

## **Exhibit E (Supplement S-1 Clearing) – The Regulatory Regime Governing ICE Clear Canada, Inc. in its Home Country or Countries**

With respect to each relevant regulatory regime or authority governing ICE Clear Canada, attach the following:

- (1) A description of the regulatory regime/authority's structure, resources, staff and scope of authority.**
- (2) The regulatory regime/authority's authorizing statutes, including the source of its authority to supervise the clearing organization.**
- (3) A description of and, where applicable, copies of the laws, rules, regulations and policies applicable to:**
  - (i) The authorization, licensure or registration of the clearing organization.**
  - (ii) The financial resource requirements applicable to the authorization, licensure or registration of the clearing organization and the continued operations thereof.**
  - (iii) The regulatory regime/authority's program for the ongoing supervision and oversight of the clearing organization and the enforcement of its clearing rules.**
  - (iv) The extent to which the current RCCPs [PFMIs] are used or applied by the regulatory regime/authority in its supervision and oversight of the clearing organization or are incorporated into its rules and regulations and the extent to which the regulatory regime/authority reviews the clearing systems for compliance therewith.**
  - (v) The extent to which the regulatory regime/authority reviews and/or approves the rules of the clearing organization prior to their implementation.**
  - (vi) The regulatory regime/authority's inspection, investigation and surveillance powers; and the program pursuant to which the regulatory regime/authority uses those powers to inspect, investigate, sanction, and enforce rules applicable to the clearing organization.**
  - (vii) The financial protection afforded customer funds.**

ICE Clear Canada's primary regulator is the MSC, the statutory regulatory authority in the province of Manitoba. In addition to the MSC, ICE Clear Canada has reporting requirements in Ontario to the Ontario Securities Commission ("OSC"), and in Quebec, to the Autorité des marchés financiers ("AMF"). All products cleared by ICE Clear Canada are listed for trading on ICE Futures Canada. All products are agricultural futures and options on futures contracts, and are classified as such in all jurisdictions.

**A description of the regulatory regime/authority's structure, resources, staff and scope of authority.**

**The regulatory regime/authority's authorizing statutes, including the source of its authority to supervise the clearing organization.**

In Canada, the oversight of securities and derivatives industries is a provincially enumerated power. On December 12, 2011, the Supreme Court of Canada issued a decision on a Reference question pertaining to the constitutionality of a proposed federal *Securities Act*.<sup>1</sup> The SCC determined that the *Securities Act*, as presently drafted, is not valid under the general branch of the federal power to regulate trade and commerce under s. 91(2) of the *Constitution Act, 1867*. Accordingly, in Canada the current regime of regulation of the securities and derivatives industries by provincial securities commissions will continue.

The securities commissions of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario and Quebec have entered into a Memorandum of Understanding dated September 1, 2009 pertaining to the oversight of Canadian exchanges and automated trading systems. This MOU provides that the MSC will be the primary regulator for ICE Futures Canada.<sup>2</sup> Notwithstanding the MOU, the AMF and the OSC have each taken the position that ICE Clear Canada is required to file exemptive relief applications and, once such relief is granted, file copies of all information that is sent to the MSC to these regulatory authorities. The ASC has recently taken the position that ICE Futures Canada is required to apply for recognition as an exchange located outside of Alberta. ICE Futures Canada has commenced the process to acquire this recognition.

The MSC is mandated by legislation to regulate and oversee ICE Clear Canada. That legislation is *The Commodity Futures Act* C.C.S.M. c. C152 ("CFA"). There are two regulations, Regulation 180/99 and Regulation 179/99, and Rule 1(CF) that have been promulgated under the provisions of the CFA. The MSC itself does not enact legislation. It does, however, have rule making power, which is similar in force to regulation. The rule making power is confined to certain specific areas, which are set out in Regulation 180/99. One Rule has been enacted, Rule 1(CF). Copies of the CFA, and the regulations and rules are Attachments A-4(1) through A-4(4) to Exhibit A-4.

The MSC is comprised of two parts; a) the Commission which is made up of seven order-in-council appointees, including a full time Chairman, a part-time Vice-Chairman and a further five, part time members, and b) 37 full-time, permanent staff, including lawyers, chartered accountants, investigators and support staff.

