For Issuers

Your guide to securities regulation in British Columbia

Comment Draft dated June 25, 2004

A NEW WAY TO REGULATE

BRITISH COLUMBIA SECURITIES COMMISSION

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Introduction

This Guide is to help you understand what is expected of issuers under British Columbia securities laws and to give you guidance on how to comply with those laws. Our system of securities regulation is designed to protect investors while minimizing the regulatory burden on industry. We have:

- established principles of regulation to ensure that investors in both the primary and secondary markets get the information they need to make investment decisions,
- imposed requirements only to the extent they are necessary for the protection of investors and markets, and
- designed outcomes-based regulatory requirements with the flexibility to suit a wide range of issuers and businesses.

We think it is important that people like you, who must comply with the requirements, are able to do so using your own judgment and experience. There is no avoiding the fact that securities regulation is a complex area, so there will always be times when you need to get professional advice. However, we believe that this should not be necessary for routine compliance matters, and that the system should be simple enough to understand so that you are able to make better judgments about when to get professional advice, and are able to better instruct your professional advisers when you do so. To create this sort of regulatory environment, we have:

- kept the rules as few and as simple as possible,
- written them in plain language, and
- established guidance and created training programs for issuers and other *market participants*.

We have adopted this approach because we believe it works. Investors get the information and protection they need, and issuers do a better job of compliance because they understand what is expected of them.

How to use this Guide

The Guide should be read together with the Securities Act and the Securities Rules.

The Act and Rules define and interpret certain words. Many of these words are used in this Guide. To draw your attention to these words, we have italicized them the first time they appear in a Section of the Guide. Unless indicated otherwise, the definitions for the italicized words are in section 1 of the Act or section 1 of the Rules.

To help the reader's understanding of the regulatory regime, this Guide often repeats or paraphrases requirements in the Act, Rules and other instruments. The text as found in those instruments governs.

How to navigate the Act and Rules

Parts 1 to 9 of the Act and Rules correspond, in terms of subject matter, to the same parts of the Canadian Securities Administrators' (CSA's) national numbering system.

How to get more help

This Guide is only part of our system of guidance for issuers. If you have specific questions that are not answered in this Guide, you can get answers by contacting us by phone or e-mail in the manner described on our website, www.bcsc.bc.ca. The website also has the text of the Act, Rules, forms and other *regulatory instruments*.

I. Application

A. Issuers that Report in Other Provinces

Interface exemptions

Most issuers are subject to securities regulation in more than one province. To avoid imposing different requirements on those who are subject to the securities legislation in other provinces, the Rules include "interface" exemptions that generally allow those issuers to satisfy the requirements in British Columbia by complying with the requirements of another province ("province" includes the territories), filing in British Columbia what they file in that province, and providing investors here with what they provide investors in that province.

The "requirements" of the other province include blanket exemptions issued by that province from regulatory requirements, but do not include a discretionary exemption that applies to you but not to issuers generally in that province. If you want the same relief in British Columbia, you will have to apply for it.

Scope

The interface exemptions for issuers generally apply to filing and disclosure requirements under the legislation. They do not extend to the prohibitions against wrongful conduct or the civil liability regime found in the Act (see Part III, Section E and Parts V and VII of this Guide).

The Rules contain these interface exemptions for issuers:

- Exempt trades under other Canadian securities laws (Rules, s. 75)
- Exempt offerings occurring in British Columbia and another province (Rules, s. 91)
- Prospectus offerings in British Columbia and another province (Rules, s. 97)
- Financial statement requirements for prospectus offerings in British Columbia and another province (Rules, s. 104)
- Reports of exempt trades (Rules, s. 113)
- Periodic disclosure (Rules, s. 141)
- Timely disclosure (Rules, s. 144)
- Insider reporting (Rules, s. 149)
- Eligible institutional investor alternative monthly reporting (Rules, s. 151)

The Rules contain similar exemptions for British Columbia issuers subject to designated SEC requirements. Among other things, these Rules require these issuers to file in British Columbia the documents they file with the SEC. This includes documents either filed or furnished under US law.

Exceptions

There are no interface exemptions for:

- The requirement to prepare disclosure documents in plain language (Rules, ss. 92, 142 and 145 and BCI 62-502, s. 24)

- The requirement to file copies of documents you send to securityholders or file with other regulators (Rules, s. 153).

CMA offerings

Section 18(3) of the Act is an exemption from the prospectus requirement for issuers whose continuous disclosure is up to date. The effect of this exemption is that once an issuer is a *public issuer*, it need not file a prospectus to do a public offering. This offering regime, called the Continuous Market Access system (CMA), is described in more detail in Part II, Section A-3 of this Guide.

Even if a public issuer is relying on the interface exemptions to comply with British Columbia regulatory requirements, it can offer securities in British Columbia using the CMA system (except when it is relying on the interface to not file an AIF or is making a national prospectus offering in which the Commission is the issuer's principal regulator under National Policy 43-201 *Mutual Reliance Review System for Prospectuses and Annual Information Forms*) (Rules, s. 118(1)).

B. Issuers that Are Investment Funds

Most of the requirements relating to *public mutual funds* are not discussed in this Guide. This is because these issuers continue to be regulated under the national mutual fund regime contained in National Instruments 81-101 *Mutual Fund Prospectus Disclosure*, 81-102 *Mutual Funds* and 81-104 *Commodity Pools*. Other requirements from the former *Securities Act* and Rules have been replaced by BC Instrument 81-509 *Mutual Fund Requirements*, which streamlines and simplifies these requirements but has few substantive changes.

Non-redeemable investment funds are collective investment vehicles that do not fit the definition of *mutual fund* (usually because they are not redeemable on demand). They include issuers such as employee venture capital corporations and venture capital corporations. They are subject to many of the same rules as non-fund *public issuers*, although BCI 81-510 *Exemption from Periodic Disclosure Requirements for Non-Redeemable Investment Funds* provides them with relief from periodic disclosure requirements.

C. Foreign Issuers

In British Columbia there are exemptions for certain *foreign issuers*, their securityholders and those making a takeover bid for or soliciting proxies from securityholders of a foreign issuer. These exemptions are contained in BC Instrument 71-502 *Exemptions for Foreign Market Participants*. See Part VIII of this Guide for more details.

II. Raising Capital

This Part deals with public offerings and private placements of securities by issuers (other than *mutual funds* – see Part I, Section B). The public offerings section describes how to go public if you are not yet a *public issuer* and how to do subsequent offerings after you become one. The private placements section describes how to raise capital, whether or not you are a public issuer.

Part VIII of this Guide describes the special rules for *foreign issuers* (BCI 71-502, s. 1) that offer securities to investors resident in British Columbia.

A. Public Offerings

To do a public offering, you must be a *public issuer.* (If you were a reporting issuer in British Columbia on •, 2004 (the date the Act came into force), you automatically became a public issuer.)

1. Becoming a Public Issuer

There are several ways to become a public issuer (Act, s. 1). You can:

- file a prospectus,
- if you are a reporting issuer or the equivalent in another province, file a notice, or
- become listed on the TSX Venture Exchange or another exchange designated by the Commission.

You also become a public issuer if you complete a takeover bid or a *business combination* or other reorganization involving an exchange of securities with an existing public issuer, or if you are designated as a public issuer by the Commission.

(a) Filing a prospectus

The most common means of becoming a public issuer is to file a prospectus that is receipted by the Commission (Act, s. 18(1)).

Filing, review and receipt process

An issuer that wants to become a public issuer this way does so by preparing a prospectus using Form 41-901F/51-905F *Prospectus/Annual Information Form.* You can find this form and instructions for completing it on the Commission website at www.bcsc.bc.ca.

In most cases, an issuer becoming a public issuer by filing a prospectus is doing so in connection with its initial public offering (IPO), but you can become a public issuer by filing a prospectus whether or not you are doing an offering at the same time. (The requirement described below to retain a *due-diligence provider* applies regardless.)

The prospectus is not effective until the Commission issues a receipt for it. To obtain a receipt, you must file your draft prospectus (Rules, s. 94) with the Commission through SEDAR.

Commission staff then reviews the draft prospectus. You are responsible for ensuring that your prospectus is complete and discloses in plain language all *material information*. (If it does not, you are exposed to civil, administrative and quasi-criminal liability.)

If your draft prospectus omits information required by Form 41-901F/51-905F (other than information, such as pricing, that is unknown at the time of filing) Commission staff may not begin reviewing the draft until the missing information is supplied.

The role of Commission staff is not to redraft your document, but to focus on the primary public interest issues associated with the prospectus filing, such as any past conduct of the issuer or its *officers*, *directors* or *significant securityholders* that makes them unfit to participate in the public market.

After reviewing the draft prospectus, staff provide comments to the issuer. Once you resolve any staff concerns, you must file the final prospectus and the Commission will issue a receipt for the prospectus if to do so is in the public interest.

The Commission considers many factors in deciding whether it is in the public interest to issue a receipt. In some cases, we may require you to provide additional information or materials to allow us to make this decision.

The following are the most likely to raise public interest concerns:

- The issuer has significantly failed to comply with our requirements.
- The past conduct of the issuer or its officers, directors or significant securityholders makes them unfit to be in the public markets — for example, one of these individuals has a history of bankruptcy or fails the criminal records check.
- The issuer's officers and directors do not have the knowledge and expertise necessary to run a public company.

We will also be concerned about any transaction involving the issuer that appears abusive or to have involved non-arm’s lengths parties.

If the issuer cannot satisfy concerns raised by staff, we may refuse to issue a receipt . However, we will not do so without giving you an opportunity to be heard (Act, s. 21(2)).

While your prospectus is being reviewed you and your selling agent may conduct pre-marketing activities for your IPO as long as you meet the requirements in section 154 of the Rules. However, until the Commission issues a receipt for your prospectus you cannot accept subscriptions. Once you resolve any staff comments, you finalize the prospectus and file it through SEDAR. The Commission will formally receipt the prospectus. You are now a public issuer and can proceed with your offering.

Financial statements

Financial statements must be prepared in accordance with *Canadian GAAP,* audits and audit reports must comply with *Canadian GAAS*, and audit reports must be prepared and signed by those legally authorized in Canada to sign audit reports (Rules, ss. 8, 9 and 11).

