

SCHEDULE I

## Schedule I

The relevant provisions of the *Securities Act*, CQLR c V-1.1

5. In this Act, unless the context indicates otherwise, [...]

“material fact” means a fact that may reasonably be expected to have a significant effect on the market price or value of securities issued or securities proposed to be issued;

“misrepresentation” means any misleading information on a material fact as well as any pure and simple omission of a material fact;

5.3. When used in relation to an issuer other than an investment fund, “material change” means a change in the business, operations or capital of the issuer that would reasonably be expected to have a significant effect on the market price or value of any of the securities of the issuer, or a decision to implement such a change made by the directors or by senior management of the issuer who believe that confirmation of the decision by the directors is probable. [...]

73. A reporting issuer shall provide periodic disclosure about its business and internal affairs, including its governance practices, timely disclosure of a material change and any other disclosure prescribed by regulation in accordance with the conditions determined by regulation.

### MISREPRESENTATION

#### DIVISION I

#### PRIMARY MARKET AND TAKE-OVER OR ISSUER BIDS

217. A person who has subscribed for or acquired securities in a distribution effected with a prospectus containing a misrepresentation may apply to have the contract rescinded or the price revised, without prejudice to his claim for damages.

The defendant may defeat the application only if it is proved that the plaintiff knew, at the time of the transaction, of the alleged misrepresentation.

218. The plaintiff may claim damages from the issuer or the holder, as the case may be, whose securities were distributed, from its officers or directors, the dealer under contract to the issuer or holder whose securities were distributed and any person who is required to sign an attestation in the prospectus, in accordance with the conditions prescribed by regulation.

[...]

220. The defendant in an action provided for in sections 218 and 219 is liable for damages unless it is proved that

(1) he acted with prudence and diligence, except in an action brought against the issuer or the holder whose securities were distributed, or that

(2) the plaintiff knew, at the time of the transaction, of the alleged misrepresentation.

221. Rights of action established under sections 217 to 219 may also be exercised if a misrepresentation is contained in

(1) the information incorporated by reference in the simplified prospectus;

(2) the offering memorandum prescribed by regulation;

(3) any other document authorized by the Authority for use in lieu of a prospectus.

[...]

225.0.1. A defendant may defeat an action based on a misrepresentation in forward-looking information by proving that

(1) the document containing the forward-looking information contained, proximate to that information,

(a) reasonable cautionary language identifying the forward-looking information as such, and identifying material factors that could cause actual results to differ materially from a conclusion, forecast or projection in the forward-looking information; and

(b) a statement of the material factors or assumptions that were applied in drawing a conclusion or making a forecast or projection; and

(2) the defendant had a reasonable basis for drawing the conclusions or making the forecasts or projections set out in the forward-looking information.

This section does not apply to forward-looking information in a financial statement required to be filed under this Act or the regulations or in a document released in connection with an initial public offering.

225.0.2. The plaintiff is not required to prove that the plaintiff relied on the document containing a misrepresentation when the plaintiff subscribed for, acquired or disposed of a security.

## DIVISION II

### SECONDARY MARKET

#### § 1. — Scope and interpretation

225.2. This division applies to any person who acquires or disposes of a security of a reporting issuer or of any issuer closely connected to Québec whose securities are publicly traded.

However, this division does not apply to a person that subscribes for or acquires a security during the period of a distribution of securities made with a prospectus or, unless otherwise provided by regulation, under a prospectus exemption granted by this Act, a regulation made under this Act or a decision of the Authority; nor does it apply to a person that acquires or disposes of a security in connection with or pursuant to a take-over bid or issuer bid, unless otherwise provided by regulation, or to a person that makes any other transaction determined by regulation.

225.3. In this division, unless the context indicates otherwise,

“core document” means a prospectus, a take-over bid circular, an issuer bid circular, a directors’ circular, a notice of change or variation in respect of a take-over bid circular, issuer bid circular or directors’ circular, a rights offering circular, management’s discussion and analysis, an annual information form, a proxy solicitation circular, the issuer’s annual and interim financial statements and any other document determined by regulation, and a material change report, but only where used in relation to the issuer or the investment fund manager and their officers;

“document” means any writing that is filed or required to be filed with the Authority, with a government or an agency of a government under applicable securities or corporate law, or with a stock exchange or quotation and trade reporting system under its by-laws, or the content of which would reasonably be expected to affect the market price or value of a security of the issuer;

[...]