The staff of the MSC are organized into the following seven operational sections:

**1. Investigations**

There are four staff in this section including the Manager of Investigation, two investigators and

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<sup>1</sup> The decision of the SCC in the matter can be found at <http://www.canlii.org/en/ca/scc/doc/2011/2011scc66/2011scc66.html>

<sup>2</sup> With respect to its oversight of ICE Futures Canada and ICE Clear Canada, the MSC notes in its 2011 Annual Report that: *The Commission oversees the operations of the exchange to ensure its business is being conducted in a manner that meets or exceeds international standards. The oversight program of the Commission includes ongoing review of the operations of the exchange and its clearinghouse, review of rules and policies of the exchange and clearinghouse and the review and monitoring of products offered by the exchange.* (pages 20-21)

one administrative support staff. The investigation section receives inquiries and complaints, conducts investigations and assists legal staff in the preparation of matters for hearings. The members of the investigation section report to the Director of Legal, Enforcement and Registrations.

## 2. Legal

The legal section is comprised of the Deputy Director-Legal, two legal counsel and one administrative support staff. The legal section provides legal advice to the Commission members and all other functional sections of the Commission, takes part in policy development and the creation of educational materials, presents applications to Commission meetings and prepares and argues enforcement cases at Commission hearings and in court. The members of the legal section report to the Director of Legal, Enforcement and Registrations.

## 3. Registration

The registration section is made up of the Deputy Director- Registrations and four full-time registration clerks. This section is responsible for the registration of firms and individuals operating in the investment markets in Manitoba. The members of the registration section report to the Director of Legal, Enforcement and Registrations.

## 4. Compliance

The Compliance section is made up of the Senior Compliance officer, Compliance Auditor and one administrative support staff. The Compliance section supports the registration function by conducting compliance audits of the industry. The Compliance section is also responsible for the oversight of recognized Self-Regulating Organizations (“SROs”). The Compliance staff members, who are both professional Accountants, also assist in the investigation and legal functions of the Commission by analyzing financial and trading information arising from investigations or from claims made by investors for compensation for financial loss. These staff members report to the Director of Legal and Enforcement and Registrations.

## 5. Corporate Finance and Continuous Disclosure

There are five staff members in this section being senior analyst, analyst, administrative assistant, corporate finance clerk and continuous disclosure clerk. The analysts are professional accountants. This section reviews and monitors offering documents and applications, as well as continuous disclosure filings of reporting issuers. It also takes part in policy development and makes presentations at Commission meetings. Staff members report to the Director of Corporate Finance and Chief Administrative Officer, who is also a professional accountant.

## 6. Finance and Administration

There are five staff members assigned to this section including the controller (a professional Accountant), an accounting clerk, a web developer/analyst, a receptionist and an administrative clerk. This section, in consultation with management, prepares the Commission’s budgets and financial reports and develops and implements office and personnel policies for both the securities and real estate divisions. Staff members report to the Director of Corporate Finance and Chief Administrative Officer.

## 7. Education and Communications

The Manager, Education and Communications and one administrative support staff are assigned to this section. The Manager, Education and Communications, who has a Bachelor of

Education and a Certificate in Management, is responsible for the development and implementation of educational programs and internal and external communications for the general public, industry and staff.

### The Commodity Futures Act (CFA)

The CFA was proclaimed and effective as law on February 1, 2000. The CFA provides for a comprehensive regime for the registration and ongoing oversight of all entities that conduct derivatives business in Manitoba. The CFA provides the MSC with broad power of investigation under Part 2. Derivative exchanges, derivative clearinghouses, self-regulatory organizations, and all dealers and advisors (both companies and individuals) are required to be registered (Parts 3 and 4). Any extra-provincial exchanges are dealt with under Part 5. Any new contracts listed by commodity futures exchanges must be approved under Part 6 of the CFA. There are broad, general trading principles set out in Part 7 of the CFA.

The MSC performs three distinct but interconnected functions under the CFA:

**Administrative** - It administers the CFA, including the registration and on-going oversight of all commodity futures exchanges, clearinghouses, SROs, dealers, and advisers. In addition, it has rule making authority, which permits it to enact rules which have the legislative authority of regulations.

**Investigative** - It has broad investigative and enforcement powers under the CFA. These include the power to issue investigation orders (under which the named investigators have the power to compel the attendance of individuals, whether registered or not, to attend and testify to any question under oath) to freeze bank accounts, to issue liens against real property, and to seize documentation.

