



BC Notice 2006/28

**Publication for Comment of proposed amendments to
Securities Rules relating to Bill 20**

The Commission is publishing for comment proposed amendments to the *Securities Rules* relating to some provisions awaiting proclamation in the *Securities Amendment Act, 2006* (Bill 20).

Background

Bill 20 received Royal Assent on May 18, 2006. The government has not yet proclaimed a number of provisions in Bill 20 in force because rules are necessary to give effect to the provisions in the Act. This proposal includes the rules for some of those provisions. We are working with other provinces through the Canadian Securities Administrators on uniform rules for the other provisions of Bill 20.

Bill 20:

- replaces the existing provisions relating to insider trading and front running in the *Securities Act*,
- adds defences to insider trading into the *Securities Act*, which are currently covered by more complex exemptions in the *Securities Rules*,
- expands the potential liability of those who trade on inside information to anyone who is trading the same securities at the time the insider is trading rather than only a person on the other side of the trade,
- deletes the profit calculation currently in the Act for offences involving breaches of manipulation and fraud or insider trading provisions and replaces the current profit calculation with a reference to profit as determined in accordance with the regulations.

These rule amendments are required so that the government can proclaim those provisions of Bill 20. We will be asking the government to proclaim in force some definitions and other provisions at the same time as these provisions.

Summary of Proposed Rule Amendments

The proposed rule amendments have two major components:

1. Requirements relating to insider trading prohibitions and liability

The proposed rule amendments

- would repeal the existing exemptions from the insider trading prohibition that are currently in the Rules and that will be replaced by defences that are included in new section 57.4 of the Act.
- would impose a cap on liability to investors for those who trade on inside information. The cap will equal three times the profit made or loss avoided by all persons as a result of the misconduct.

Bill 20 allows anyone in the market to sue a person who trades on inside information. For an actively traded stock, the potential liability without a cap could significantly exceed the profit

made or loss avoided. A cap of triple the profit made or loss avoided will be a significant deterrent to insider trading while preventing excessive exposure to liability.

2. Penalty calculation

The proposed rule amendments establish a profit calculation formula for offences under the Act so that provincial court judges can calculate penalties after finding a person committed an offence. The rule amendments would replace current section 155(7) of the Act with a formula that provides a more appropriate method for calculating profit. It deals specifically with situations where a person buys or sells securities or covers a short position during the period for calculation of the average market price. These amendments reduce the period from 20 trading days to 10 trading days. The amendments also cover profits from front running, which are not currently covered in section 155(7).

Other

The proposed rule amendments make several changes necessary for proclamation of other provisions in Bill 20. We will seek the government's approval to proclaim a number of provisions in Bill 20 at the same time as these proposed rule amendments come into effect late next spring (see Appendix A).

Comments

You can deliver comments in hard copy, by fax or e-mail by February 7, 2007 to:

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December 8, 2006

Douglas M. Hyndman
Chair

Ref: *Securities Act*, sections 57.4 and 155(7)
Securities Amendment Act, 2006 (Bill 20)

This Notice may refer to other documents. These documents can be found at the B.C. Securities Commission public website at www.bcsc.bc.ca in the section Securities Law & Policy: Act, Regulations & Rules.

Appendix A
Section Amendments being proclaimed with rule amendments

Section in Securities Act being amended	Section in Bill 20	Topic
1(1)	1(a)	Director (repealed & substituted)
1(1)	1(a)	Insider (repealed & substituted)
1(1)	1(a)	Officer (repealed & substituted)
1(1)	1(a)	Senior officer (repealed)
1(1)	1(c)	Economic interest (new)
1(1)	1(c)	Related financial instrument (new)
3	3	Definition of special relationships (amended)
54(2)	16	Representation or holding out of registration (repealed & substituted)
57.2	17	Insider trading, tipping and recommending (new)
57.3	17	Front running (new)
57.4	17	Defences (new)
77	19	Certificates about status of reporting issue and list of defaulting reporting issuers (repealed & substituted with permissive list requirement)
84.1	22	Definition (repealed)
86	24	Trading or informing where undisclosed change (repealed)
128	36	Front running prohibition (repealed)
136	42	Liability in special relationship if material fact or material change undisclosed (repealed & substituted)
136.1	42	Accounting for Benefits (new)
136.2	42	Due diligence defence for insider trading (new)
137	43	Action by commission on behalf of issuer (amended)
155	47(a), 47(g), 48(g)	Offences generally (amended)
157(1)	50(a)	Order for compliance (amended)

Amendments to Securities Rules

1. Sections 50(g)(ii), 157(2)(b), 157(3) and 174(2) of the *Securities Rules* are amended by striking out “senior officer” and substituting “officer”.
2. Section 161 of the *Securities Rules* is repealed.
3. The following section is added to Part 16 of the *Securities Rules*:

Limits on Liability

184.4 For the purpose of section 136(3)(b) of the Act [*Liability for insider trading, tipping and recommending*], the amount is equal to triple the profit made by all persons, or the losses avoided by all persons, because of the misconduct.

4. The following section is added to Part 18 of the *Securities Rules*:

Calculation of Profit

- 187.1 (1) For the purpose of section 155(7) of the Act [*Offences generally*], “**profit**” means the applicable amount determined as follows:
- (a) for a purchase of securities in contravention of section 57.2 (2) of the Act [*insider trading*], the profit is the aggregate of, for each security purchased in contravention of that section,

$$A - B$$

where

“**A**” equals, if the security was

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

“**B**” equals the amount paid by the person for the security;

- (b) for a sale of securities in contravention of section 57.2 (2) of the Act [*insider trading*], the profit is the aggregate of, for each security sold in contravention of that section,

$$A - B$$

where

“**A**” equals the proceeds from the sale of the security, and

“**B**” equals, if the contravention was

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

(c) for a purchase of securities in contravention of section 57.3 (3) (a) of the Act [*front running*], the profit is the aggregate of, for each security purchased in contravention of that section,

A – B

where

“**A**” equals, if the security

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

“**B**” equals the amount paid by the person for the security;

(d) for a sale of securities in contravention of section 57.3 (3) (a) of the Act, the profit is the aggregate of, for each security sold in contravention of that section,

A – B

where

“**A**” equals the proceeds from the sale of the security, and

“**B**” equals, if the contravention was

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

(iii) not a short sale, the last price paid in the execution of the order that is the subject of the material order information;

(e) for a contravention of

- (i) section 57.2 (3) or (4) of the Act [*tipping of material information*],
- (ii) section 57.2 (5) of the Act [*recommending re material information*],
- (iii) section 57.3 (4) of the Act [*tipping of material order information*], or
- (iv) section 57.3 (5) of the Act [*recommending re material order information*],

the profit is

$$\mathbf{A + B}$$

where

“**A**” equals the value of the consideration received by the person for providing the information or recommendation, and

“**B**” equals the profit of all persons who received the information or recommendation, calculated under paragraph (a), (b), (c), (d), or (f) (ii), (iii) or (iv), as applicable;

(f) for a contravention of

- (i) section 57 of the Act [*manipulation and fraud*],
- (ii) section 57.2(2) of the Act in connection with a related financial instrument [*insider trading re derivatives*]
- (iii) section 57.3(3)(a) in connection with an exchange contract [*front running re exchange contracts*]
- (iv) section 57.3(3)(b) of the Act [*front running re derivatives*]
- (v) a provision not set out in this paragraph or in paragraphs (a), (b), (c), (d) or (e),

the amount determined by the court.

(2) In calculating profit under subsection (1) (a) to (d) and (f), the court may consider the effect of commissions paid based on evidence provided by the parties.