Your prospectus must include audited annual financial statements with up to three years of comparative statements (Rules, ss. 99 and 100), and unaudited comparative financial statements for the issuer's most recent interim period (Rules, s. 101) (unless the results for the most recent interim period are included in the annual financial statements; Rules, s. 101(2)). Your comparative interim financial statements need not include a balance sheet and may be presented for a year-to-date interim period.

The financial statements in your draft prospectus do not need to be in draft form – if, for example, you have a set of financial statements that meets the requirements of the Rules and for which the audit report has already been signed, you may use those statements in your draft prospectus.

Financial statements – special situations

If the issuer acquired its primary business within the three years before the prospectus, you must also include the statements of the business before the acquisition, and if the issuer has not existed for three years and another entity previously carried on its business, you must include in the prospectus the relevant financial statements of that entity (Rules, s. 103).

If the financial statements of a *subsidiary* of the issuer disclose material information about the issuer that is not disclosed elsewhere in the prospectus, consider including these financial statements, even if they are consolidated in the issuer's financial statements. It may be the most efficient way to present material information about the subsidiary's operations.

If the prospectus discloses a recent or pending business combination that will be accounted for as a reverse takeover, the relevant financial statements may be those of the entity whose business will be the ongoing business, rather than those of the legal parent, if the offering is conditional on successful completion of the reverse takeover. If the offering is not conditional on successful completion of the transaction, it is likely that the financial statements for both entities are material and should be provided.

Post-receipt pricing

We will generally not issue a receipt for an IPO prospectus that excludes information about the price of the securities offered. Without this information, your disclosure about the anticipated proceeds of the offering and the intended use of those proceeds will be incomplete. Since a new public issuer does not have a *continuous disclosure record*, this lack of pricing and proceeds information means that purchasers would not have sufficient information about the issuer to make an informed investment decision.

For offerings after the IPO, a prospectus is not required under the CMA system, so the issue does not arise.

Delivery

In carrying out your offering, you do not have to deliver the prospectus to a purchaser or prospective purchaser unless the purchaser requests it (Rules, s. 96). Part VI, Section B of this Guide discusses electronic delivery of documents.

Amendments

If after you file a draft prospectus and before the Commission issues a receipt for your prospectus, new material information arises, you will need to file an updated draft. Once the Commission has issued a receipt for your prospectus, you are a public issuer and you will disclose new material information by press release, as discussed in Part III, Section B below.

Alternative forms, exemptions and variations

We will accept various alternative documents as a prospectus instead of Form 41-901F/51-905F:

- An issuer that is participating in a share exchange takeover bid or a business combination in British Columbia or another Canadian jurisdiction can file the takeover bid or information circular as its prospectus.

- An issuer that has some characteristics of a *mutual fund* may use the simplified prospectus and AIF prescribed for mutual funds under National Instrument 81-101 *Mutual Fund Prospectus Disclosure*, with appropriate modifications.

- An issuer that is subject to the laws of a designated jurisdiction (the US (SEC), UK or Australia) may file an offering or registration document from one of those jurisdictions as its prospectus. For *SEC issuers*, documents prepared in accordance with the 10-K, 10-KSB or 20-F forms are acceptable.

These documents are still subject to the requirement that all material information about the issuer be disclosed, and they must be receipted by the Commission before the issuer becomes a public issuer (Act, ss. 20 and 18).

The Commission may vary a prospectus form requirement or rule or exempt an issuer from a prospectus requirement (Act, ss. 154 and 151). If the Commission issues a receipt for the issuer's prospectus, this receipt will also be evidence of any variation or exemption the issuer requests in connection with the prospectus filing. You should request any exemption in writing, either in a pre-filing application, or in the cover letter accompanying your draft prospectus.

(b) Notice by Canadian reporting issuer

An issuer that is subject to continuous disclosure requirements in another province can become a public issuer by filing a notice in Form 44-901F/81-904F *Notice by Canadian Reporting Issuer to Become Public Issuer/Mutual Fund* (Act, s. 19(1)). If you are in compliance with the securities requirements of the jurisdiction of your principal regulator, we will issue a receipt immediately. If not, we will review the notice for public interest concerns before issuing a receipt (Act, s. 21(1)).

Once the Commission formally receipts your notice, you are a public issuer and subject to British Columbia's continuous disclosure requirements (subject to the interface exemptions described in Part I, Section A of this Guide). If for some reason Commission staff intend to recommend that the Executive Director refuse to receipt your notice, the Commission will give you an opportunity to be heard (Act, s. 21(2)).

(c) Becoming listed on TSX Venture Exchange

An issuer that has had its securities listed on the TSX Venture Exchange (or any other *marketplace* the Commission prescribes) at any time since the Act came into force is a public issuer.

2. Underwriters and Due-Diligence Providers

The requirement

You must retain an *underwriter* or due-diligence provider to provide services in connection with the prospectus you file to become a public issuer, whether or not you are offering securities (Rules, s. 95(1)). The underwriter or due-diligence provider requirement exists to ensure that an independent third party conducts a review of the issuer's business, affairs and securities before the issuer goes public. However, there may be situations when an underwriter or due-diligence provider is not necessary and we will evidence an exemption from this requirement by issuing a receipt for the prospectus.

A registered *dealer* that trades a security in connection with a public offering can act as an underwriter.

A due-diligence provider can be a registered *adviser*, or another competent third party. (This is discussed in the next section of this Guide.) The issuer must obtain from the due-diligence provider a written opinion that there are reasonable grounds to believe that the prospectus contains all material information about the issuer (Rules, s. 95(2)).

Both underwriters and due-diligence providers are subject to civil liability for *misrepresentations* in the issuer's prospectus if there is a public offering — see Part VII of this Guide. An underwriter or due-diligence provider is not required for subsequent offerings.

Non-dealer/adviser due-diligence providers

Those interested in acting as due-diligence providers must apply to the Commission for approval (Act, s.1). The application can be in connection with a specific issuer or offering or a class of issuers, or can be unlimited.

There are no prescribed proficiency or experience requirements for due-diligence providers that are not registered advisers but these factors are relevant:

- The applicant's knowledge, skills and experience relevant to the business of the issuer or class of issuers that the applicant intends to review
- The applicant's professional qualifications or equivalent proficiencies
- The tools and systems the applicant intends to use in its review
- The applicant's criteria for ensuring its independence from the issuer

3. Offerings After the IPO

No prospectus required

Subject to some exceptions discussed below, once an issuer becomes a public issuer, it can sell its securities to residents of British Columbia at any time under the CMA exemption, so long as its continuous disclosure record is up to date and includes a current AIF (Act, s. 18(3)). This exemption allows a public issuer to raise new capital from the public without filing a prospectus. This is because, under the continuous disclosure requirements (see Part III of this Guide), all material information about all public issuers is available to the market at all times (Act, s. 23). Therefore, if the issuer is in compliance with its continuous disclosure obligations, there is no new material information about the issuer to be disclosed at the time of the offering.

Because of the common law due diligence defence, a significant securityholder of a public issuer may sell securities under the CMA exemption if the securityholder has no reasonable grounds to believe that the issuer's continuous disclosure record is inaccurate.

News release

However, it is likely that you will have to file a news release. Under the continuous disclosure requirements, a public issuer must issue and file a news release whenever new material information about the issuer becomes available (Act, s. 23).

It is up to you to decide whether the offering is material. However, almost all offerings of securities to the public, and most non-public offerings, are likely to be material. In addition to the fact that the offering is taking place, these are the items that are likely to be material in connection with an offering (and therefore would be covered in the news release):

- The terms of the offering (for example, the number of securities being offered, the price, whether there is a minimum or maximum offering and the duration of the offering)
- The features of the securities
- How you intend to use the proceeds of the offering
- If you are also offering the securities in another jurisdiction, how you will deal with subscription money received from purchasers resident in British Columbia if the issuer does not complete any minimum offering
- Whether there is an underwriter or due-diligence provider and, if so, the significant features of your agreement with the underwriter or due-diligence provider

Not all details about the offering will be material information. If there is information that you would like to disclose publicly, but that is not material information and therefore not included in your news release, you may file supplementary disclosure including this information, either separately or as part of an offering document.

Completion or abandonment of an offering is also likely to be material information, which would require another news release.

Resource issuers

Resource issuers should keep in mind that a news release announcing an offering will trigger the requirement under National Instrument 43-101 *Standards of Disclosure for Mineral Projects* to prepare and file a technical report on its material properties using Form 43-101F1 *Technical Report*, unless the information is included in a previously filed technical report (Rules, s. 115). The report must be an independent technical report under NI 43-101 unless the issuer is a producing issuer as defined in that instrument. Issuers who attempt to avoid their mining disclosure requirements by not filing a news release will be subject to compliance action.

Offering documents

Under the CMA exemption from the requirement to file a prospectus, offering documents are optional. There is no prescribed form, so if you choose to use one, you can present information about the offering in a form that best suits the market for your securities. However, you must ensure that the information in an offering document is balanced, not misleading, and in plain language (Act, s. 28; Rules, s. 92). If the document contains a misrepresentation, the issuer and its directors and officers will be subject to enforcement action and, along with any underwriter or due-diligence provider, to civil liability (see Part VII of this Guide). This means that if new material information about the issuer arises during an offering that makes statements in the offering document misleading, you will have to communicate the new information to investors who are relying on the offering document.

The offering document is not the place to disclose material information for the first time. As described under Part III, Section B of this Guide, new material information must be disclosed by issuing and filing a news release (Act, s. 23). The disclosure in an offering document should all be based on information that is already in your continuous disclosure record, except for details about the offering itself.

If you deliver a copy of an offering document to an investor resident in British Columbia, you must file a copy of it within 10 days of the first time you do so (Rules, s. 114). There will normally not be any review of that document by Commission staff at the time of filing, but it may be reviewed later as part of a continuous disclosure review.

Registration exemption – risk acknowledgement

There is a corresponding registration exemption available for public issuers wishing to sell securities to the public without involving a dealer (Rules, s. 61). This exemption allows a public issuer to sell securities to any investor so as long as the issuer receives a signed risk acknowledgement in the required form from each investor. You are also subject to the general requirements described under Part V of this Guide.

Investors under a risk acknowledgement have no special remedies, other than the right of action for damages for a misrepresentation discussed in Part VII of this Guide.

You can find the required form of risk acknowledgment, Form 45-909F *Risk Acknowledgment – Public Issuers*, on the Commission website at www.bcsc.bc.ca.

