made available for inspection and copying by the person or company from which it was obtained, if practicable.

**Return**

9(2) Any thing seized or produced under this Part shall be returned to the person or company from which it was obtained when,

- (a) retention is no longer necessary for the purposes of an investigation, examination, proceeding or prosecution; or
- (b) the commission so orders.

**Report of investigation or examination**

10(1) A person appointed under subsection 6(1) or 7(1) shall, at the request of the chairperson of the commission or of a member of the commission involved in making the appointment, provide a report to the chairperson or member, as the case may be, or any testimony given and any documents or other things obtained under section 8.

**Report privileged**

10(2) A report provided under this section is privileged.

**Non-disclosure**

11 No person or company shall disclose at any time, except to his, her or its counsel,

- (a) the nature or content of an order under section 6 or 7; or
- (b) the name of any person examined or sought to be examined under section 8, any testimony given under section 8, any information obtained under section 8, the nature or content of any questions asked under section 8, the nature or content of any demands for the production of any document or other thing under section 8, or the fact that any document or other thing was produced under section 8.

**Interim preservation of property**

12(1) If the commission considers it necessary or advisable

- (a) for the due administration of Manitoba commodity futures law or the regulation of the commodity futures markets in Manitoba; or
- (b) to assist in the due administration of the commodity futures laws or the regulation of the commodity futures markets in another jurisdiction;

it may in writing direct a person or company having on deposit or under its control or for safekeeping any funds, securities or property of any person or company to retain those funds, securities or property and to hold them until the commission in writing revokes the direction or consents to release a particular fund, security or property from the direction.

**Application to branches of financial institution**

12(2) A direction under subsection (1) that names a bank or other financial institution shall apply only to the branches of the bank or other financial institution identified in the direction.

**Exclusions**

12(3) A direction under subsection (1) shall not apply to funds, securities or property in the clearing house of a commodity futures exchange or stock exchange or to securities in process of transfer by a transfer agent unless the direction so states.

**Clarification, variation or revocation**

12(4) A person or company directly affected by a direction under subsection (1) may apply to the commission for clarification or to have the direction varied or revoked.

**Registration against land**

12(5) If property identified in a direction under subsection (1) includes an interest in land, the commission may authorize the director to issue a certificate in respect of the land and request registration of the certificate in the land titles office for the land titles district in which the land is situated, and the certificate when so registered shall have the same effect as, and the registration of it may be discharged in the same manner as, a certificate of pending litigation in respect of the land.

**Application for appointment of receiver**

13(1) The commission may, where it considers it necessary or advisable for the proper administration of this Act, the regulations or the rules, apply to a judge of the Court of Queen's Bench

for the appointment of a receiver, receiver and manager, trustee or liquidator in respect of all or any part of the property of a person or company.

**Appointment**

13(2) Upon an application made under subsection (1), the judge may, if he or she considers it necessary or advisable for the proper administration of this Act, the regulations or the rules, by order appoint a receiver, receiver and manager, trustee or liquidator of any or all of the property of a person or company.

**Application without notice**

13(3) The judge may make an order under subsection (2) on an application without notice, but the period of appointment shall not exceed 15 days.

**Powers of receiver**

13(4) In making an appointment under subsection (2) in respect of property of a person or company, the judge may authorize the appointee

- (a) to act as receiver, receiver and manager, trustee or liquidator of, in addition to property of the person or company, all or any property held by the person or company on behalf of or in trust for another person or company; and
- (b) to wind up or manage the business and affairs of the person or company.

**Costs of application**

13(5) The commission's costs related to an application under this section shall be paid out of the assets of the person or company in respect of which an appointment is made.

**PART 3****SELF-REGULATORY ORGANIZATIONS, COMMODITY FUTURES EXCHANGES AND CLEARING HOUSES****Recognition of self-regulatory organization**

14(1) The commission may recognize in writing an organization, whether incorporated or unincorporated, representing registrants as a self-regulatory organization if the commission considers that it is in the public interest to do so and that the organization is in compliance with this Act, the regulations and the rules and is able to continue to be in compliance.

**Hearing**

14(2) The commission shall not refuse to recognize an organization as a self-regulatory organization without giving the applicant an opportunity to be heard.

**Recognized organization to regulate members**

14(3) A self-regulatory organization recognized under subsection (1) shall, subject to this Act, the regulations, the rules and the decisions of the commission and of the director, regulate the standards and business conduct of its members.

**Commission's powers**

14(4) If the commission considers it in the public interest to do so, it may make a decision in respect of

- (a) an internal regulation or proposed internal regulation of a self-regulatory organization; or
- (b) a direction, decision, order or ruling made under an internal regulation of the organization.

**Requirement to register as exchange**

15(1) No person or company shall carry on business as a commodity futures exchange in Manitoba unless it is registered as a commodity futures exchange under this Part.

**Registration**

15(2) Upon application by or on behalf of a person or company wishing to carry on business in Manitoba as a commodity futures exchange, the commission shall grant registration to the person or company where it is satisfied that to do so would not be prejudicial to the public interest, taking into account whether

- (a) the clearing arrangements and the financial condition of the exchange, its clearing house and members provide reasonable assurance that all obligations arising out of contracts entered into on the exchange will be met;
- (b) the internal regulations of the exchange that govern its members and members of its clearing house are in the public interest and are actively enforced;
- (c) floor trading practices are fair and effectively supervised;
- (d) adequate measures are taken to prevent manipulation and excessive speculation;
- (e) adequate provision is made to record and publish details of trading, including volume and open interest; and
- (f) the exchange is in compliance with this Act, the regulations and the rules and is able to continue to be in compliance.

**Hearing**

15(3) The commission shall not refuse to grant registration to a commodity futures exchange without giving the applicant an opportunity to be heard.

**Designation of recognized clearing house**

16(1) Upon the application of a person or company carrying on or proposing to carry on the business of a clearing house for a commodity futures exchange registered under section 15, the commission may designate in writing the person or company as a recognized clearing house where the commission is satisfied that to do so would be in the public interest and that the person or company can comply with this Act, the regulations, the rules and any term or condition imposed by the commission in respect of the designation.

**Hearing**

16(2) The commission shall not refuse to make a designation under subsection (1) without giving the applicant an opportunity to be heard.

**Requirement to file documents**

17(1) Every registered commodity futures exchange and every recognized clearing house shall file with the commission a copy of every constating document, general agreement or other document governing its members, internal regulation and every amendment to them, without delay and in any event not later than five days after the day on which the document or amendment is approved by the board of directors of the exchange and, where membership approval is required, before approval by its membership.