**Quasi-Judicial** - The MSC acts as a quasi-judicial body with respect to:

- (a) hearing appeals from decisions made by a registered exchange, clearinghouse or SRO;
- (b) considering whether it is in the public interest to cancel or suspend the registration of a person or company;
- (c) considering whether it is in the public interest that a commodity futures exchange, clearinghouse and/or SRO be recognized;
- (d) sitting as the tribunal with respect to hearings brought before it for certain violations of the CFA. In this instance the Commission sits as a tribunal subject to the rules of administrative law in Canada. Appeals from such hearings are to the Manitoba Court of Appeal (on leave).

### Registration

The cornerstone of the CFA is registration: every participant in the marketplace including exchanges, clearinghouses and individuals and companies that deal with the public must apply to the MSC and seek registration status. The CFA specifies the criteria to be met for registration to be granted.

Section 16 of the CFA reads:

### **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.

On May 31, 2002 the MSC issued Order No.3766 under section 16(1) of the CFA, recognizing ICE Clear Canada as a clearinghouse. This order has been updated and amended twice subsequently; on December 11, 2006 by Order No. 5265 and on June 16, 2008 by Order No. 5719. Order No. 5719 was further amended by Order No. 6878 on February 6, 2014. Copies of these Orders are provided as Attachments A-4(7) through A-4 (9) to Exhibit A-4.

ICE Clear Canada remains under the regulatory jurisdiction and oversight of the MSC, as outlined in sections 18 and 19 of the CFA, which read:

#### **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.

### **Financial Reporting**

ICE Clear Canada provides regular financial reporting to the MSC, which includes monthly unaudited financial statements and the annual financial statements<sup>3</sup>.

Attached as Attachment E(2) are the unaudited monthly financial statements for ICE Clear Canada for the period ending February 28, 2015.

### **Compliance-related Reporting to the MSC by ICE Clear Canada**

As set out in Order No. 5719, the MSC imposes numerous reporting obligations on ICE Clear Canada, including Rule and Operations Manual amendments, notification of Board and committee appointments, the provision of a detailed report detailing any misconduct or fraud on the part of a Clearing Participant, or any situation that may result in material loss or damage to ICE Clear Canada or its operations, and notification of any systems issues or any material systems failure or changes that impact clearing operations. The MSC has access to all clearing

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<sup>3</sup> ICE Clear Canada does not provide audited financial statements. Its statements are consolidated with the financial statements of ICE Futures Canada, Inc., its sole shareholder.

and other operational information as it requires with respect to the operations of the Clearinghouse. The MSC has access to all records maintained by ICE Clear Canada.

#### Rules and Policy Statements - National Instruments

Although the MSC does not have legislative powers, it is able to make and enforce Rules. In the past several years, the securities commissions across Canada have worked as a group, known as the Canadian Securities Administrators (“CSA”),

The website<sup>4</sup> of the CSA states:

*“The 10 provinces and 3 territories in Canada are responsible for securities regulations. Securities regulators from each province and territory have teamed up to form the Canadian Securities Administrators, or CSA for short. The CSA is primarily responsible for developing a harmonized approach to securities regulation across the country.*

*The CSA brings provincial and territorial securities regulators together to share ideas and work at designing policies and regulations that are consistent across the country and ensure the smooth operation of Canada's securities industry. By collaborating on rules, regulations and other programs, the CSA helps avoid duplication of work and streamlines the regulatory process for companies seeking to raise investment capital and others working in the investment industry”.*

The rules and policies that the CSA collaborate on are referred to as “National Instruments”. National Instruments are applicable and binding on all registrants and cover such matters as the authorization and continuing oversight of markets, electronic trading systems, and clearing organizations, marketplace operations, trading rules (for equity markets), use of client brokerage commissions, the National Registration database, Ongoing registration requirements for Dealers, Underwriting conflicts (for equity markets) Registrants acting as Corporate Directors, Acceptable Accounting Principles and Auditing Standards, Insider Reporting exemptions, Corporate Governance requirements, and similar. Attachment F(5) is a list of the National Instruments that the MSC has approved.

#### Financial Protections Afforded Customer Funds

The CFA provides for certain protections to customers relative to customer funds, although more detailed and specific rules are provided for by the Investment Industry Regulatory Organization of Canada (“IIROC”), the primary SRO for sales and financial compliance for FCMs and broker-dealers (those entities entitled to trade for clients and/or accept client monies).