The exceptions

There are four exceptions to a public issuer's ability to use the CMA exemption:

- If you do a prospectus offering in more than one province and the Commission is your principal regulator under National Policy 43-201 *Mutual Reliance Review System for Prospectuses and Annual Information Forms* (Rules, s. 118(1)).

- If you do an offering into the United States under the multijurisdictional disclosure system and British Columbia is your principal filing jurisdiction (Rules, s.118(2)).

- If you rely on exemptions from filing an AIF (Rules, s. 117). This would include venture issuers that take advantage of the relief from filing an AIF under National Instrument 51-102 *Continuous Disclosure Obligations* and non-redeemable funds that rely on an exemption from filing an AIF in BC Instrument 81-510 (described in Part I, Section B of this Guide). For both types of issuers, the Rules also impose a 4-month hold period on securities issued under exemptions for which there are hold periods in other jurisdictions (Rules, s. 85). The CMA system is therefore available as a package: if the issuer files an AIF and complies with continuous disclosure requirements, it can use the system to offer securities without a prospectus or hold period. Issuers who do not file an AIF must use a prospectus or an exemption, generally with a hold period.

- If you are a foreign issuer and you rely on the exemptions from continuous disclosure in that instrument (Rules, s. 119(2)).

Report of offering

A public issuer that offers securities under the CMA exemption must provide details of the offering in a report filed with the Commission (Rules, s. 116(1)). You can find the required form of report, Form 45-911F *Report of Section 18(3) Offering by Public Issuer*, on the Commission website at www.bcsc.bc.ca.

The deadlines for filing these reports are in the Rules (Rules, s. 116(2)). For information on how to file them, see the Commission website.

4. Offerings in Other Jurisdictions

MRRS

If the Commission is your principal regulator under NP 43-201 and you file a prospectus here, either for your IPO or a subsequent offering, Commission staff will apply the prospectus review procedures described in NP 43-201 for the type of prospectus being filed (long form, short form, SHELF or PREP).

MJDS

If you wish to file a prospectus for an offering in the United States under SEC rules to accommodate the *multi-jurisdictional disclosure system*, you may choose British Columbia as your review jurisdiction and Commission staff will apply the applicable national prospectus review procedures.

5. Offerings Through the Internet

If you publish a document that offers or solicits trades of securities on a website, you may be trading securities in British Columbia, and therefore subject to the Act and Rules, unless:

- the document clearly identifies the jurisdictions where the offering or solicitation is being made (and those jurisdictions do not include British Columbia), and
- you take reasonable steps not to sell the securities to anyone resident in British Columbia.

A foreign securities regulator may view publishing a document on a website to be an offering of securities in the foreign jurisdiction. You should be aware of any relevant guidelines on this issue. You can find information about the guidelines of various foreign regulators in a 1998 report of the Technical Committee of the International Organization of Securities Commissions (IOSCO) entitled *Securities Activity on the Internet*. That report is on the IOSCO website at www.iosco.org.

B. Private Placements

A private placement is an offering under a prospectus exemption that may be done without a *dealer* involved. Normally, trades in securities can be done only through a dealer who is registered under the Act (Act, s.14). However, there is an exemption from this requirement that allows issuers to do offerings without a dealer. In most cases, parallel offering exemptions also exist (Rules, s. 84). (Offering exemptions for securityholders are found in sections 87 to 90 of the Rules.)

There are exemptions from both the registration and prospectus requirements for eight types of private placements:

1. Offerings to those with a close connection to the issuer, called exempt purchasers
2. Offerings to those who are sophisticated or who can bear the risk of loss, called *accredited investors*
3. Offerings for $150,000 or more
4. Offerings made using an offering memorandum
5. Offerings under the CMA exemption with a risk acknowledgement
6. Offerings made under the *Employee Investment Act*
7. Offerings to existing securityholders
8. Offerings by significant securityholders

If you are a *private issuer*, see Part II, Section C of this Guide.

For some offerings described in this Section, purchasers have a right of action for damages for misrepresentations (which include material omissions) in your disclosure. Even where there is no required form of disclosure, the prohibitions against misrepresentations and unfair practices apply. See Part V of this Guide.

1. Offerings to Exempt Purchasers

The exemption

You can sell securities to exempt purchasers without the involvement of a dealer (Rules, s. 56). This exemption has no specified disclosure requirements.

Exempt purchasers are those who, at the time they invest, have a close relationship with the issuer, or someone associated with the issuer, or whose association with the issuer justifies the exemption. The list of exempt purchasers includes (Rules, s. 56):

- *directors*, *officers* and *significant securityholders* of the issuer and their *family members*, close personal friends and close business associates, and
- the issuer's employees and consultants and their *spouses*.

Family members, close personal friends, and close business associates

A family member is a spouse, parent, grandparent, sibling, child or grandchild.

A person's close personal friends are people who know the person well enough, and long enough, to assess the person's trustworthiness and capability. Individuals are not close personal friends just because they:

- belong to the same organization, association, religious group or other community,
- are clients or former clients, or
- are friends of friends.

A person's close business associates are people who know the person well enough, and long enough, through business dealings and observation, to assess their trustworthiness and capability. Individuals are not close business associates just because they:

- work for the same employer,
- have been introduced so they can be persuaded to purchase securities,
- are clients or former clients, or
- are business associates of business associates.

Large numbers of trades to purported close personal friends and close business associates may trigger a review by Commission staff to verify that all purchasers in fact meet the criteria described above. Advertising for purchasers in these categories is a strong indication that the criteria are not present.

Employees and consultants

A person is not a consultant unless the person is working under a written contract (Rules, s. 48). In making trades to employees and consultants, you have to make sure that the circumstances surrounding the trade would not be an unfair practice (see Part V of this Guide). For example, tying a person's employment or engagement with the issuer to their agreeing to purchase securities could constitute an unfair practice.

2. Offerings to Accredited Investors

You can sell securities to accredited investors without the involvement of a dealer (Rules, s. 58). This exemption has no specified disclosure requirements.

This exemption allows you to sell securities to accredited investors — those who, at the time they invest, are sophisticated or can bear the risk of loss. The list of accredited investors includes (Rules, s. 1):

- institutional investors such as *Canadian financial institutions*, and the Business Development Bank of Canada
- registered dealers and *advisers* and their *representatives*
- wealthy individuals (those holding cash and securities worth more than $1 million, net assets worth more than $5 million or with a family income over $300,000 annually)
- companies, partnerships and trusts with net assets of at least $5 million
- *public mutual funds*
- those designated by the Commission as accredited investors

A person can apply to be designated an accredited investor in all circumstances, or for a specific transaction. These are the factors that the Commission will consider in deciding whether or not to designate a person as an accredited investor:

- The person's financial sophistication or ability to withstand financial loss, or both
- The person's relationship with the issuer and its management
- The person's ability to bargain on an equal footing with the issuer

3. Offerings of At Least $150,000

You can sell securities to individual purchasers for $150,000 or more without the involvement of a dealer (Rules, s. 59). This exemption has no specified disclosure requirements.

Each purchaser under this exemption must purchase securities having a total cost of $150,000 or more. You may accept a promissory note in payment for these securities – that is, the purchaser need not pay cash. Where payment includes a promise to pay, the present value of that payment must exceed $150,000 and the purchaser must be certain or virtually certain of making the later payments. Your governing corporate legislation may also include rules about payment for shares.

Each purchaser must also be purchasing as principal, which means that you cannot sell to a group of purchasers who have combined their resources into one entity to qualify for the $150,000 threshold.

4. Offerings Under the Offering Memorandum Exemption

You can sell securities under an offering memorandum without the involvement of a dealer (Rules, s. 60).

In addition to the general requirements described under Part V of this Guide, you must prepare disclosure in the required form (Rules, s. 105(1)).

If you are a public issuer, a reporting issuer or the equivalent in another province, or publicly traded, the required forms are those required under Multilateral Instrument 45-103 *Capital Raising Exemptions.* All other issuers must use Form 45-907F *Offering Memorandum* and Form 45-908F *Risk Acknowledgement – Non Public Issuers.* (Public issuers may prefer to use the CMA exemption coupled with the risk acknowledgement exemption discussed in the next Section) (Act, s. 18(3); Rules, s. 61).

These are the main conditions you must meet to use this exemption:

- You must prepare an offering memorandum in the required form.
- You must deliver the offering memorandum to each purchaser before he or she purchases (Rules, s. 60(1)(a)).
- You must obtain a signed risk acknowledgement in the required form (Rules, s. 60(1)(b)).
- You must file the offering memorandum with the Commission within 10 days of delivering it to the first purchaser (Rules, s. 105(4)); if you are a public issuer, it will become part of your *continuous disclosure record*.

The information in the offering memorandum must be current when it is delivered to a purchaser and when the issuer accepts the purchaser's agreement to purchase the security; if the information changes, the issuer must disclose the changed information to the purchaser in writing before completing the purchase (Rules, s. 105(3)).

You should keep both the signed risk acknowledgement and the offering memorandum for six years – that is the period in which the Commission may take action against you for any contraventions of the legislation in connection with the offering (Act, s. 174). You will want to be in a position to demonstrate that an exemption was available and that you met you obligations. If you fail to keep these documents, you will be in the position of trying to demonstrate compliance without any supporting evidence.

Purchasers of securities of an issuer that is not a public or reporting (or equivalent) issuer, or publicly traded, under an offering memorandum have two unique rights:

1. **Two Day Cancellation Right.** Each purchaser has two days in which to cancel the purchase (Act, s. 98); you have to hold their money in trust for those two days (Rules, s. 60(2)). How you hold purchasers' money for the two day cancellation period is up to you; common methods are to simply hold the cheque uncashed for that period, or to deposit the funds to a segregated account. However, whether you hold the funds directly or through an intermediary, it is still your responsibility to make sure the purchaser's funds are returned if he or she cancels the purchase. To cancel the purchase, a purchaser must deliver a notice to you by midnight on the second business day after signing the agreement (Act, s. 98).

2. **Rescission for Misrepresentation.** In addition to this cancellation right, a purchaser of securities of this type of issuer has a right to rescind (cancel) the purchase agreement within 180 days if the offering memorandum contains a *misrepresentation* (Act, s. 97). This "rescission" right is available regardless of whether the purchaser was relying on the misrepresentation when deciding whether to purchase the securities (Act, s. 106). If a purchaser sues for rescission, he or she cannot also claim damages.