“management’s discussion and analysis” means the section of an annual information form, annual report or other document that contains management’s discussion and analysis of the financial situation and operating results of an issuer as required under this Act or the regulations;

“public oral statement” means an oral statement made in circumstances in which a reasonable person would believe that information contained in the statement will become generally disclosed;

[...]

§ 2. — Actions for damages and burden of proof

I. — Prior authorization and other general conditions

225.4. No action for damages may be brought under this division without the prior authorization of the court.

The request for authorization must state the facts giving rise to the action. It must be filed together with the projected statement of claim and be served by bailiff to the parties concerned, with a notice of at least 10 days of the date of presentation.

The court grants authorization if it deems that the action is in good faith and there is a reasonable possibility that it will be resolved in favour of the plaintiff.

The request for authorization and, if applicable, the application for authorization to institute a class action required under article 574 of the Code of Civil Procedure (chapter C-25.01) must be made to the court concomitantly.

225.7. An action may not be abandoned or settled except on the terms set by the court, including terms as to legal costs.

When setting the terms, the court considers whether there are any other actions outstanding under this division or under comparable provisions of extra-provincial securities laws within the meaning of section 305.1 in respect of the same misrepresentation or failure to make timely disclosure.

[...]

## II. — Persons liable to action

225.8. A person that acquires or disposes of an issuer's security during the period between the time when the issuer or a mandatary or other representative of the issuer released a document containing a misrepresentation and the time when the misrepresentation was publicly corrected may bring an action against

(1) the issuer, each director of the issuer at the time the document was released, and each officer of the issuer who authorized, permitted or acquiesced in the release of the document;

(2) each influential person, and each director and officer of an influential person, who knowingly influenced the issuer or a mandatary or other representative of the issuer to release the document or a director or officer of the issuer to authorize, permit or acquiesce in the release of the document; and

(3) each expert whose report, statement or opinion containing the misrepresentation was included, summarized or quoted from in the document and, if the document was released by a person other than the expert, who consented in writing to the use of the report, statement or opinion in the document.

225.9. A person that acquires or disposes of an issuer's security during the period between the time when a mandatary or other representative of the issuer made a public oral statement relating to the issuer's business or affairs and containing a

misrepresentation and the time when the misrepresentation was publicly corrected may bring an action against

(1) the issuer and each director and officer of the issuer who authorized, permitted or acquiesced in the making of the public oral statement;

(2) the person who made the public oral statement;

(3) each influential person, and each director and officer of an influential person, who knowingly influenced the person who made the public oral statement to make the public oral statement or a director or officer of the issuer to authorize, permit or acquiesce in the making of the public oral statement; and

(4) each expert whose report, statement or opinion containing the misrepresentation was included, summarized or quoted from in the public oral statement and, if the public oral statement was made by a person other than the expert, who consented in writing to the use of the report, statement or opinion in the public oral statement.

225.10. A person that acquires or disposes of an issuer's security during the period between the time when an influential person or a mandatary or other representative of the influential person released a document or made a public oral statement relating to the issuer and containing a misrepresentation and the time when the misrepresentation was publicly corrected may bring an action against

(1) the issuer, if a director or officer of the issuer or the investment fund manager authorized, permitted or acquiesced in the release of the document or the making of the public oral statement;

(2) the person who made the public oral statement;

(3) each director and officer of the issuer who authorized, permitted or acquiesced in the release of the document or the making of the public oral statement;

(4) the influential person and each director and officer of the influential person who authorized, permitted or acquiesced in the release of the document or the making of the public oral statement; and

(5) each expert whose report, statement or opinion containing the misrepresentation was included, summarized or quoted from in the document or public oral statement and, if the document was released or the public oral statement was made by a person other than the expert, who consented in writing to the use of the report, statement or opinion in the document or public oral statement.

225.11. A person that acquires or disposes of an issuer's security during the period between the time when the issuer failed to make timely disclosure of a material

change and the time when the material change was disclosed in the manner required under this Act or the regulations may bring an action against

(1) the issuer and each director and officer of the issuer who authorized, permitted or acquiesced in the failure to make timely disclosure; and

(2) each influential person, and each director and officer of an influential person, who knowingly influenced the issuer or a mandatary or other representative of the issuer in the failure to make timely disclosure or a director or officer of the issuer to authorize, permit or acquiesce in the failure to make timely disclosure.