**Commission may review filed document**

17(2) The commission may review a document filed under subsection (1) and, if it considers it in the public interest to do so, make a decision respecting the document, including suspending its operation or requiring an amendment to it.

**Additional powers**

17(3) The commission may review the operation of a commodity futures exchange or its clearing house and, if it considers it in the public interest to do so, make an order

- (a) respecting the manner in which the exchange or clearing house carries on business;
- (b) in the case of an exchange,
  - (i) respecting trading on or through the facilities of the exchange, including the setting of levels of margin, daily price limits, daily trading limits and position limits, or
  - (ii) requiring the liquidation of or suspension of trading in a contract or any other action the commission considers necessary or advisable to maintain or restore orderly trading in a contract; and
- (c) in the case of a clearing house, requiring it to liquidate a contract, suspend its operations or take any action the commission considers necessary or advisable to maintain or restore orderly trading in a contract.

**Conflict with commodities law**

18 No internal regulation of a self-regulatory organization, a registered commodity futures exchange or a recognized clearing house shall conflict with this Act, the regulations or the rules, but any of them may impose additional requirements within its jurisdiction.

**Suspension or cancellation of registration or recognition**

19(1) If the commission, after giving a self-regulatory organization, a commodity futures exchange or a recognized clearing house an opportunity to be heard, considers it in the public interest to do so, it may reprimand the organization, exchange or clearing house or suspend, cancel, restrict or impose terms and conditions upon its registration, recognition or designation under this Part.

**Temporary order without hearing**

19(2) Despite subsection (1), if the commission considers that the delay required for a hearing would be prejudicial to the public interest, it may make an order under that subsection without prior notice to the organization, exchange or clearing house, but the order is effective for not more than 15 days.

S.M. 2011, c. 35, s. 7.

**Assignment of powers and duties by commission**

20(1) The commission may, on any terms and conditions it considers advisable, assign to a registered commodity futures exchange or a self-regulatory organization any power or duty of the commission under Part 4 (Registration for Trading, Acting as Adviser) or the regulations or rules relating to that Part.

**Assignment of powers and duties by director**

20(2) The director may, with the approval of the commission which may be given on any terms and conditions it considers advisable, assign to a registered commodity futures exchange or a self-regulatory organization any power or duty of the director under Part 4 (Registration for Trading, Acting as Adviser) or the regulations or the rules relating to that Part.

**Variation or revocation of assignment**

20(3) The commission or, with the commission's approval, the director may at any time vary or revoke, in whole or in part, an assignment of powers and duties made under this section.

**Review of decision of exchange or clearing house**

21 A person or company substantially affected by a direction, order or other decision made under an internal regulation of a registered commodity futures exchange or a recognized clearing house may, within 30 days after the decision is made, apply to the commission for a hearing to review the matter and Part IV (Appeals) of *The Securities Act* applies to the application and hearing, with necessary modifications, as if the decision were a decision of the director.

**Records of exchanges and clearing houses**

22(1) Each registered commodity futures exchange in Manitoba and its clearing house shall keep all records necessary for the proper recording of each transaction on the exchange and shall deliver to the commission, at such time or times as the commission requires and in a form acceptable to the commission, reports respecting transactions on the exchange.

**Particulars of transactions**

22(2) Every registered commodity futures exchange shall supply to any customer of a member of the exchange, upon production of a written confirmation of a transaction with the member, particulars of the transaction, including the time at which it took place and the matters set out in the confirmation.

**Auditor of exchange, clearing house or self-regulatory organization**

23(1) Every registered commodity futures exchange, recognized clearing house and self-regulatory organization shall appoint an auditor for itself.

**Auditor of member**

23(2) Every registered commodity futures exchange and every self-regulatory organization shall

- (a) select a panel of auditing firms for its members; and
- (b) cause each of its members to appoint an auditor from that panel.

**Examination and report**

23(3) The auditor of a member of a registered commodity futures exchange or self-regulatory organization shall examine, in accordance with generally accepted auditing standards, the annual financial statements and the regulatory filings of the member required by the internal regulations

applicable to the member, and shall report the results of the examination in accordance with professional reporting standards to the exchange or organization.

#### PART 4

### REGISTRATION FOR TRADING, ACTING AS ADVISER

#### Registration for trading

- 24(1) No person or company shall trade in a contract unless the person or company
- (a) is registered
    - (i) as a dealer or a local, or
    - (ii) as a salesperson, floor trader, partner or officer of a registered dealer and is acting on behalf of the dealer;
  - (b) has received written notice of the registration; and
  - (c) is in compliance with all terms and conditions imposed in respect of the registration.

#### Registration as adviser

- 24(2) No person or company shall act as an adviser unless the person or company
- (a) is registered under this Act
    - (i) as an adviser, or
    - (ii) as a partner or officer of a registered adviser and is acting on behalf of the adviser;
  - (b) has received written notice of the registration; and
  - (c) is in compliance with all terms and conditions imposed in respect of the registration.

#### Termination of salesperson or floor trader

24(3) The termination of the employment of a registered salesperson or registered floor trader with a registered dealer operates as a suspension of the registration of the salesperson or floor trader until notice in writing is received by the director from a registered dealer of the employment of the salesperson or floor trader by the dealer, and reinstatement of the registration is approved by the director or until the registration of the salesperson or floor trader expires, whichever first occurs.

#### Designation of employee as non-trading

25(1) The director may designate as non-trading any employee or class of employees of a registered dealer that do not usually trade in contracts.

#### Cancellation of designation

25(2) If in the director's opinion a non-trading employee or class of employees should be registered as salespersons, he or she may cancel the designation made under subsection (1) in respect of the employee or class.

#### Exception

25(3) Despite subsection (1), if the director is satisfied that a member of a non-trading class of employees should be registered as a salesperson, the director may require the person to be so registered.

#### Registration as dealer or adviser

- 26(1) The director shall grant registration or a renewal or reinstatement of registration or an amendment to a registration to an applicant unless the director is satisfied that
- (a) taking into account the applicant's financial position, the applicant cannot reasonably be expected to be financially responsible to conduct business;
  - (b) the past conduct of the applicant, or the officers, directors or partners of the applicant, affords reasonable grounds to believe that the business of the applicant will not be carried on in accordance with law and with integrity and honesty; or
  - (c) the applicant is or will be carrying on activities that contravene this Act, the regulations or the rules.

#### Director may impose conditions

26(2) The director may impose terms and conditions on a registration including restricting its duration and restricting the classes of contracts in which the registrant may trade.