All purchasers of securities under an offering memorandum have the right of action for damages discussed in Part VII of this Guide.

5. CMA Offerings Using a Risk Acknowledgement

The CMA exemption in section 18(3) of the Act allows a public issuer to offer securities to the public without filing a prospectus so long as the issuer has filed all the continuous disclosure materials it is required to file under the Act and Rules, including an AIF.

As described in Part II, Section A-3 of this Guide, there is a corresponding registration exemption available to allow public issuers to sell securities to the public without involving a dealer (Rules, s. 61). A public issuer can sell securities to any investor so as long as the issuer receives a signed risk acknowledgement in the required form from each purchaser. You can find the required form of risk acknowledgment (Form 45-909F) on the Commission website at www.bcsc.bc.ca.

Investors under a risk acknowledgement have no special remedies, other than the right of action for damages for a misrepresentation discussed in Part VII of this Guide.

6. Offerings Under the *Employee Investment Act*

You can sell securities under the *Employee Investment Act* exemption without the involvement of a dealer (Rules, s. 62). This exemption has no specified disclosure requirements.

This exemption allows an employee venture capital corporation registered under the *Employee Investment Act* to sell its securities to an employee of an eligible business or an *affiliate* of an eligible business. The employee venture capital corporation must only sell to employees of a single eligible business and invest primarily in securities of that business. It also allows an employee to trade to another employee of that business. Employee venture capital corporation, eligible business and venture capital plan are all terms that are defined in the *Employee Investment Act*.

This exemption is not available for publicly traded venture capital investment funds.

7. Offerings to Existing Securityholders

You can sell securities to your existing securityholders without the involvement of a dealer (Rules, s. 54(1)). This exemption has no specified disclosure requirements.

The existing securityholder must be a *bona fide* shareholder, not one who acquired securities of the issuer solely for the purpose of relying on the exemption.

If the sale is not part of a general offering to your securityholders, there is an exception to this exemption if you are not a public issuer. In those circumstances, you cannot use this exemption to sell to securityholders who acquired your securities solely under the offering memorandum exemption, or solely through the exemption in section 72 of the Rules.

8. Offerings by Significant Securityholders

A significant securityholder – one holding 10% or more of any class of the issuer's voting securities, or who is able to affect materially the control of the issuer, alone or with another person – can sell securities to certain persons without the involvement of a dealer (Rules, s. 57). This exemption has no specified disclosure requirements.

9. General Requirements for Using the Exemptions

You are responsible for making sure that the conditions for using an exemption are met. For exemptions that are based on attributes of the purchaser, you may rely on purchasers' claims that they possess the required attributes, so long as you have no reasonable grounds to believe that the claims are false. We recommend you document the fact that you have met the conditions for using an exemption.

Acting on behalf of an issuer

The Act defines trade to include "any act in furtherance" of a trade, which includes advertisements, solicitations and negotiations. Anyone who acts on your behalf in connection with an offering is therefore trading, but they can rely on the same exemption you have.

Other aspects of the Act still apply

The exemptions are only from the trading and offering requirements, not from the operation of the Act generally. Therefore, if your securities have been cease traded, you cannot sell securities using the exemptions. Similarly, no one whose trading rights are restricted through registration conditions or a Commission order can trade using the exemptions.

Resale restrictions

There are no restrictions on the resale of securities in British Columbia of *public issuers* or reporting issuers (or equivalents) in other provinces, unless:

- the issuer is a venture issuer that relies on the relief from filing an AIF under NI 51-102 or is a non-redeemable fund that relies on the AIF exemption in BC Instrument 81-510 (Rules, s. 117). For both types of issuers, the Rules impose a 4-month hold period on securities issued under exemptions for which there are hold periods in other jurisdictions (Rules, s. 85), or
- the person selling owns more than 20% of the issuer's securities and the issuer is not qualified to use the CMA exemption.

Securityholders of issuers that are not public issuers or reporting issuers (or equivalents) in other provinces can only sell their securities under the exemptions available to them under the Rules (Rules, s. 76). For example, a securityholder of one of these issuers could sell his or her securities to an accredited investor.

Significant securityholders of issuers that are not public issuers or reporting issuers (or equivalents) in other provinces may sell their securities under the exemptions in the Rules available for all securityholders, to a person purchasing as principal or through a *marketplace*, or a marketplace outside Canada.

If you are not a public issuer or a reporting issuer (or equivalent) in another province, you must take steps to ensure that purchasers know there are restrictions on their ability to sell their securities (Rules, s. 76(2)). There are several ways to do this, including printing the resale restrictions on your share certificates or setting them out in a subscription agreement.

Report of exempt offering

An issuer who sells securities under the accredited investor, offering memorandum, and certain other exemptions must file a report of the offering in Form 45-910F *Report of Exempt Offering*. You can find this form on the Commission website at www.bcsc.bc.ca.

The deadlines for filing these reports are in the Rules (Rules, s. 112(2)). For information on how to file them, see the Commission website.

10. Offerings in Other Jurisdictions

If you sell securities to a person in another jurisdiction, the laws of both British Columbia and the other jurisdiction generally apply. In almost all cases, British Columbia will have a registration exemption that corresponds to the registration exemptions elsewhere in Canada. (In any event, if the trade takes place in both British Columbia and another Canadian jurisdiction and the trade is exempt under the laws of the other Canadian jurisdiction, it is also exempt in British Columbia.) (Rules, s. 75.)

C. Private Issuers

A *private issuer* has 50 or fewer securityholders (not counting current or former employees), is not listed, quoted, or traded on any *marketplace*, and has only issued its securities under limited exemptions. These exemptions include those for trades to existing securityholders, trades to exempt purchasers, trades to *accredited investors*, and trades for $150,000.

An exemption available only to private issuers is the exemption for trades to a person that is, in relation to the seller, not a member of the public (Rules, s. 55). Whether a purchaser is a member of the public will depend on the particular circumstances, but court decisions have interpreted this exemption fairly narrowly.

A private issuer will cease to be a private issuer, and therefore no longer be able to rely on this exemption, if it issues securities other than under certain exemptions available to it under the Rules.

III. Continuous Disclosure Requirements

A public issuer's *continuous disclosure record* must contain all *material information* about its business and affairs at all times (Act, s. 23). There are two types of continuous disclosure used to keep the continuous disclosure record up to date: periodic disclosure and timely disclosure.

Periodic disclosure is documents filed at regular intervals in accordance with the *regulations* (Act, s. 22). (Regulations include the Rules, and any other national or local rules or instruments that the Commission adopts.) Examples of periodic disclosure documents are AIFs, interim and annual financial statements, interim and annual MD&A, and proxy materials.

Timely disclosure refers to the public dissemination from time to time of material information — information that could reasonably be expected to affect the value or market price of any or all of the issuer's securities.

An issuer's continuous disclosure record includes all information that an issuer files or is required to file under Part 4 (Offerings) and Part 5 (Continuous Disclosure) of the Act and Rules.

A. Periodic Disclosure

1. Annual Information Form

Filing requirement and CMA exemption

All *public issuers*, except *venture issuers* who rely on the relief from filing an AIF under NI 51-102 (Rules, s. 117), must file an AIF each year (Rules s. 121). (A venture issuer is a public issuer not listed or quoted on any of the TSX, an exchange registered as a national securities exchange in the US, NASDAQ (including the SmallCap market and the National Market) or a *marketplace* outside of Canada and the US, other than one designated by the Commission (Rules, s. 120). (The Commission has designated the Freiverkehr der FWB Frankfurter Wertpapierbörse (Regulated Unofficial Market of the Frankfurt Stock Exchange) and the Freiverkehr der Börse Berlin-Bremen (Unofficial Regulated Market of the Berlin-Bremen Stock Exchange) for this purpose.) Thus, you are a venture issuer if you are listed only on the TSXV, CNQ, or OTC BB, or any combination of those marketplaces, or you are not listed anywhere. If you are interlisted on TSXV and TSX, you are not a venture issuer.)

Under the CMA system, a public issuer whose *continuous disclosure record* is up to date and includes a current AIF can issue securities without filing a prospectus (Act, s. 18(3)).

Thus, the CMA exemption is not available to venture issuers that take advantage of the AIF relief under NI 51-102 (Rules, s. 117). There is also a 4-month hold period on securities issued under exemptions for which there are hold periods in other jurisdictions (Rules, s. 85).

The CMA system is therefore available as a package: if the issuer files an AIF and complies with continuous disclosure requirements, it can use the system to offer securities without a prospectus or hold period. Issuers who do not file an AIF must use a prospectus or an exemption, generally with a hold period.

See Part II, Section A-3 above for more details about the post-IPO offering process and the other exceptions to the CMA exemption.

All material information

The AIF must include all *material information* about the issuer (Rules, s. 121(2)). The British Columbia form of AIF is the same as the British Columbia prospectus form, except that Part 5 of that form, which requires disclosure about any offering the issuer is making under a prospectus, does not apply. Instructions to the AIF form contain comprehensive guidance on how to complete it. There are also supplemental instructions to help non-redeemable investment funds complete the form.

You can find the AIF form and instructions, 41-901F/51-905F *Prospectus/Annual Information Form*, on the Commission website at www.bcsc.bc.ca.

Failure to file AIF

If an issuer that is required to file an AIF fails to do so, it will be named on the Commission's defaulting issuers' list; if appropriate, the issuer or its management may also be subject to a cease trade order (CTO). (Part III, Section A-10 of this Guide contains more information about what will happen if you fail to file any required disclosure document.) In addition to satisfying any other conditions the Commission imposes, the issuer must file a prospectus by the date that its next AIF is due (Rules, s. 121(3) and 161).

The prospectus filing, review and receipt process described in Part II, Section A-1 of this Guide applies to that prospectus.

The Commission will not lift the CTO until the issuer files all documents it is required to file (completed in accordance with the Act and Rules), pays any required fees, and a receipt is issued for the prospectus (Act, s. 44(2)).

Alternative documents

We will accept various alternative documents as an AIF instead of Form 41-901F/51-905F:

- An issuer that is participating in a share exchange takeover bid or a *business combination* in British Columbia or another Canadian jurisdiction can file the takeover bid or information circular as its AIF.

- An issuer that is subject to the laws of a designated jurisdiction (the US (SEC), UK or Australia) may file an offering or registration document, an AIF or an annual disclosure document from one of those jurisdictions as its AIF. For *SEC issuers*, documents prepared in accordance with the 10-K, 10-KSB or 20-F forms are acceptable.