The CFA Section 46(1) provides for the segregation, and accounting for money, securities, property, as follows:

##### **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,

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<sup>4</sup> [www.securities-administrators.ca](http://www.securities-administrators.ca)

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.

#### **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.

The failure to adhere to the requirements of the CFA can result in a fine of \$1,000,000.00 or a term of imprisonment of 2 years, or both on each charge (per section 60(1) ).

As noted in Exhibit B, the MSC has recognized IIROC as an SRO, and IIROC is responsible for the setting proficiency standards for all Futures Commission Merchants ("FCMs") and for setting rules and requirements relative to customer fund protections<sup>5</sup>. Pursuant to MSC Order No. 6139 issued on June 3, 2010, (Attachment E(1)) IIROC is responsible for regulating dealers (which include FCMs), establishing, administering and monitoring financial and operations compliance rules, policies and regulations, and providing notice to the MSC of any violations of IIROC rules or securities/derivatives legislation by any registered dealers. In particular, IIROC is required to:

#### **Rules**

- a. IIROC must establish and maintain Rules that:
  - (i) are necessary or appropriate to govern and regulate all aspects of its functions and responsibilities as a self-regulatory entity;
  - (ii) are designed to:
    - (A) ensure compliance with securities laws,
    - (B) prevent fraudulent and manipulative acts and practices,
    - (C) promote just and equitable principles of trade and the duty to act fairly, honestly and in good faith,
    - (D) foster cooperation and coordination with entities engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in, securities,
    - (E) foster fair, equitable and ethical business standards and practices,
    - (F) promote the protection of investors, and
    - (G) provide for appropriate discipline of those whose conduct it regulates;
  - (iii) do not impose any burden or constraint on competition or innovation that is not necessary or appropriate in furtherance of IIROC's regulatory objectives;
  - (iv) do not impose costs or restrictions on the activities of market participants

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<sup>5</sup> The MSC oversees IIROC as a recognized SRO, pursuant to Order No. 6139 ,which can be found at: [http://www.msc.gov.mb.ca/legal\\_docs/orders/6139\\_iiroc\\_am.pdf](http://www.msc.gov.mb.ca/legal_docs/orders/6139_iiroc_am.pdf)

that are disproportionate to the goals of the regulatory objectives sought to be realized; and  
(v) are not contrary to the public interest.

The FinOp department of IIROC reviews and analyzes the financial filings of IIROC member firms to ensure ongoing financial compliance by FCMs.

**A description of and, where applicable, copies of the laws, rules, regulations and policies applicable to:**

**The authorization, licensure or registration of ICE Clear Canada.**

This is set out in MSC Order Nos. 5719 and 6878. See Attachments A-4(7) and A-4(7.1) to Exhibit A-4.

**The financial resource requirements applicable to the authorization, licensure or registration of ICE Clear Canada and the continued operations thereof.**

The MSC does not set minimum financial resource requirements for ICE Clear Canada but requires that it provide regular financial reporting on a monthly basis. In addition, ICE Clear Canada has advised the MSC that its intentions are to maintain no less than six months' operating capital at all times and since 2007 ICE Clear Canada has always maintained in excess of six months' operating capital in liquid assets.

**The regulatory regime/authority's program for the ongoing supervision and oversight of the clearing organization and the enforcement of its clearing rules.**

The MSC is responsible for, and conducts, oversight review of ICE Clear Canada. These are conducted by senior compliance and auditing staff of the MSC and are designed to ensure that ICE Clear Canada is meeting the requirements of the CFA and MSC Order Nos. 5719 and 6878.

The process that these reviews have followed are for Staff of the MSC to request documentation be provided in advance of attending to conduct an on-site visit. The documentation reviewed in advance of the on-site visit will include all updated Policy and procedure documentation, staff job descriptions, contracts, application/agreements between the Clearinghouse and Clearing Participants, material contract reviews, and similar.

The on-site visit may last between 10 to 14 days, at which time Staff of the MSC will review selected aspects of the operations of ICE Clear Canada, including meetings and questioning of staff, "job-shadowing" certain staff members for a half-day, sitting in on internal meetings, and reviewing the office systems. Once the on-site visit is concluded, additional materials are requested. There may be a brief exit interview conducted. Ultimately, Staff of the MSC will produce a written report with their findings and recommendations. The recommendations will outline the positions of Staff of the MSC as to whether action is required on a low, medium or high basis. Staff review the report and provide it in its entirety to the Board. Any suggestions for amendments noted are addressed and a written report is completed for submission to Staff of the MSC.