#### **Director's refusal to register**

26(3) The director shall not impose terms and conditions on, or refuse to grant, renew, reinstate or amend a registration without giving the applicant an opportunity to be heard.

#### **Powers of the commission**

27(1) If the commission, after giving a registrant under this Part an opportunity to be heard, considers it in the public interest to do so, it may reprimand the registrant or suspend, cancel, restrict or impose terms and conditions upon the registrant.

#### **Temporary order**

27(2) Despite subsection (1), if the commission considers that the delay required for a hearing would be prejudicial to the public interest, it may make an order under that subsection without prior notice to the registrant, but the order is effective for not more than 15 days.

#### **Surrender of registration**

27(3) The commission may, upon an application by a registrant under this Part, accept the voluntary surrender of the registration of the dealer or adviser, subject to any terms or conditions that the commission considers necessary or advisable, where the commission is satisfied that the financial obligations of the registrant to its customers have been discharged and the surrender of the registration is not prejudicial to the public interest.

#### **Application after refusal or suspension**

28 Where the director refuses an application under subsection 26(1) or imposes terms and conditions under subsection 26(2), or the commission makes a decision under subsection 27(1), the person or company may make a further application in respect of the matter upon new material or a significant change in circumstances.

#### **Application form and fee**

29 An application for registration under this Part shall be made in writing in a form approved by the commission, and shall be accompanied by any fee prescribed by the regulations.

#### **Director may require additional information**

30 The director may require

- (a) an applicant or registrant to provide additional information or material within a specified time and to verify by affidavit or otherwise any information or material submitted; or
- (b) a partner, officer or director of, or a person performing a like function for, or an employee of, an applicant or registrant, to submit to examination under oath by a person designated by the director.

#### **Residency requirement**

31 The director may refuse to grant registration under this Part to an applicant if the applicant or a director or officer of the applicant has not been a resident of Canada throughout the 12-month period immediately preceding the date of the application unless the applicant

- (a) is, in the director's opinion, suitable for registration; and
- (b) has, throughout that period, been registered in a capacity corresponding to that of a dealer, local, salesperson, floor trader, partner, officer or adviser under the laws of the jurisdiction in which the applicant, director or officer last resided.

#### **Registered dealer to give notice of changes**

32(1) A registered dealer shall, within five business days after the event, notify the director, in the manner prescribed by the regulations or the rules and in a form acceptable to the director, of

- (a) a change in the dealer's address for service in Manitoba or any business address;
- (b) a change in
  - (i) the partners, directors or officers of the dealer, and the reason for any resignation or termination of employment or office, and
  - (ii) the holders of the voting securities of the dealer;

- (c) the commencement and termination of employment of every registered salesperson and registered floor trader, and the reason for any termination of employment;
- (d) the opening or closing of a branch office in Manitoba and, in the case of an opening, the name and address of the person in charge of the office; and
- (e) a change in the name or address of a person in charge of a branch office in Manitoba.

**Registered adviser to give notice of changes**

32(2) A registered adviser shall, within five business days after the event, notify the director, in the manner prescribed by the regulations or the rules and in a form acceptable to the director, of

- (a) a change in the adviser's address for service in Manitoba or any business address; and
- (b) a change in
  - (i) the partners, directors or officers of the registered adviser, and the reason for any resignation or termination of employment or office, and
  - (ii) the holders of the voting securities of the registered adviser.

**Exemption of dealer or adviser re voting securities**

32(3) Despite subclauses (1)(b)(ii) and (2)(b)(ii), if the director considers it not to be prejudicial to the public interest to do so, he or she may exempt a registered dealer or registered adviser, upon application by the dealer or adviser, from the requirement of those provisions subject to any terms or conditions the director considers necessary or advisable.

**Notice of change in employment**

32(4) Every registered salesperson and floor trader shall, within five business days after the event, notify the director, in the manner prescribed by the regulations or the rules and in a form acceptable to the director, of every commencement and termination of his or her employment by a registered dealer.

**Change of address**

32(5) Every registered salesperson, floor trader and local shall, within five business days after the event, notify the director, in the manner prescribed by the regulations or the rules and in a form acceptable to the director, of any change in his or her business address or address for service in Manitoba.

**Exemption of certain advisers**

33 Subject to the regulations and the rules, registration as an adviser is not required to be obtained by any person or company designated by the regulations or the rules or by

- (a) a bank to which the *Bank Act* (Canada) applies, the Business Development Bank of Canada, a trust company registered under Part XVI (Registration of Bodies Corporate) of *The Corporations Act* or an insurance company licensed under *The Insurance Act*;
- (b) a lawyer, accountant, engineer or teacher;
- (c) a registered dealer or a registered partner, officer or salesperson of a registered dealer;
- (d) a publisher of, or a writer for, a bona fide newspaper, news magazine, business or financial publication of general and regular paid circulation distributed only to its subscribers for value or to its purchasers, or a broadcaster or writer for a bona fide radio or television broadcast, who
  - (i) acts as an adviser only through the publication or broadcast,
  - (ii) has no interest, directly or indirectly, in any contract in respect of which the advice is given, and
  - (iii) receives no commission or other consideration for giving the advice

where the performance of the service as an adviser is solely incidental to his, her or its principal business or occupation.

**Exemption of certain trades**

34 Subject to the regulations and the rules, registration is not required in respect of a trade in a contract

- (a) by a hedger through a dealer;
- (b) by a person or company acting solely through an agent that is a registered dealer;

(c) not yet proclaimed.

**Auditor of registrant**

35(1) Every registered dealer and registered adviser who is not governed by the audit requirements under section 23 applicable to members referred to in that section shall appoint an auditor who satisfies the requirements established by the commission for such appointments.

**Examination and report**

35(2) An auditor appointed under subsection (1) shall examine the annual financial statements and other regulatory filings of the registered dealer or registered adviser, in accordance with generally accepted auditing standards, and shall prepare a report on the registrant's financial affairs in accordance with professional reporting standards.

**Filing of auditor's report**

35(3) Each registrant for whom an auditor's report is prepared under this section shall file the report with the commission together with the registrant's annual financial statements and other regulatory filings.

**Delivery of financial statements**

35(4) Each registrant required by subsection (1) to appoint an auditor shall file with the commission annual audited financial statements, prepared in accordance with generally accepted accounting principles, and other regulatory filings as prescribed by the regulations or the rules, within 90 days after the end of its financial year or at any other time prescribed by the regulations or the rules.