2. Financial Statement Disclosure

Accounting principles and auditing standards

Financial statements must be prepared in accordance with *Canadian GAAP,* audits and audit reports must comply with *Canadian GAAS,* and audit reports must be prepared and signed by those legally authorized in Canada to sign audit reports (Rules, ss. 8, 9 and 11). Auditors must be, as of the date of the report, subject to requirements of the Canadian Public Accountability Board (Rules, s. 11(2)).

US GAAP and GAAS

Issuers who file under US SEC rules may follow US requirements (Rules, s. 14).

There is no requirement that SEC issuers who do so provide a reconciliation to Canadian GAAP, although if an issuer changes from Canadian GAAP to US GAAP during its financial year, it may be appropriate to restate its interim financial statements for interim periods during that year and provide a reconciliation to Canadian GAAP. The issuer must disclose sufficient information to enable an investor to appreciate the impact of the change on the issuer to the extent this is material information. In some cases, providing a restatement and reconciliation may be the most meaningful way to disclose material information about the change.

Disclosure of foreign currencies

Issuers must disclose the reporting currency in their financial statements if that currency is not in Canadian dollars (Rules, s. 12(1)). They must also disclose if the measurement currency is different from the reporting currency (Rules, s. 12(2)).

Board approvals

The Rules require approval of an issuer's financial statements (Rules, s.13(2)). Your governing corporate legislation may also include rules in this area.

These approval requirements do not affect your obligation to make timely disclosure of material information as described below. All new material information must be disclosed as soon as practicable.

Annual and interim financial statements

If you are not a venture issuer, you have to file your audited annual financial statements within 90 days of your year-end, and your interim statements within 45 days of the end of the period (Rules, ss. 125(a) and 127(a)).

If you are a venture issuer, you have to file your audited annual financial statements within 120 days of your year-end, and your interim statements within 60 days of the end of the period (Rules, ss. 125(b) and 127 (b)).

Despite these deadlines, you must file your financial statements (and related MD&A) no later than the date you file them in another jurisdiction (Rules, s.128).

In all cases, you must file comparative statements (Rules, ss. 124 and 126(1)), presented in a manner consistent with established accounting practices.

Financial statements after becoming public issuer

Once you become a public issuer, the first statements you must file will be those that cover any periods that have passed since the periods covered by the statements in your prospectus (or the alternative disclosure you used to become a public issuer). If the filing deadlines for those periods have already passed, you must file the statements within 20 days of becoming a public issuer if they are annual statements, or 10 days if they are interims. As with the statements in your prospectus, you need not file comparatives if it is not practicable. (If the filing deadlines have not yet passed for any of these periods, the usual deadlines apply.) (Rules, s. 129.)

The objective is to ensure that your continuous disclosure record includes a continuous stream of financial statements for all periods, starting with the earliest period covered in your prospectus. For this reason, the 20-day and 10-day filing requirements for intervening periods do not apply to a reporting issuer (or equivalent) in another province that becomes a public issuer by filing a notice because that issuer's financial statements will have already been filed on SEDAR. (Rules, s. 129(4).)

Disclosure of non-GAAP financial measures

Disclosing financial measures on a basis other than that required by GAAP is not prohibited and can be useful, but it creates the potential for misleading disclosure, particularly if the disclosure does not state that you used non-GAAP measurements, or to explain the significant differences between the non-GAAP measures reported and GAAP measures for the same period. (The easiest and best means of doing the latter may be to provide the comparable GAAP-based measurements.)

Your disclosure may also be misleading unless you:

- Caution readers that the non-GAAP financial measures may not be comparable to similar measures used by other issuers
- Explain why you have chosen to disclose financial measures on the basis that you have
- Present the non-GAAP financial measures consistently from period to period, or explain any changes if you do not

Reverse takeovers

There are no specific financial statement requirements for reverse takeovers. However, an issuer involved in a reverse takeover that is material information must disclose sufficient information about both the issuer and the ultimate operating business being acquired so that an investor is able to understand the resulting business and its future prospects.

In some cases, disclosing the financial statements of the acquired business may be the most meaningful way to disclose material information about the transaction. An example is where the issuer's principal business is different than the business it is acquiring, but after the acquisition, the new business will be the issuer's principal business.

3. Pro Forma Financial Statements

The purpose of pro forma financial statements is to show the impact of an acquisition, takeover bid, business combination or other reorganization on the issuer by adjusting the issuer's historical financial statements to give effect to the transaction. These statements will be most useful, and least likely to be misleading, if:

- you prepare the pro formas based on the issuer's financial statements, without any adjustments other than those necessary to reflect the transaction,
- you prepare the pro forma balance sheet as at the date of the issuer's most recent balance sheet, as if the transaction occurred on that date,
- you prepare pro forma income statements for the issuer's most recently completed financial year, and any subsequent interim period, as if the transaction occurred at the beginning of the issuer's most recently completed financial year,
- you use only reasonable assumptions in the preparation of the pro formas, fully describe those assumptions, and limit the pro forma adjustments to those that can be directly attributed to the transaction and those assumptions are reasonable, and
- you explain in notes to the statements how you have dealt with any differences in financial year-ends or reporting periods among the issuers and businesses participating in the transaction.

4. Management's Discussion and Analysis

A public issuer must provide interim and annual MD&A that is related to its financial statements (Rules, s. 122(1)). Venture issuers without significant revenues in their last two years also have to provide a breakdown of certain material expenses in their financial statements or MD&A (Rules, s. 123).

The Rules require approval of a public issuer's MD&A (Rules, s. 13(3)).

The purpose of MD&A is to explain to investors how the issuer performed during the period covered by the financial statements, along with the issuer's financial condition and future prospects. MD&A is not part of your financial statements, but is intended to provide an accompanying narrative. Your MD&A must discuss material information that may not be fully reflected in the financial statements. Some examples are legal proceedings, contingent liabilities, defaults under debt, off-balance sheet financing arrangements or other contractual obligations.

Alternative documents

An issuer that is subject to the laws of a designated jurisdiction (the UK, Australia, or the US if listed on the NYSE, Amex or NASDAQ) and satisfies other specified criteria may file MD&A that complies with those laws as their MD&A (BCI 71-502, ss. 5(3)). See Part VIII of this Guide for more information about these issuers' filing options.

MD&A prepared in accordance with SEC requirements designated by the Commission is acceptable. The Commission has designated Item 303 of Regulation S-K and Item 303 of Regulation S-B under the 1934 Act for this purpose.

5. Delivery of Documents

In British Columbia there is no mandated delivery of continuous disclosure documents except information circulars.

However, if a securityholder requests a copy of an issuer's AIF and the issuer relies on or intends to rely on the CMA exemption in section 18(3) of the Act, the issuer must deliver the AIF, or a prospectus filed in place of an AIF, "as soon as practicable" to the securityholder at no charge (Rules, s. 130(1)). (Where the securityholder is an objecting beneficial owner under National Instrument 54-101 *Communication with Beneficial Owners of Securities of a Reporting Issuer,* the issuer need only pay the costs of delivering the documents to the intermediary.) There are similar rules for delivery on request for annual and interim financial statements and the related MD&A (Rules, s. 130(1). (These delivery requirements are limited to AIFs, financial statements and MD&A filed within two years of the request; Rules, s. 130(2).)

This does not mean the issuer must send the document before it is filed, and in fact it would be giving selective disclosure if it did. However, the issuer should also not wait to send it until the next group mailing. If a securityholder requests only financial statements or MD&A, the issuer must send both.

Public issuers must also disclose in their AIFs and information circulars that copies of these documents are available on request and how to obtain them. These disclosure requirements are found in the forms themselves.

Your governing corporate legislation may also include rules about delivery of documents.

6. Change of Auditor

A public issuer that changes auditors other than as required by law or because the issuer was involved in a takeover bid, business combination or other reorganization, must disclose that change in a news release (Rules, s. 131(1)(b)). It must also advise its former and new auditors in writing of the reasons for the change and file that report. If either auditor disagrees with the issuer's description of those reasons, the auditor must advise the Commission (Rules, ss. 131(1)(a) and (2)).

SEC issuers are exempt from these requirements if they comply with the SEC's requirements for changes in auditor, file the SEC documents with the Commission, and disclose the change in a news release (Rules, s. 132).

7. Change of Status

An issuer that does any of the following must disclose it in a notice it files with the Commission (Rules, s. 133):

- Becomes or ceases to be a venture issuer
- Changes its name
- Becomes a public issuer as a result of a takeover, business combination or other reorganization
- Becomes a public issuer by listing on a prescribed marketplace (the Commission has prescribed the TSX Venture Exchange for this purpose)

The notice must be in Form 51-906F *Notice of Change of Status*. You can find this form on the Commission website at www.bcsc.bc.ca.

8. Change in Year-End

A public issuer that changes its financial year-end by more than 14 days must disclose this and the transition periods in a notice that it files with the Commission (Rules, s. 134(1)). The notice must be in Form 51-907F *Notice of Change in Year-End*. You can find this form on the Commission website at www.bcsc.bc.ca.

The filing deadlines for this notice are tied to the deadlines for your financial statements (Rules, s. 134(2))

You must follow the general financial statement requirements in the Rules when preparing your statements for the applicable transition year-end and period. The transition year must be no more than 15 months and the first interim period must be no more than four months (Rules, s. 134(3)).

Again, SEC issuers who comply with SEC requirements and file the SEC documents with the Commission are exempt from these change of year-end rules (Rules, s. 135).

9. Proxy Solicitation Materials

When management of a public issuer send investors notice of any shareholders meeting, they must include a form of proxy for each investor entitled to vote at the meeting (Rules, s. 136(1)). The form of proxy must include information about how the investor can exercise his or her voting rights and may confer discretionary authority to vote on the investor's behalf in certain circumstances (Rules, s. 139).

Anyone soliciting proxies in connection with that meeting, whether management or otherwise, must also send an information circular to each investor whose proxy is solicited (Rules, s. 136(2)). The circular includes information about the issuer, management and the matters to be dealt with at the meeting. You can find the required form of circular, Form 54-902F *Information Circular*, on the Commission website at www.bcsc.bc.ca.