**The extent to which the current RCCPs [PFMIs] are used or applied by the regulatory regime/authority in its supervision and oversight of the clearing organization or are incorporated into its rules and regulations and the extent to which the regulatory regime/authority reviews the clearing systems for compliance therewith.**

Although the PFMIs are not incorporated into the rules and regulations to the CFA, staff at the MSC consider them to be an important reference point and the MSC issued Order No. 6878 to ensure that Ice Clear Canada meets these standards. Its oversight reviews of ICE Clear Canada look to the PFMIs for guidance and direction.

See also Attachment D-3(1) to Exhibit D-3, which is ICE Clear Canada's Disclosure Framework document which is published to the website and updated regularly.

**The extent to which the regulatory regime/authority reviews and/or approves the rules of ICE Clear Canada prior to their implementation.**

ICE Clear Canada is required to submit all rule and policy amendments to the MSC for receipt of non-disapproval prior to implementing such amendments. Section 17 of the CFA reads:

**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.

Notwithstanding the provisions of Section 17, which permits ICE Clear Canada to enact all Rule and Operations Manual amendments and provide notice to the Commission within 5 days, staff of the MSC requested early in its regulatory oversight, that whenever possible, pre-approval for amendments to the Rules and the Operations Manual should be obtained. Accordingly, the process that has been in place since 2001, and that is generally followed, is that ICE Clear Canada, after each Board meeting, sends a detailed letter to the MSC requests for non-disapproval of Rule and/or Operations Manual amendments and other matters and submits background for items of interest for information purposes.

Staff of the MSC reviews all correspondence relating to rule amendments and then submits matters to the Commission at its regularly scheduled weekly meetings. Staff of the MSC will then follow up with an email advising of the non-disapproval, or, if it has not been granted, seeking further information.

Depending on the situation, ICE Clear Canada may provide a notice to Clearing Participants that an amendment has been sent to the MSC for non-disapproval. This is done in a situation where it is necessary to ensure that the information is broadly distributed as soon as possible.

We note that in a few cases Rule or Operations Manual amendments have been required to be implemented on an immediate basis and in such case ICE Clear Canada contacts MSC by phone or e-mail, outlining the need to implement the amendment without first obtaining non-disapproval.

**The regulatory regime/authority's inspection, investigation and surveillance powers; and the program pursuant to which the regulatory regime/authority uses those powers to inspect, investigate, and enforce rules applicable to ICE Clear Canada.**

One of the three significant functions that the MSC has under its legislative mandate is investigation and enforcement. The CFA provides the MSC with broad investigative and enforcement powers. These include the power to issue investigation orders (under which the named investigators have the power to compel the attendance of individuals, whether registered or not, to attend and testify to any question under oath) to freeze bank accounts, to issue liens against real property, and to seize documentation.

The enforcement powers of the MSC under the provisions of the CFA are broad. The MSC's mandate under the CFA is to administer and enforce the CFA and all MSC Participants are specifically required in the CFA to "... 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." (s.2(3)).

The specific provisions of the CFA and the powers it grants to the MSC are as follows:

- Section 6 The MSC is able to appoint persons (staff or otherwise) by order, to investigate any matter that it considers necessary or advisable for either (a) the due administration of Manitoba commodity futures law or the regulation of the commodity futures markets in Manitoba; and/or (b) the due administration of the commodity futures laws or the regulation of the commodity futures markets in another jurisdiction.
- Section 6(3) The scope of the investigation powers of the MSC is broad. The relevant Section reads:

**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.
- The MSC has the right to examine documents or 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 (Section 6(4)).
  - The MSC can appoint anyone to do an examination of the financial affairs of a market participant (Section 7(1)).
  - Anyone appointed by the MSC to conduct an investigation, including a financial investigation, has the power to *compel* anyone to attend before him and answer any questions put to that person under oath.(Section 8(1)). This is a similar power as that provided to the Court of Queen's Bench for the trial of civil actions. If anyone refuses to attend, or refuses to answer questions put to him or her, they are subject to be committed to jail for contempt. In Canada, the power to compel testimony under oath is considered an extraordinary power to be granted to an administrative body.
  - A person doing an investigation can enter onto the business premises of any person or company named in an investigation order, during business hours, and inspect any documents or things that are used in the business that relate to the matters specified in the order, excepting only those files and documents maintained by a lawyer in respect of his or her client's affairs (Section 8(3)).
  - Persons named in investigation orders can apply to the Court of Queen's Bench for a search warrant, without notice to the other parties and are able to search and seize, provided all materials seized by delivered to the judge making the order. In doing this search the person(s) named in the investigation order can use as much force as is reasonable necessary for the purpose (Sections 8(4) and 8 (6)).
  - The MSC has the power to direct any person or company (whether registered under the CFA or not) to retain any funds, securities or property and to hold then under the MSC in writing revokes the direction or consents to release a particular fund, security or property from the direction (Section 12 (1)).
  - In granting orders recognizing and registering commodity futures exchanges and clearing houses, the MSC is entitled to place any orders or directions it sees fit on the entities.
  - Any person or company that is substantially affected by a decision, direction or order made under an internal regulation of a commodity futures exchange or a clearing house, has the right to apply to the MSC for a hearing to review the matter (Section 21).

- Section 22(1) sets out that every commodity futures exchange and clearing house is required to keep books and records on every part of its operations and shall deliver them to the MSC, in a form acceptable to the MSC, at any time when requested by the MSC.
- The MSC requires all registrants to provide notice of changes in address, branches, managers, salespersons and so forth, thereby ensuring an up to date listing of all criteria necessary to investigate matters (Section 32(1) to 32(5)).

In terms of proceeding forward to disciplinary action and/or sanction, the MSC has two avenues to use in sanctioning Clearing Participants at the Clearinghouse and/or market participants (whether registered or not). Firstly the MSC can authorize that a matter proceed to an administrative hearing, which is an internal hearing held before the seven-person Commission panel. Secondly, the MSC can authorize that charges be laid and a trial be held in provincial judges court. In either event the course of an appeal is to the Court of Queen's Bench and then the Court of Appeal. Depending on whether an administrative hearing or a provincial judges court trial is held, the sanctions available are different. The sanctions are set out in the CFA.

- Section 12(1) permits the commission to direct any 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.
- Section 12(5) the MSC can file against land and request registration of the certificate in the land titles office and that certificate has the same effect as a certificate of pending litigation in respect of the land.
- The MSC can apply to 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 (Section 13(1)).
- The MSC has the power to suspend or condition or cancel the registration of a commodity futures exchange, a recognized clearing house (Section 19(1)) or any company or individual registered (Section 26).
- After a hearing, the commission can reprimand a registrant, or suspend, cancel, restrict or impose terms and conditions upon the registrant (Section 27).
- If the MSC is concerned that the time required to have a hearing could prejudice the public, it can reprimand, suspend, cancel, restrict or impose terms and conditions upon a registrant without giving the registrant advance notice, provided that a hearing be held within 15 days (Section 27(2)).
- The MSC may, where it appears to it that a person or company (including an exchange, clearinghouse, or officer or employee) has failed to comply with a provision of or a decision made under the CFA, the regulations or the rules, despite any penalty previously imposed in respect of the non-compliance and in addition to any other rights the MSC may have, apply to the Court of Queen's Bench for an order (a) directing the person or company to comply

with the CFA, regulations or rules 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, regulations, rules or decision (Section 62).

If the MSC determines to proceed to a trial at Provincial Judges court for an infraction of the provisions of the CFA, it proceeds as a criminal trial. Provincial Judges court is a court of the provincial government of Manitoba and operates to enforce both provincial laws (such as the CFA) as well as certain federal laws (such as the *Criminal Code (Canada)*). Unlike administrative hearings before the Commission, judges of the Provincial Judges court have the jurisdiction to order imprisonment. The sanctions available, upon a finding of guilt, include those listed in the CFA at Sections 60(1), 60(4), and 60(5).

#### **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

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

The above sanctions are per offense, (Section 60(6)) and therefore the total sanction levied may be much larger in certain circumstances.

Apart from any other fines levied, a person or company that has contravened Sections 58 or 59 of the CFA (Prohibition against front running and Prohibition on trading in non-public information) and has made a profit, the amount of which can be determined, by reason of the contravention is liable to a fine that is not less than the amount of the profit and not more than the greater of (a) \$1,000,000.00 and (b) three times the amount of the profit (Section 60(5)). This section reads:

#### **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.