**Certification of financial statements**

35(5) The financial statements and regulatory filings referred to in subsection (4) shall be certified by the registrant required to file them or by or an officer or partner of the registrant.

**Additional information**

35(6) A registrant under this Part shall deliver to the commission such other information as the commission requires in a form acceptable to the commission.

**PART 5****RECOGNITION OF EXTRA-PROVINCIAL COMMODITY FUTURES EXCHANGES****Recognition of extra-provincial exchange by commission**

36(1) The commission may, upon the application of the director or an interested person or company, recognize a commodity futures exchange situated outside Manitoba where the commission is satisfied that recognition would not be prejudicial to the public interest, taking into account the criteria in clauses 15(2)(a) to (e) and whether the exchange and its clearing house are subject to appropriate government controls.

**Hearing**

36(2) The commission shall not refuse to recognize a commodity futures exchange situated outside Manitoba without giving the applicant an opportunity to be heard.

**Exemption**

36(3) If the commission, taking into account the criteria referred to or set out in subsection (1), considers it not to be prejudicial to the public interest to do so, it may exempt a commodity futures exchange from the need for recognition under that subsection for the purpose of section 40, and it may impose any terms and conditions on the exemption it considers necessary or advisable.

**Revocation of recognition or exemption**

37(1) If after giving a commodity futures exchange an opportunity to be heard the commission considers it in the public interest to do so, it may by order, subject to any terms or conditions it considers necessary or advisable, suspend or revoke its recognition of a commodity futures exchange under this Part or an exemption granted under subsection 36(3).

**Temporary order**

37(2) Despite subsection (1), if the commission considers that the delay necessary for a hearing would be prejudicial to the public interest, it may make an order under that subsection without prior notice to the exchange, but the order is effective for not more than 15 days.

## PART 6

### APPROVAL OF CONTRACTS

#### Approval of form of contract by director

38(1) Upon application by or on behalf of a commodity futures exchange and the filing of a copy of all the terms and conditions of a form of contract that the exchange proposes for trading in Manitoba, the director shall approve the form of contract if he or she is satisfied that the form is not prejudicial to the public interest, taking into account whether

- (a) more than occasional use is to be made or can reasonably be expected to be made of the contract for hedge trades;
- (b) with respect to a commodity futures contract, each term or condition conforms to normal commercial practices of the trade in the commodity or the exchange has a reasonable justification for any non-conformance;
- (c) with respect to a commodity futures contract, satisfactory levels of margin, daily price limits, daily trading limits and position limits are imposed by the commodity futures exchange;
- (d) with respect to a commodity futures option, the form of the commodity futures contract that is the subject of the option has been accepted under this section; and
- (e) with respect to a commodity futures option, performance on exercise of the option is reasonably assured by by-laws, rules, regulations, procedures and policies that are actively enforced.

#### Hearing

38(2) The director shall not refuse to approve a form of contract without giving the applicant an opportunity to be heard.

#### Amendment to approved form of contract

38(3) A commodity futures exchange that proposes to amend a form of contract that has been approved by the director under this section shall file a copy of the proposed amendment with the director without delay after the proposed amendment is approved by its board of directors and apply to the director for the form of contract to be approved as amended.

#### Exemption

38(4) If the commission, after taking into account the criteria set out in subsection (1), considers it not to be prejudicial to the public interest to do so, it may exempt a form of contract from the need for approval under that subsection for the purpose of section 40, and it may impose any terms and conditions on the exemption that it considers necessary or advisable.

#### Revocation of approval

39(1) If after giving a self-regulatory organization or commodity futures exchange an opportunity to be heard the commission considers it in the public interest to do so, it may by order, subject to any terms or conditions it considers necessary or advisable, revoke its approval of a form of contract or an exemption granted under section 38.

#### Temporary order

39(2) Despite subsection (1), if the commission considers that the delay necessary for a hearing would be prejudicial to the public interest, it may make an order under that subsection without prior notice to the organization or exchange, but the order is effective for not more than 15 days.

## PART 7

### TRADING GENERALLY

#### Prohibition on certain trades

40 No person or company shall trade in a contract on his, her or its own account or on behalf of any other person or company except where the trade is a trade referred to in clause 34(c) or

- (a) the trade is made on a commodity futures exchange registered under Part 3 (Self-regulatory Organizations, Commodity Futures Exchanges and Clearing Houses) or recognized by the commission under Part 5 (Recognition of Extra-provincial Commodity Futures Exchanges) or exempted under that Part from the need for recognition; and
- (b) the form of the contract has been approved by the director under Part 6 (Approval of Contracts) or exempted under that Part from the need for approval.

**Disclosure statement to be furnished to prospective customer and guarantor**

41 Each registered dealer and registered adviser shall furnish each prospective customer, before a commodity futures account is opened in his, her or its name, and each guarantor of a commodity futures account with a written statement of disclosure in the form prescribed by the regulations or the rules that

- (a) explains the nature of, and risks inherent in, trading in contracts and the obligations assumed by the customer upon entering into a contract;
- (b) advises the customer to request a copy the terms and conditions of the contract and to study them; and
- (c) furnishes details respecting commissions and other charges that are or could be levied by the dealer or adviser;

and the dealer or adviser shall obtain from the customer a statement dated and signed by the customer and acknowledging that the customer has received and understands the disclosure statement.

**Information to be provided to customer**

42(1) A registered dealer and a registered adviser shall, at the request of a customer,

- (a) explain the nature of and the risks inherent in trading in contracts and the obligations assumed by the customer upon entering into a contract;
- (b) furnish details respecting the terms and conditions of a contract; and
- (c) furnish details respecting commissions and other charges that are or could be levied by the dealer or adviser and any change to the charges.

**Terms and conditions**

42(2) Except where the director by order modifies the requirement, each registered dealer and registered adviser shall, at the request of a customer, furnish the customer with a copy of the current terms and conditions of any contract the form of which has been approved by the director under Part 6 (Approval of Contracts) or exempted by the director under that Part from the need for approval.

**Margin requirements**

43 Every registered dealer that acts as an agent in respect of a trade in a contract shall require payment from the customer, within the time required by the commodity futures exchange upon which the contract is traded or under its internal regulations, of margin that may exceed, but shall not be less than,

- (a) the margin required under the internal regulations of the exchange; or
- (b) if the commission has established levels of margin under subsection 17(3) for the exchange, the margin so established.