Not every person who provides information in connection with a shareholders' meeting must comply with the formal proxy solicitation requirements in the Rules. For example, the following are not soliciting proxies (Rules, s. 136(3)):

- A person acting as a intermediary
- A securityholder making a public announcement under corporate legislation of how he or she intends to vote and why
- A person communicating with securityholders to obtain the number of securities required for a shareholder proposal under corporate legislation.

10. Failure to File

Meeting continuous disclosure obligations is a fundamental responsibility of every public issuer, and we take enforcement action against issuers who do not file disclosure as required. An issuer that fails to file a required record will be in default of its filing obligations and placed on the Commission's defaulting issuers' list.

Issuer CTOs

If appropriate, the issuer may also be subject to a cease trade order (CTO) (Act, s. 44(1). If a CTO is issued against the issuer, this means no one can trade the issuer's securities until the order is lifted.

The Commission will lift the CTO as soon as practicable after the issuer files all documents it is required to file (completed in accordance with the Act and Rules), pays any required fees and, in some cases, files a prospectus (Act, s. 44(2) and (3)).

Management CTOs

If the failure to file is foreseeable and will last for a short period, you can apply for a management CTO, which only prohibits *insiders* from trading — other investors can trade as usual. We will consider granting a management CTO if:

- your business is operating in accordance with its business plan, with a functioning board of directors,
- you are not in contravention of any other securities regulatory requirements in any jurisdiction,
- the financial statements and any related audit reports will be filed within at least two months of the required filing date, and
- your company's securities are listed and actively traded on a Canadian stock exchange.

You can find the details of how to apply on our website at www.bcsc.bc.ca.

11. Compliance

(a) Continuous disclosure reviews

All issuers are subject to regular continuous disclosure reviews by the Commission to determine if they are in compliance with the legislation (Act, s. 43). The Commission

selects issuers for a review primarily using a risk-based approach. However, some issuers are selected randomly to ensure all British Columbia-based issuers are potential candidates for a review.

(b) Orders

The Commission may make various orders if an issuer is not complying with the legislation. For example, we may cease trade an issuer's securities, or order that an issuer fix and refile its disclosure (Act, s. 59).

B. Timely Disclosure

An effective system of securities regulation depends on *public issuers* making complete, accurate and timely disclosure of *material information*.

1. The Disclosure Obligation

A public issuer must disclose material information as soon as practicable. You make disclosure by issuing and filing a news release. The news release must contain all material information about the matter being disclosed (Act, s. 23).

In addition to the news release, you may file supplemental information if you wish, as long as all the material information is in the news release.

2. Meaning of Material Information

Meaning of "material information"

Material information is information relating to the business, operations or securities of an issuer that would reasonably be expected to significantly affect the value or market price of any or all of the issuer's securities. When you are determining whether something would significantly affect the value or market price of your securities, you should assume that the market is behaving rationally.

The materiality of information varies from one issuer to another according to the issuer's assets, earnings and capitalization, the nature of the issuer's operations and many other factors.

Examples of information that may be material include:

- takeover bids, business acquisitions, *business combination*s, and other reorganizations
- important acquisitions or dispositions of properties, securities or other assets
- offering securities and the completion or abandonment of the offering
- redeeming securities
- the development of new products or business lines
- winning or losing significant contracts
- significant changes in your business plan
- changes in key personnel
- restatements of financial statements or MD&A

Lists like this are not exhaustive and do not substitute for your exercising your own judgment.

Business acquisitions and combinations

An issuer involved in an acquisition or business combination that is material information must disclose sufficient information to enable an investor to appreciate the impact of the acquisition on the issuer and its business. In some cases, disclosing historical financial statements of the acquired business may be the most meaningful way to disclose material information about the acquisition. Whether financial information about the acquired business is material information depends on several factors, including the size of the operations of the issuer and the business, the cost of the acquisition and the resources that will be dedicated to the acquired business. One way of measuring these factors is to express the assets and income of the acquired business as a percentage of the issuer's assets and income.

External events

The obligation to disclose material information would generally not require you to interpret the impact of external political, economic and social developments on your business, operations and securities unless the impact is material and affects you differently than other issuers engaged in the same business.

Rumours

You need not respond to rumours unless the issuer or its management is perceived by the market as the source of the rumour, or if the rumour involves *inside information* that appears to have leaked.

3. Establishing Material Information

Whether information is material will depend on the specific facts of each case. When facts arise that are clearly material, determining whether there is material information to disclose is not an issue. However, when the material information develops over a period of time through the aggregation of a series of facts, it can be more difficult to determine when the information represented by that aggregation of facts becomes material information that must be disclosed.

For example, when a natural resources issuer is conducting a drilling program and is receiving results as the program proceeds, each analytical result of a drilled interval may not be material until put in context with the results thus far received, or yet to be received. However, depending on the issuer, a single spectacular drill hole or negative drill hole could be material on its own.

The analysis can become more complicated when uncertainty surrounds one or more of the relevant facts. When it is uncertain whether an event will happen, management must consider both the likelihood that it will, and the anticipated impact of the event on the value or market price of the issuer's securities if it were to happen, to decide whether the materiality threshold has been crossed, and if so, when.

For example, consider the issuer that begins merger discussions and it is reasonable to expect that the merger would significantly affect the value or market price of the issuer's securities. The issuer might well not be obligated to disclose that initial discussions have begun, particularly if it is far from clear that the merger proposal is commercially attractive to the intended merger partner – the merger may be significant if it were to happen, but that is offset by the low probability of the event at that point in time. However, once negotiations reach the point where there is a real possibility that the merger could happen, the combination of probability and significance would constitute material information, triggering the disclosure obligation. (In this example, the issuer may choose to consider a confidential filing, as described in the next Section.)

4. Timing of Disclosure

Once you have decided that information is material, you must disclose it as soon as practicable (you cannot defer public disclosure of material information simply by delaying the *directors*' formal approval of the relevant matter). You will sometimes have to exercise judgment in deciding how soon to make disclosure, particularly in an emerging situation. You must consider the particular circumstances, which include the nature of the material information, other activities of the issuer (like a securities offering), and the likelihood of the information being leaked. The key factor to consider is the objective of the timely disclosure requirement: that all investors have access to current material information. If you believe it would be unduly detrimental to the issuer's interests to disclose the matter, you may defer public disclosure, if you make a confidential filing with the Commission (Rules, s. 143).

The legislation provides that if, in the issuer's reasonable opinion, disclosure of material information would be unduly detrimental to the issuer's interests, the issuer can fulfill its timely disclosure obligations by filing a confidential report with the Commission detailing the material information and the reasons why disclosure at that time would be unduly detrimental.

For example, if an issuer is in technical default of a material loan but you believe that the lender will waive the default, disclosure of the lender's entitlement to call the loan could lead to an unwarranted loss of confidence in the issuer.

There is no required form for a confidential report of material information, however, a good way to detail the material information would be to prepare the text of the press release that you would have issued had you not opted to file confidentially.

At any point in the confidential filing process Commission staff may notify you that staff considers that the public interest in disclosing the material information outweighs the issuer's interest in keeping it confidential (Rules, s. 143(3)). If you do not disclose the information on receipt of this notice, staff may issue a cease trade order against the issuer until the disclosure is made.

If a reasonable person would believe that there is a significant risk that the information will be selectively disclosed, you must disclose the information within one business day of that risk arising (Rules, s. 143(4)).

Once the reason for deferring disclosure of material information has ended, if the information is still material information, the issuer must disclose it.

Sometimes circumstances change and the information disclosed under the confidential filing process becomes moot or otherwise immaterial. In these cases, the issuer should advise the Commission of this. However, no public disclosure is required.

5. Management's Responsibilities

You are expected to exercise reasonable business judgment in determining whether information is material, based on the information available to you at the time you are making the decision. To do that, you need to make reasonable inquiry to find out relevant information.

Issuers are expected to have systems in place for managing disclosure and to monitor those systems for compliance and effectiveness. See Part III, Section E-4 of this Guide.

C. Forward-Looking Information

An issuer may choose to provide a detailed forecast of future operating results or other types of forward-looking information. This type of disclosure has the potential to be misleading. The following are practices to consider following so that your disclosure of forward-looking information is not misleading:

- Stating that the information is forward-looking, including appropriately cautionary language about the risks of relying on forward-looking information (these risks are acute for issuers with a limited operating history)
- Ensuring that the assumptions used are reasonable on an objective basis and that the forecast period does not extend beyond the period that information can reasonably be estimated
- Disclosing the material assumptions used and the factors that may cause actual results to differ materially from the forward-looking information

Once you have disclosed forward-looking information, in order that it not become misleading in the future as a result of intervening events (such as, for example, a key assumption becoming unrealistic) you may have to update it, under your timely disclosure obligations, in your MD&A, or both. The most useful way to present the update in your MD&A may be to compare your actual operating results to those forecasted or projected for the relevant period and explain the material differences.

The measurement standards in Section 4250 of the Handbook may assist you in developing earnings guidance and other types of forward-looking information and how to present the information.

Safe harbour

The Act includes a safe harbour for preparers of forward-looking information (Act, s.117). Issuers and management are not liable for *misrepresentations* in forward-looking information if:

- you identify the information as forward-looking information,
- you state the material factors considered and the assumptions used to develop the forward-looking information, and

- the person making the statements contained in the forward-looking information has a reasonable basis for doing so.

No audit requirement

Forward-looking information need not be audited nor prepared by an expert. An issuer that chooses to disseminate forward-looking information should take responsibility for its preparation and reliability.

D. Corporate Governance

1. Audit Committee

A *public issuer* must have an audit committee unless its board has less than five members and performs the responsibilities of an audit committee (Rules, s. 16(1). A majority of the members of the committee must be independent (Rules, s. 16(2)). The test for director independence is set out in section 15 of the Rules.

A public issuer must take reasonable steps to ensure that its audit committee is independent of the issuer's management and represents the interests of its securityholders. As part of this process, the issuer must authorize the audit committee to oversee the process of selecting and appointing the external auditor, oversee the conduct of the audit, and have primary responsibility for the relationship between the issuer and its external auditor. (Rules, ss. 16(3) and (4).)

The audit committee must ensure that the auditor is independent of management and consider the adequacy of audit fees (Rules, s. 17).

SEC issuers who meet the criteria set out in the Rules are exempt from the audit committee requirements in the Rules (Rules, s. 18).

2. Disclosure

Management must provide disclosure about the issuer's governance structure in the information circular. Part III, Section A-9 discusses the proxy solicitation and disclosure requirements under the legislation. Where no information circular is filed in a given year, this disclosure must be made in the issuer's AIF, if the issuer files one.