### III. — Plaintiff's burden of proof

225.12. The plaintiff is not required to prove that the plaintiff relied on the document or public oral statement containing a misrepresentation or on the issuer having complied with its timely disclosure obligations when the plaintiff acquired or disposed of the issuer's security.

225.13. For the purposes of sections 225.8 to 225.10, unless the defendant is an expert or the misrepresentation was contained in a core document, the plaintiff must prove that the defendant

(1) knew, at the time that the document was released or the public oral statement was made, that the document or public oral statement contained a misrepresentation or deliberately avoided acquiring such knowledge at or before that time; or

(2) was guilty of a gross fault in connection with the release of the document or the making of the public oral statement.

225.14. For the purposes of section 225.11, unless the defendant is the issuer, the investment fund manager or an officer of the issuer or the investment fund manager, the plaintiff must prove that the defendant

(1) knew, at the time that a material change report should have been filed, of the change and that the change was a material change, or deliberately avoided acquiring such knowledge at or before that time; or

(2) was guilty of a gross fault in connection with the failure to make timely disclosure.

[...]

225.16. The court seized of the action may decide that multiple misrepresentations having common subject matter or content may be treated as a single misrepresentation or that multiple instances of failure to make timely disclosure concerning common subject matter may be treated as a single failure to make timely disclosure.

#### IV. — Defendant's burden of proof

225.17. A defendant may defeat an action by proving that, at the time of the transaction, the plaintiff knew that the document or public oral statement contained a misrepresentation or was aware of the material change that should have been disclosed.

An action may also be defeated by proving that the defendant conducted or caused to be conducted a reasonable investigation and had no reasonable grounds to believe that the document or public oral statement would contain a misrepresentation or that the failure to make timely disclosure would occur.

225.18. In determining whether an investigation was reasonable under the second paragraph of section 225.17, the court must consider all relevant circumstances, including those listed in paragraphs 1 to 11 of section 225.15.

225.19. A defendant may defeat an action by proving that

(1) the misrepresentation was also contained in a document filed by or on behalf of a third person, other than the issuer, with the Authority or an extra-provincial securities commission within the meaning of section 305.1 or a stock exchange, and was not corrected in another document filed by or on behalf of that third person with the Authority, commission or stock exchange before the issuer or the mandatary or other representative of the issuer released the document or made the public oral statement;

(2) the document or public oral statement contained a reference identifying the document that was the source of the misrepresentation; and

(3) when the document was released or the public oral statement was made, the defendant did not know and had no reasonable grounds to believe that the document or public oral statement contained a misrepresentation.

[...]

225.22. A defendant may defeat an action for a misrepresentation in forward-looking information in a document or a public oral statement by proving that

(1) the document or public oral statement containing the forward-looking information contained, proximate to that information,

(a) reasonable cautionary language clearly identifying the forward-looking information as such, and identifying material factors that could cause actual results to differ materially from a conclusion, forecast or projection in the forward-looking information; and

(b) a statement of the material factors or assumptions that were applied in drawing a conclusion or making a forecast or projection; and



(2) the defendant had a reasonable basis for drawing the conclusions or making the forecasts or projections set out in the forward-looking information.

This section does not apply to forward-looking information in a financial statement required to be filed under this Act or the regulations or in a document released in connection with an initial public offering.

225.23. A defendant is deemed to have satisfied the requirements of subparagraph 1 of the first paragraph of section 225.22 with respect to a public oral statement containing forward-looking information if the person who made the public oral statement

(1) made a cautionary statement that the public oral statement contains forward-looking information;

(2) stated that the actual results could differ materially from a conclusion, forecast or projection in the forward-looking information and that certain material factors or assumptions were applied in drawing a conclusion or making a forecast or projection as reflected in the forward-looking information; and

(3) stated that additional information about the material factors that could cause actual results to differ materially from the conclusion, forecast or projection in the forward-looking information and about the material factors or assumptions applied in drawing a conclusion or making a forecast or projection as reflected in the forward-looking information is contained in a readily-available document, and has identified that document.

For the purposes of subparagraph 3 of the first paragraph, a document filed with the Authority, or otherwise generally disclosed, is deemed to be readily available.

[...]