**Written confirmation of trade**

44(1) A registered dealer that has acted as an agent in respect of a trade in a contract, including a trade upon the exercise of a commodity futures option, shall without delay after the trade provide a written confirmation of the transaction, in the form and manner prescribed by the regulations or the rules, to

- (a) the customer;
- (b) any person or company that has provided instructions to the dealer respecting trades for the customer's account; and
- (c) any guarantor of the customer's account.

**Waiver of written confirmations**

44(2) Despite subsection (1), a dealer is not required to provide a written confirmation of a trade for the account of a customer to

- (a) a person or company that has provided instructions respecting trades for the customer's account; or
  - (b) a guarantor of the customer's account;
- if the person, company or guarantor has in writing requested the dealer not to provide written confirmations of trade for the account.

**Disclosure by agent**

44(3) Upon request by the director, a dealer that has acted as agent in connection with a trade in a commodity futures contract or commodity futures option shall without delay disclose to the director the name of the person or company from, or to or through whom the contract or option was purchased or sold.

**Statement of purchase and sale**

45(1) A registered dealer that has acted as an agent in respect of a liquidating trade in a contract for the account of a customer shall without delay after the trade provide, in addition to a written confirmation under subsection 44(1), a written statement of the purchase and sale, in the form and manner prescribed by the regulations or the rules, to the persons or companies referred to in that subsection.

**Monthly statement**

45(2) Where a transaction in a contract has been effected during a month, or there remains outstanding an unexpired and unexercised commodity futures option, or an open commodity futures contract in a customer's account with a registered dealer, the dealer shall send a written monthly statement, in the form and manner prescribed by the regulations or the rules, to each person or company referred to in subsection 44(1).

**Waiver of statements**

45(3) Despite subsections (1) and (2), a dealer is not required to provide a statement under this section in respect of a customer's account to

- (a) a person or company that has provided instructions respecting trades for the customer's account; or
  - (b) a guarantor of the customer's account;
- if the person, company or guarantor has in writing requested the dealer not to provide the statement.

**Segregation, accounting for money, securities, property**

- 46(1) A registered dealer
- (a) shall segregate, in accordance with any regulations or rules made for the purpose of this section, all money, securities, property and proceeds of loans received or advanced by a registered dealer to margin, guarantee or secure the trades or contracts of customers and all funds accruing to customers, for the benefit of the customers for whom they are held;
  - (b) shall separately account for the money, securities, property, proceeds and funds so received, advanced or accrued; and
  - (c) shall not knowingly commingle any money, securities, property, proceeds or funds referred to in clause (a) with the dealer's own money, securities, property and funds.

**Application to certain property, securities and loans**

46(2) Subsection (1) does not apply to property or securities that are subject to a lien or charge in favour of the registered dealer under a written agreement to secure loans referred to in that subsection.

**Commingling of segregated funds**

46(3) The money, securities, property, proceeds and funds segregated under subsection (1) for the benefit of customers may be commingled.

**Registered dealer not to use funds**

46(4) No registered dealer shall knowingly use money, securities, property, proceeds or funds received from, advanced or accrued to or held for a customer to margin, guarantee or secure trades or contracts or to secure or extend the credit of a customer other than the customer for whom the money, securities, property, proceeds or funds are held.

**Registered dealer may advance funds**

46(5) Despite subsection (1), a registered dealer may have a residual financial interest in a customer's account and may from time to time advance from the dealer's own funds sufficient funds to prevent a customer's account from becoming undermargined, and where a dealer has such an interest or so advanced funds, the dealer may draw on the account or any other account of the customer with the dealer to the dealer's own order to the extent of the dealer's residual financial interest or the amount of the funds advanced.

**Prohibition on residual financial interest, advances**

46(6) A salesperson, partner, officer, director or employee of a registered dealer or registered adviser shall not have a residual financial interest in a customer's account or advance his or her own funds to prevent the customer's account from being undermargined.

**Application of subsections (1) and (4).**

46(7) Upon application by an interested person or company, the commission may exempt a registered dealer or a class of registered dealers from the application of subsection (1) or (4), subject to any terms and conditions the commission considers necessary or advisable to provide reasonable protection for customers.

**Reports**

47 A registered dealer shall deliver to the commission, at such time or times as the commission requires and in a form acceptable to the commission, reports respecting transactions in contracts on the dealer's own account or on behalf of another person or company.

**Restrictions on trading in contracts**

48(1) The director may by order restrict or prohibit a person or company from

- (a) calling at any residence;
- (b) telephoning from within Manitoba to any residence in or outside Manitoba; or
- (c) using electronic mail;

for the purpose of trading in a contract.

**Hearing**

48(2) The director shall not make an order under subsection (1) without giving the person or company an opportunity to be heard.

**Meaning of "residence"**

48(3) In this section, "**residence**" includes a building or part of a building in which the occupant resides permanently or temporarily and any premises appurtenant to the building.

**Calls by person or company**

48(4) For the purpose of this section, a person or company is deemed to make every call made by its officer, director or salesperson on behalf of the person or company.

**Certain representations prohibited**

49(1) No person or company shall, with the intention of effecting a trade in a contract,

- (a) make a representation
  - (i) that any person or company will refund all or any portion of the margin or premium paid,
  - (ii) that any person or company will assume all or any part of the obligation of another person or company under the contract,
  - (iii) that the person or company knows, or ought reasonably to know, is false, misleading or deceptive in a material manner or that fails to state material facts, or
  - (iv) that misrepresents the performance of a dealer or adviser in trading in contracts on behalf of discretionary accounts; or
- (b) use advertising that includes pictures, graphs or tables that are misleading or deceptive, unrepresentative statistics or a misrepresentation.

**Prohibited representations re future value and risks**

49(2) No person or company shall, with the intention of effecting a trade in a contract,

- (a) give a written or oral undertaking relating to the future value of the contract;
- (b) make or publish a statement, promise or forecast that the person or company knows, or ought reasonably to know, is false, misleading or deceptive in a material manner or that fails to state material facts; or
- (c) conceal material facts or risks or fail to present fairly the risks inherent in trading in contracts and the obligations assumed by a customer upon entering into a contract.

**Use of name of another registrant**

50 No registrant shall use the name of another registrant in advertising or on letterheads, forms or signs, as correspondent or otherwise, unless the registrant is a partner, officer or agent of the other registrant or is authorized so to do in writing by the other registrant.

**Restriction on advertising**

51(1) No registrant shall include in its advertising its performance record for trades in contracts effected by it on behalf of discretionary accounts unless the registrant has traded in that capacity for the previous three years and sets out its performance record for those years, and the performance record is accompanied by a statement in the form prescribed by the regulations or the rules.