E. Handling Inside Information

1. Prohibition Against Trading or Disclosing Inside Information

Our system of securities regulation is based on the premise that all investors have equal access to *material information*. The legislation prohibits a *connected person* (Act, s. 30(1)) from trading in securities of a *public issuer*, or any other issuer whose securities are publicly traded, or from entering into an equity monetization transaction in connection with those securities, if the person has *inside information* about the issuer, and from telling anyone else the inside information ("tipping")(Act, s. 30(2)). (See Part III, Section G-1 of this Guide for information on equity monetization transactions.) It also prohibits a

connected person from recommending or encouraging another person to trade in those securities (Act, s. 30(4)).

Inside information is undisclosed material information about the issuer.

Connected persons include (Act, s. 30(1)):

- the public issuer's *insiders, officers*, employees, *affiliates* and *associates*
- parties to major transactions with the issuer (and their insiders, officers and employees)
- persons engaged in business with the issuer (and their *directors*, officers and employees)
- "tippees" — those who acquire inside information from any of these persons, or from any one who they know, or ought reasonably to know, acquired the information from any of these persons

2. "Necessary Course of Business" Exception

You may inform another person of undisclosed material information if it is necessary in the course of the issuer's or the person's business (Act, s.30(3)). This would generally cover communications with:

- vendors, suppliers or strategic partners
- employees, officers, board members and *significant securityholders*
- lenders, legal counsel, auditors, *underwriters* and financial and other professional advisers
- parties to negotiations
- labour unions and industry associations
- government agencies and non-governmental regulators
- credit rating agencies

Generally speaking, you cannot use the necessary course of business exception to disclose inside information to:

- investors under a private placement (although we recognize that industry practice and disclosure standards elsewhere in Canada permit disclosure in these circumstances, we do not believe that private placement negotiations properly fall within this exception.)

- analysts, institutional investors or other market professionals

- the media

If you do disclose material information under the necessary course of business exception, you should make sure those receiving the information understand that they cannot pass the information on to anyone else (other than in the necessary course of business), or trade on the information, until it has been generally disclosed.

Getting the person who receives the information to sign a confidentiality agreement can be a good practice and may help to safeguard the confidentiality of the information.

However, such an agreement does not replace the need for the disclosure to be in the necessary course of business.

3. Areas of Risk

There are some situations in which you are particularly vulnerable to making "selective disclosure" — disclosure of inside information to one person or a small group of persons.

Private briefings with analysts, institutional investors and other market professionals

Financial information such as sales and profit figures or earnings forecasts is often material information, and therefore you should not disclose it to analysts, institutional investors and other market professionals until it is generally disclosed. Earnings forecasts are in the same category. Even within these constraints there is plenty of scope to hold a useful dialogue about the issuer's current business and prospects.

An effective way to disclose this kind of information generally is to include it in your MD&A.

Partial disclosures

You cannot make material information immaterial simply by breaking the information into seemingly non-material pieces. At the same time, disclosure of non-material information to analysts is not prohibited, even if this information, when combined with information the analyst has from other sources, helps the analyst complete a "mosaic" of information that, taken together, is inside information.

Analyst reports

It is not unusual for analysts to ask the issuer to review earnings estimates that they are preparing, but it is easy to contravene the tipping prohibition if you confirm the estimate or indicate that it is too high or too low.

Even confirming to an analyst information previously made public could contravene the tipping prohibition if a long time has passed since the original disclosure. For example, if you disclosed expected earnings for a quarter near the beginning of the quarter, confirming them privately to the analyst near the end of the quarter may be tipping because it is likely that the confirmation is based on actual performance that has not been generally disclosed.

Distributing an analyst's report to people outside the issuer can be construed as a statement by the issuer that the contents of the report are true. If you wish to distribute analyst reports, the safer practice is to post all analyst reports on the issuer on your website with an appropriate disclaimer.

If you choose to refer to an analyst report rather than distribute it, you may only provide the analyst’s name and the firm he or she works for.

Analysts, institutional investors and other market professionals who do receive inside information from a company are tippees. Since the risk of receiving inside information is

common for these persons, it makes sense for them to have procedures to help them identify situations where they may have received inside information and set up guidelines for dealing with them.

4. Practices to Consider

There are some practices that issuers can adopt to manage disclosure effectively. The practices listed here are fairly comprehensive, and not all of them would make sense for every issuer. Each issuer will have to decide which ones, if any, to adopt, and implement them to suit their own circumstances.

Corporate disclosure policy

A written corporate disclosure policy gives you a process for disclosure and promotes an understanding of legal requirements among your directors, officers and employees. The process of creating it is itself a benefit, because it forces a critical examination of your current disclosure practices.

Your policy should be practical to implement, simple enough to be easily understood by those it applies to, and reviewed periodically. It should promote consistent disclosure practices aimed at informative, timely and broadly disseminated disclosure of material information to the market. Items to consider including in the policy are:

- determining materiality
- earnings announcements and related analyst calls and meetings
- contact with analysts, institutional investors, other market professionals and the media
- website policy
- forward-looking information
- dealing with rumours and unintentional selective disclosures
- trading restrictions and quiet periods

Coordination

If your policy is to be effective, you likely have to assign someone at a senior level to be responsible for developing and implementing your disclosure policy, monitoring its effectiveness and ensuring it is followed.

Board and audit committee reviews

Having your board or audit committee review disclosures of earnings guidance and other financial information as yet undisclosed will improve their quality. Issuing your earnings news release concurrently with the filing of your quarterly or annual financial statements provides a more complete financial picture to the market.

Limited spokespersons

Limiting the number of people who are authorized to speak on behalf of the issuer helps to reduce the risk of unauthorized disclosures and statements that are inconsistent with

your *continuous disclosure record* or things other people speaking for the issuer have said.

Quiet periods and insider trading blackout periods

Observing a quarterly quiet period, during which no earnings guidance is issued or comments about the current quarter's operations or expected results are made, is a good practice for avoiding selective disclosure problems. The period would end on the release of the quarterly earnings announcement and can begin as early as the end of the related quarter. You may also choose to prohibit trading by your insiders, officers and employees during the quiet period as part of a policy that monitors the trading activity of your insiders and ensures they know they cannot trade when they have inside information. Insider trading blackout periods may also be appropriate when exploration results or the result of clinical trials are received but not yet disclosed.

Chat rooms, bulletin boards and e-mails

Avoiding these forums will help protect your company from the liability that could arise from the well-intentioned efforts of employees to correct rumours or defend the company. If your website allows viewers to send you e-mail messages, remember the risk of selective disclosure when responding.

F. Advertising

An issuer is free to advertise in British Columbia so long as the advertisement (Rules, s. 154):

- is identified as an advertisement,
- states whether the issuer is unlisted or if trading in its securities is restricted, and
- directs the public to the issuer's *continuous disclosure record*, if applicable, and any related offering document.

1. Avoiding Misrepresentations

To avoid misleading disclosure, you should avoid partial disclosure. For example, if the advertisement mentions a benefit but not the conditions and risks attached to that benefit, a reasonable investor could infer there are none. If the matter was material, this would be a *misrepresentation*.

Another example where care is required is use of words like "preferred", "guaranteed", "liquid" and "indemnity", which have specific meanings and should not be used if those meanings do not apply in the circumstances.

2. Advertising in Other Canadian Jurisdictions

The rules in other Canadian jurisdictions are more restrictive. For example, in other Canadian jurisdictions no one is allowed to advertise over radio or television except during a distribution of securities under a receipted prospectus, and special rules apply.

You should be aware of the relevant policies elsewhere in Canada, including Interim National Policy 42 *Advertising of Securities on Radio or Television* and National Policy 47-201 *Trading Securities Using the Internet and Other Electronic Means.*

G. Insider Reporting Requirements

New *insiders* of *public issuers* must file an insider report within 10 days of becoming an insider, but only if they hold securities of the issuer on that date. If the insider does not own securities at that time, they must report within 10 days of their first trade in the issuer's securities (Act, s.25; Rules, s. 147(1)). After that, they must report all trades in securities of the public issuer within 10 days (Act, s.26; Rules, s. 147(2)). They must report trades of all securities that they own or have control over. (A person has control of a security if, among other things, the person directly or indirectly, directs the trading or voting of the security; Act, s.3.)

Insiders include *directors*, *senior officers* and *significant securityholders* of an issuer, and directors and *officers* of the issuer's subsidiaries and significant securityholders if the director or officer's responsibilities routinely provide the individual with access to *inside information* about the issuer.

1. Equity Monetization Transactions

Insiders must report transactions involving *derivatives*. The reporting deadlines are the same as for other trades (discussed above). A derivative is a security whose value is derived from, or materially varies with, the value or market price of the issuer's securities. These include equity monetization arrangements that allow you to receive a cash amount or otherwise capture the economic benefit of your securities without actually trading them. ("Monetization" means converting an asset – for example, a security – into cash.)

You can find comprehensive information about how to report equity monetization transactions and other derivative transactions in CSA Staff Notice 55-308 *Questions on Insider Reporting*, CSA Staff Notice 55-312 *Insider Reporting Guidelines for Certain Derivative Transactions (Equity Monetization)* and other documents found on the Commission website at www.bcsc.bc.ca.

2 Senior Officers

A senior officer is any officer of an issuer whose responsibilities routinely provide the officer with access to inside information about the issuer. (An officer is anyone who works in an executive capacity, i.e. has the capacity to make significant senior level business decisions relating to the issuer.) Officers who, if they are properly fulfilling the functions associated with their position, have routine access to inside information include the issuer's chief executive officer, chief financial officer, chief operating officer and investor relations officer.

3. Significant Securityholders

A significant securityholder is any person who owns or controls 10% or more of any class of an issuer's voting securities or is able to affect materially the control of that issuer.

When calculating the 10% threshold, you should exclude any securities that a *registrant* holds during a public offering.

4. List of Insiders

A public issuer must file a list of its director and senior officer insiders with the Commission as soon as practicable after becoming a public issuer, and annually after that (Rules, s.148). For instructions on how to do this, visit the Corporate Finance section of the Commission's website at www.bcsc.bc.ca.

5. Reporting Exemptions

Corporate events and automatic purchase plans

If your holdings change due to a stock dividend, stock split, consolidation, amalgamation, reorganization merge or other similar event, you may wait to report the change until the next time you report any other change in your holdings (Rules, s. 147(7)).