**Restriction on hypothetical results**

51(2) No registrant shall distribute advertising that sets out the hypothetical results of a computer trading program unless the advertising is accompanied by a statement in the form prescribed by the regulations or the rules.

**Registration not to be advertised**

52 No registrant shall, in any circular, pamphlet, letter or advertising, hold himself, herself or itself out as being registered.

**Holding out by unregistered person**

53 No person or company that is not registered shall, directly or indirectly, hold himself, herself or itself out as being registered.

**Representing approval by commission**

54 No person or company shall make a representation, written or oral, that the commission has in any way passed upon the financial standing, fitness or conduct of a registrant or the merits of a contract.

**Director may order copy of advertising**

55(1) If the director considers it necessary or advisable for the protection of the public, he or she may by order

- (a) require that a registrant deliver to him or her copies of all advertising used or proposed to be used by the registrant in connection with trading in contracts; or
- (b) prohibit the use of advertising by a registrant or require that deletions or changes be made to its advertising before it is used.

**Hearing**

55(2) The director shall not make an order under subsection (1) without giving the registrant an opportunity to be heard.

**Director may rescind or vary order**

55(3) If the director considers it not to be prejudicial to public interest to do so, he or she may vary or rescind an order made under subsection (1) on application by the registrant not earlier than six months after the order was made.

## PART 8 ENFORCEMENT

**Prohibitions respecting contracts**

56 No person or company shall

- (a) manipulate or attempt to manipulate the price of a contract or commodity that is the subject matter of a contract;
- (b) effect, alone or in concert with others, a series of transactions in a contract to create an impression of actual or apparent active trading in the contract or to raise or lower the price of the contract for the purpose of inducing the purchase or sale of the contract by others;
- (c) fill an order for a trade in a contract by a customer by taking the opposite side of the trade and reporting or recording that the trade has been executed on a commodity futures exchange; or
- (d) enter into a trade in a contract that has been prearranged, unless the trade is permitted by the internal regulations of the commodity futures exchange upon which the contract trades.

**Prohibition of cross trades**

57 No registrant, no associate, affiliate or subsidiary of a registrant and no company controlled by a registrant shall fill an order for a trade in a contract by a customer by offsetting the order against an order or orders of any other customer of the registrant, an associate, affiliate, subsidiary of the registrant or a company controlled by it.

**Prohibition on front running**

58(1) No floor trader may purchase or sell, for his or her own account or for an account in which he or she has an interest, a contract while holding an order for a customer for the purchase or sale of the same contract that is executable at the market price or at the price at which a purchase or sale can be made for the floor trader's own account or an account in which he or she has an interest.

**Meaning of "order"**

58(2) For the purpose of subsection (1), an order in which a floor trader has an interest is deemed to include an order for a non-customer account of the dealer with which the floor trader is associated, and an order for the account of another floor trader.

**Prohibition on trading in non-public information**

59(1) No person or company shall trade in a contract, or cause a contract to be traded, to benefit from material non-public order information that has not been generally disclosed and that the person or company knows, or ought reasonably to know, will have an immediate impact on the price of the contract or a commodity that forms the underlying interest of the contract.

**Prohibition on registrant and affiliates**

59(2) No registrant, no associate, affiliate, subsidiary of a registrant and no company controlled by a registrant shall trade in a contract, or cause a contract to be traded, for an account in which the registrant, an associate, affiliate, subsidiary of the registrant or a company controlled by the registrant has an interest, or for an account over which the registrant exercises discretionary authority, to benefit from material non-public order information that has not been generally disclosed and that the registrant knows, or ought reasonably to know, will have an immediate impact on the price of the contract or a commodity that forms the underlying interest of the contract.

**Meaning of "material non-public order information"**

59(3) For the purpose of subsections (1) and (2), "material non-public order information" means information respecting the imminent execution of trades in contracts, or in commodities that are the subject matter of contracts, by a person or company.

**Exemption**

59(4) Subsections (1) and (2) do not apply to trades or classes of trades that are designated by the regulations or the rules as being exempt from the application of those subsections.

**Offence and penalty**

60(1) A person or company that

- (a) makes a statement in material, evidence or information that is submitted or given under this Act, the regulations or the rules to the commission, its representative, the director or a person appointed to make an investigation or audit under this Act and that, at the time and in the circumstances under which it is made, is a misrepresentation;
- (b) makes a statement in an application, release, report, return, financial statement, or other document that is required to be filed or furnished under this Act, the regulations or the rules and that, at the time and in the circumstances in which it is made, is a misrepresentation;

(c) otherwise contravenes this Act, a regulation, or a rule specified in a regulation made under clause 70(s); or

(d) fails to comply with a direction, decision, ruling, order or other requirement made under this Act or the regulations;

is guilty of an offence and is liable on summary conviction to

(e) in the case of a company, a fine of not more than \$1,000,000.; or

(f) in the case of an individual, a fine of not more than \$1,000,000. or imprisonment for a term of not more than two years, or both.

#### **Application**

60(2) Clauses (1)(a) and (b) do not apply to a statement made or given to the commission in a submission in respect of a proposed rule or policy.

#### **Defence**

60(3) No person or company is guilty of an offence under clause (1)(a) or (b) if the person or company did not know and, in the exercise of reasonable diligence, could not have known that the statement was a misrepresentation.

#### **Directors and officers**

60(4) Where a company or a person other than an individual is guilty of an offence under subsection (1), every director or officer of the company or person that authorized, permitted or acquiesced in the offence is also guilty of an offence and is liable on summary conviction to a fine of not more than \$1,000,000. or imprisonment for a term of not more than two years, or both.

#### **Amount of fine where profit made**

60(5) Despite the fine referred to in subsection (1), a person or company that has contravened section 58 or 59 and made a profit, the amount of which can be determined, by reason of the contravention is liable under that subsection to a fine that is not less than the amount of the profit and not more than the greater of

(a) \$1,000,000.; and

(b) three times the amount of the profit.

#### **Information may contain more than one offence**

60(6) An information in respect of an offence under subsection (1) may be for one or more offences, and no information, summons, warrant, conviction or other proceeding in a prosecution is objectionable or insufficient by reason of its relating to two or more offences.

#### **Executing warrant from other jurisdiction**

61(1) Where a provincial judge, magistrate or justice of another province or territory of Canada issues a warrant for the arrest of any person on a charge of contravening any provision of a statute of such province or territory similar to this Act, the Court of Queen's Bench may, upon satisfactory proof of the handwriting of the provincial judge, magistrate or a justice who issued the warrant, make an endorsement thereon in the form prescribed by the regulations, and a warrant so endorsed is sufficient authority to the person bringing the warrant and to all other persons to whom it was originally directed and to all police officers to execute the warrant and to take the person arrested thereunder either out of or anywhere in Manitoba and to rearrest such person anywhere in Manitoba.

#### **Prisoner in transit**

61(2) Any police officer of Manitoba or of any other province or territory of Canada who is passing through Manitoba and who has in custody a person arrested in another province or territory under a warrant endorsed under subsection (1) is entitled to hold, take and rearrest the accused anywhere in Manitoba under such warrant without proof of the warrant or the endorsement of the warrant.

S.M. 2000, c. 35, s. 3.

#### **Order for compliance**

62 Where it appears to the commission that a person or company has failed to comply with a provision of or a decision made under this Act, the regulations or the rules, the commission may,

despite any penalty previously imposed in respect of the non-compliance and in addition to any other rights the commission has, apply to the Court of Queen's Bench for an order

- (a) directing the person or company to comply with the Act, regulation, rule or decision or restraining the person or company from failing to comply with it; and
- (b) directing the directors and officers of the person or company to cause the person or company to comply with the Act, regulation, rule or decision;

and, upon the application, the judge may make any order that he or she considers appropriate.

#### **Limitation period**

63 No proceedings under this Act shall be commenced in a court or before the commission more than two years after the facts upon which the proceedings are based first come to the knowledge of the commission.

## **PART 9**

### **GENERAL PROVISIONS**

#### **Refunds where applications abandoned**

64 Where an applicant for registration or recognition under this Act or approval of the form of a contract has paid a fee for the application and later abandons the application, the director may, at the request of the applicant, cause the fee, or any part of the fee that the director considers fair and reasonable, to be refunded.

S.M. 1999, c. 16, s. 2.

#### **Admissibility in evidence of certified statements**

65 A statement respecting

- (a) the registration or non-registration of a person or company;
- (b) the filing or non-filing of a document or material required or permitted to be filed;
- (c) a matter set out in clause (a) or (b) and another matter that pertains to registration, non-registration, filing or non-filing, or to any person, company, document or material; or
- (d) the date of the facts upon which any proceeding is to be based first came to the knowledge of the commission,

certified by the commission, one of its members or the director is, without proof of the office or signature of the individual certifying, admissible in evidence, so far as it is relevant, for any purpose in an action, proceeding or prosecution.

#### **Commission's power to exempt**

66(1) If the commission considers it not to be prejudicial to the public interest to do so, it may order that a person or company is exempt from a provision of, or a decision, ruling or order made under, the Act, the regulations or the rules and it may impose any terms or conditions on the exemption it considers necessary or advisable.

#### **Statutes and Regulations Act does not apply**

66(2) *The Statutes and Regulations Act* does not apply to an order made under this section.

S.M. 2013, c. 39, Sch. A, s. 39.

#### **Address for service**

67(1) Every registrant under this Act shall provide to the commission an address for service in Manitoba, and any document required or permitted under this Act, the regulations or the rules to be served on the registrant is sufficiently served if it is delivered or sent by prepaid mail to the latest address for service provided by the registrant.

#### **Attornment of non-resident registrant**

67(2) A non-resident registrant shall attorn to the jurisdiction of the courts of Manitoba.

#### **Filing of material**

68(1) Any material required or permitted by this Act, the regulations or the rules to be filed may be filed by depositing it with the commission.

#### **Access to filed materials**

68(2) Subject to subsection (3), the commission shall make all material filed with it under this Act, the regulations or the rules available for public inspection during the normal business hours of the commission.

#### **Confidential material**

68(3) The commission may hold in confidence any material or class of material referred to in subsection (2), for so long as the commission considers that the material discloses intimate financial, personal or other information and that the desirability of avoiding its disclosure in the interests of any person or company affected outweighs the desirability of making the material available to the public for inspection.

#### **Immunity for acts or omissions in good faith**

69(1) No action or other proceeding for damages may be commenced against the commission or its members, employees or agents for an act done in good faith in the performance of a duty or in the exercise of a power under this Act, the regulations or the rules, or for any neglect or default in the performance of the duty or exercise of the power in good faith.

#### **Immunity re delegated powers and duties**

69(2) No action or other proceeding for damages may be commenced against a registered commodity futures exchange or self-regulatory organization or its members, employees, agents or directors for an act done in good faith in the performance of a duty or in the exercise of a power under assigned to the exchange or organization under section 20 or for any neglect or default in the performance of the duty or exercise of the power in good faith.

#### **Immunity of person or company in compliance**

69(3) No person or company has a right or remedy, and no proceedings may be commenced against another person or company, for an act or omission of the other person or company done or omitted to be done in compliance with the provisions of, or a decision, ruling or order made under, this Act, the regulations or the rules.

#### **Regulations**

70 The Lieutenant Governor in Council may make regulations

- (a) governing trades and trading in contracts;
- (b) designating any good, article or service, right or interest, or a class or combination of them, as a commodity;
- (c) respecting the powers and duties of the officers and other members of the commission;
- (d) prescribing requirements respecting the conduct of investigations and financial examinations under Part 2 (Investigations), including the payment of costs incurred in relation to those investigations and examinations;
- (e) for the purpose of subsection 5(3), prescribing limits to the amounts payable to experts for services and expenses;
- (f) for the purpose of Part 3 (Self-regulatory Organizations, Commodity Futures Exchanges and Clearing Houses), prescribing requirements respecting applications for recognition as a self-regulatory organization or designation as a recognized clearing house, and prescribing procedures in respect of those applications;
- (g) prescribing conditions for the conduct of the business of a commodity futures exchange;
- (h) governing registration and, without limiting the generality of the foregoing,
  - (i) prescribing requirements in respect of applications for registration and the renewal, amendment, expiration or surrender of registration,
  - (ii) respecting the suspension, cancellation and reinstatement of registration,
  - (iii) prescribing categories or sub-categories of registrants,
  - (iv) classifying registrants into categories or sub-categories,
  - (v) prescribing the conditions of registration or other requirements for registrants or any category or sub-category of registrants, including

- (A) standards of practice and business conduct of registrants in dealing with their customers and clients and prospective customers and clients,
- (B) requirements governing ownership or control of the registrants,
- (C) requirements in respect of membership in a registered commodity futures exchange or self-regulatory organization,
- (vi) prescribing requirements in respect of the disclosure or furnishing of information to the public or the commission by registrants,
- (vii) prescribing requirements in respect of the books, records and other documents required to be kept by registrants,
- (viii) respecting conflicts of interest,
- (ix) respecting bonds and bonding,
- (x) respecting compensation funds or contingency trust funds;
- (i) providing for and governing exemptions from the registration requirements under this Act and, without limiting the generality of the foregoing,
  - (i) prescribing trades in respect of which registration is not required,
  - (ii) respecting the modification or variation of those exemptions;
  - (iii) respecting the restriction or removal of those exemptions;
- (j) requiring any information, documents, records or other materials to be filed, furnished or delivered;
- (k) requiring the inclusion or permitting the exclusion of any information, documents, records or other materials that may be required to be filed, furnished or delivered;
- (l) respecting the content and distribution of written, printed or visual material and advertising that may be distributed or used by a person or company in respect of a contract;
- (m) governing the format, preparation, form, contents, execution, certification, filing or manner of delivery, review, public inspection and the dissemination and other use of all information, documents, records or other materials required under or governed by this Act and the regulations and, without limiting the generality of the foregoing,
  - (i) respecting applications for registration, recognition or other purposes,
  - (ii) respecting financial statements,
  - (iii) respecting disclosure statements required under section 41,
  - (iv) respecting written confirmations of trade required under section 44,
  - (v) respecting statements of purchase and sale and monthly statements required under section 45,
  - (vi) respecting statements required under section 51,
  - (vii) establishing procedures and requirements in respect of the use of any electronic or computer-based system for the filing, delivery or deposit of information, documents, records or materials,
  - (viii) varying or modifying the application of this Act to facilitate the use of an electronic or computer-based system for the filing, delivery or deposit of information, documents, records or materials,
  - (ix) prescribing the circumstances in which persons or companies will be deemed to have signed or certified information, documents, records or materials on an electronic or computer-based system for any purposes of this Act;
- (n) for the purpose of section 46, respecting the practice and procedure for the segregation of customers' money, securities, property, proceeds and funds;
- (o) for the purpose of subsection 61(1), prescribing the form of endorsement of a warrant under that subsection;
- (p) permitting the commission or the director to exempt a person or company from a provision of the regulations or vary the provisions as they apply to a person or company;
- (q) prescribing the fees payable to the commission, including fees for filing, fees for applications for registration, recognition, designation or approval under this Act, fees in respect of audits or examinations made by the commission and other fees in respect of the administration of this Act and the regulations;

- (r) governing the procedure to be followed by the commission with respect to making or repealing rules under section 71;
- (s) specifying rules of the commission under section 71 the contravention of which constitutes an offence;
- (t) governing any other matter related to the carrying out of this Act.

**Commission may make rules**

71(1) Subject to this section and the regulations referred to in clause 70(r), the commission may make rules in respect of the matters referred to in section 70 other than those referred to in clauses 70(q), (r) and (s).

**Regulation prevails**

71(2) Where the provisions of a regulation made under section 70 and a rule made under this section conflict, the regulation prevails.

**LG in C may amend or repeal rule**

71(3) The Lieutenant Governor in Council may by regulation amend or repeal a rule made by the commission under this section.

**Force and effect of rule**

71(4) Subject to subsections (2) and (3) and section 72, a rule made by the commission under this section has the same force and effect as a regulation made by the Lieutenant Governor in Council under section 70.

**Statutes and Regulations Act does not apply**

71(5) *The Statutes and Regulations Act* does not apply to a rule made by the commission under subsection (1).

S.M. 2013, c. 39, Sch. A, s. 39.

**Publication of rules**

72(1) Every rule made by the commission under section 71 must be published on the commission's website.

**Effect of publication**

- 72(2) On publication of a rule as required by this section,
- (a) every person and company is deemed to have notice of the rule; and
  - (b) the rule is deemed to be valid despite any irregularity or any defect in the rule-making process.

**Effect of non-publication**

72(3) Until a rule is published in as required in this section, it is not enforceable against a person or company that has not had actual notice of the rule.

**Proof of rule**

72(4) In the absence of evidence to the contrary, a copy of a rule accessed from the commission's website or a printout of such a copy, if it is accompanied by an oral or written statement confirming that it was so accessed, is presumed to be an accurate statement of the rule.

**Proof of date of publication**

- 72(5) In the absence of evidence to the contrary, the date of publication specified
- (a) in a copy of a rule accessed from the commission's website;
  - (b) on the commission's website; or
  - (c) in a certificate of the director;

is proof of the date that the rule was first published on the commission's website.

S.M. 2013, c. 39, Sch. A, s. 39.

**Evidence Act**

73(1) For the purpose of *The Manitoba Evidence Act*, a rule made under section 71 shall be treated in the same manner as if it were a regulation.

#### Application of regulations and rules

73(2) A regulation or rule may be of general or specific application.

#### Incorporation by reference

73(3) A regulation or rule may incorporate by reference, in whole or in part, any standard, procedure or guideline and may require compliance with any standard, procedure or guideline adopted.

S.M. 2011, c. 35, s. 7.

#### Exemption from a regulation or rule

74 A regulation or rule may authorize the commission or director to grant an exemption to the regulation or rule

- (a) in whole or in part; and
- (b) subject to conditions or restrictions.

#### Policy statements

75(1) The commission may issue policy statements and other instruments the commission considers advisable to facilitate the exercise of its powers and the performance of its duties under this Act, the regulations and the rules.

#### Policy statements not rules or regulations

75(2) A policy statement or other instrument referred to in subsection (1) is not

- (a) a rule of the commission for the purpose this Act; or
- (b) a regulation within the meaning of *The Statutes and Regulations Act*.

S.M. 2013, c. 39, Sch. A, s. 39.

#### Commission may vary or revoke its decision

76 If the commission considers it not to be prejudicial to the public interest to do so, it may by order, on any terms and conditions it considers necessary or advisable, vary or revoke a decision made by it under this Act, the regulations or the rules.

77 **NOTE: This section contained consequential amendments to *The Securities Act* which are now included in that Act.**

#### Repeal

78 *The Commodity Futures Act*, R.S.M. 1987, c. C152, is repealed.

#### C.C.S.M. reference

79 This Act may be cited as *The Commodity Futures Act* and referred to as Chapter C152 of the *Continuing Consolidation of the Statutes of Manitoba*.

#### Coming into force

80 This Act comes into force on a day fixed by proclamation.

**NOTE: S.M. 1996, c. 73, except clause 34(c), came into force by proclamation on February 1, 2000.**