Delayed reporting is also permitted in certain cases if your holdings change as a result of the operation of an automatic purchase plan (Rules, s. 147(3) and (4)). If holdings change as a result of an additional lump sum payment under the plan, the normal reporting deadlines apply (Rules, s. 147(6)).

Eligible institutional investors

Insiders who are *eligible institutional investors* (these include financial institutions, pension funds, *mutual funds* other than *public mutual funds,* and portfolio managers) may report their trades using an alternative monthly reporting system if their holdings exceed certain thresholds as of month end (Rules, s. 150).

Eligible institutional investors and their *affiliates* and *associates* may also have "aggregation relief". In some circumstances, they may treat securities they hold through different business units separately for reporting purposes (Rules, ss. 150(6) and (7)).

6. Form to Use

Subject to some limited exceptions, insiders must file their reports electronically at www.SEDI.ca.

For instructions on how to do this, and for other specific information on how to fulfill your insider reporting obligations, see the *SEDI User* Guide, the SEDI Online Help File and CSA Staff Notice 55-308 *Questions on Insider Reporting* and visit the Corporate Finance section of the Commission's website at www.bcsc.bc.ca.

IV. Exemptions for Corporate Transactions

An issuer can carry out the following transactions without the involvement of a *dealer*:

A. Business Combinations, Reorganizations, Takeover Bids, Issuer Bids and Windings Up

An issuer can trade securities to effect a *business combination* or other reorganization, a takeover bid, issuer bid or the winding up or dissolution of the issuer without the involvement of a *dealer* (Rules, s. 63). Because of the relationship of a securityholder to one of the issuers involved in the transaction, available disclosure about the transaction, or compliance with other statutory or court ordered requirements, securityholders do not need the protection of a *registrant*.

A business combination is an amalgamation, merger, arrangement or similar transaction.

A reorganization includes court-ordered arrangements under corporate law, bankruptcy law, or other acts affecting the rights between entities, securityholders and creditors.

B. Dividends in Kind

An issuer can issue its own securities as dividends using the exemption for trades by an issuer to its existing securityholders (Rules, s. 54). Part II, Section B-7 of this Guide discusses this exemption.

An issuer can also trade securities of a *public issuer* or reporting issuer in another Canadian jurisdiction that it holds to existing securityholders as a dividend in kind without involving a *dealer* (Rules, s. 64). The existing securityholder must be a *bona fide* shareholder, not one who acquired securities of the issuer solely for the purpose of relying on the exemption. This exemption is limited to securities of public and reporting issuers because they are subject to continuous disclosure requirements. Therefore, securityholders have adequate information about the issuer and its securities.

C. Direct Purchase Plans

Direct purchase plans are designed to allow investors to acquire small quantities of fractional shares of an issuer at a lower cost and are set up primarily as regularly scheduled investments in securities of an issuer. These plans operate in a manner similar to a dividend reinvestment plan except that investors are not required to own a qualifying share.

A *public issuer* can sell its securities to investors under a direct purchase plan without involving a *dealer*, subject to these conditions (Rules, s. 65):

- Only 2% of the issuer's securities can be issued in any one year under the plan.
- The administrator of the plan must be a Canadian financial institution, an equivalent entity in a designated jurisdiction (the UK, Australia or the US if listed on the NYSE, AMEX or NASDAQ) or a designated entity.

- Only a registered dealer or *adviser* and their *representatives*, or an equivalent entity in another province, may advise or recommend that a person purchase securities under the plan.

This exemption is limited to securities of public issuers because they are subject to continuous disclosure requirements and therefore there is information in the market about them.

V. Market Participant Conduct

Because the Commission's responsibilities include protecting the integrity of the capital market and the confidence of investors, the legislation imposes duties on *market participants* (which include issuers) and prohibits certain conduct. It is important that issuers are aware of these provisions because if one is contravened, the issuer and its management may be subject to regulatory or criminal sanctions. In some cases, contraventions of the legislation can also give rise to actions for civil liability (see Part VII of this Guide).

Any activity in furtherance of a trade is included in the definition of trade which means that advertising, solicitation, negotiations and any other activity to encourage trading of your securities is also caught.

Manipulation and fraud

Any conduct relating to trading in a security that results in manipulation or fraud is prohibited (Act, s. 27).

Misrepresentations

Misrepresentations are prohibited (Act, s. 28). In the *public issuer* context, there are two common situations where this prohibition is relevant. One is the disclosure of information to investors. In this context, you cannot provide untrue material information, omit material information, or omit other information necessary to prevent a statement from being misleading. Disclosure of material information is discussed in this Guide under Part III, Section B.

The second situation is the relationship between a person engaged in promotional activities on behalf of an issuer and an investor. In this context, a misrepresentation is untrue information or the omission of information about something that a reasonable investor would consider important in making a decision to buy or sell a security**.**

Unfair practices

A person must not engage in an *unfair practice* (Act, s. 29(1)). This means that high-pressure sales tactics, taking advantage of an investor's physical or mental infirmity, ignorance, illiteracy, age or lack of sophistication and imposing inequitable terms or conditions on a sale is not permitted (Act, s. 29(2)).

Insider trading, tipping or recommending

A *connected person* (Act, s. 30(1)) must not trade securities of a public issuer or recommend another person trade the securities, if the person has *inside information* (Act, s. 30(2) and (4)). A connected person also must not tell anyone else the inside information. These prohibitions are discussed in this Guide under Part III, Section E-1.

False or misleading statements to Commission

You must not make or give false or misleading statements or information to the Commission or Commission staff (Act, s. 40). This includes any verbal or written statements or information provided in the course of dealings with Commission staff on a filing or application.

Obstruction of justice

A person must not destroy, conceal or withhold give any information or document needed for a hearing, compliance review of investigation (Act, s. 41).

Contraventions attributable to others

If an issuer contravenes the legislation or a Commission decision, any employee, *officer*, *director*, agent or *significant securityholder* of the issuer who authorized, permitted or acquiesced in the contravention is also considered to have committed the same contravention (Act, s. 173).

VI. General Requirements and Guidelines for Issuers

A. Duty to Use Plain Language

You must prepare the following disclosure documents using plain language (Rules, s. 92, 142 and 145 and BCI 62-502, s. 24):

- Prospectus
- Offering memorandum
- AIF
- MD&A
- Information circular
- News releases containing material information
- Confidential material information reports
- Takeover bid and issuer bid materials

This means that they must be easy to read and understand.

There are many resources available on the subject of plain language, but here are some basic principles for you to consider when preparing these documents:

- Use short sentences
- Use definite, unambiguous, everyday language
- Use the active voice
- Avoid superfluous words
- Organize the document in clear, concise sections, paragraphs and sentences
- Avoid jargon
- Do not rely on glossaries and defined terms unless it helps the reader understand the information
- Avoid boilerplate wording
- Avoid multiple negatives
- Avoid technical terms where possible (if you use them, include definitions or explain them)
- Use charts and tables where it makes information easer to understand.

B. Electronic Delivery of Documents

You can deliver documents to investors electronically (other legislation may be relevant). If you choose electronic delivery, you need to ensure that it is as effective and timely as delivery by more traditional means. If it is not, you will not have met the delivery obligations under the legislation.

Consent

If you wish to use electronic delivery, obtaining a consent is a good way to ensure that the recipient has been given notice that you will be delivering electronically. A consent can set out how and when electronic delivery will occur – and be evidence that you and the recipient have agreed on the process.

Here are the types of things to consider including in a consent:

- The documents that may be delivered
- How documents will be delivered
- What software and other systems requirements the recipient will need
- How an investor can revoke the consent

Delivery system

An effective delivery system will likely have the following elements:

- Ease of access by the intended recipients, which includes making the document available for a reasonable period of time, and allowing the recipient to download a printable version of the document
- Proof that the document has been delivered or otherwise made available to the person
- Protections against the alteration or corruption of documents.

Hyperlinks

You should use caution when using hyperlinks in a document, unless the hyperlink is to another point in that same document. If you are hyperlinking to information outside the document, you risk incorporating the hyperlinked information into the document and becoming legally responsible for its accuracy. Also, hyperlinks to a separate document raise the question of which documents are being delivered.

Keep in mind that the SEDAR Filer Manual prohibits hyperlinks between documents.

Proxy materials – execution requirements

Under the Rules, a proxy must be signed by a securityholder to be valid (Rules, s. 129). Electronic signature is acceptable.

C. Additional Filing Requirements

If a *public issuer* sends a document to its securityholders or files a document with a *marketplace*, *regulatory organization*, government agency, or other entity that regulates trading in securities or administers or enforces securities laws, that contains *material information* not already filed with the Commission, it must file the document with the Commission (Rules, s.153).

D. Personal Information Forms (PIFs)

A *public issuer* must provide the Commission with personal information about a *director* or *officer* within 30 days of the individual becoming a director or officer (Rules, s. 152(1)). If your are listed on a Canadian *marketplace*, you may comply by providing a copy of the PIF or statutory declaration you filed with the marketplace (Rules, s. 152(2)).

VII. Investor Remedies

A. Liability

The legislation provides a statutory right of action for:

- damages, for a *misrepresentation* by a *public issuer*, against the issuer, its *directors*, *officers*, *significant securityholders*, experts, and in connection with a public offering, against *due–diligence providers* and *underwriters* (Act, s. 90),

- damages, for a misrepresentation by a significant securityholder, against the security holder, its directors, officers, experts and others (Act, s. 91),

- damages, for not making timely disclosure about a public issuer, against the public issuer and its directors, officers and significant securityholders (Act, s. 92),

- damages, for a misrepresentation in a private placement offering memorandum, of an issuer that is not a public issuer or has no securities that are publicly traded against the issuer and its directors and officers (and rescission against the issuer, as well as the right to cancel the contract within two days, without cause) (Act, ss. 96, 97 and 98),

- damages or rescission, for making an offering without a prospectus or a prospectus exemption, against the person making the offering (Act, s. 99),

- damages for a misrepresentation in a takeover bid or issuer bid document, against the offeror, its directors, officers, and experts (Act, s. 100),

- damages for misrepresentation in a takeover bid directors' circular, against those directors (Act, s. 101),

- damages, rescission and other remedies, for contravening the takeover bid and issuer bid provisions in the legislation, against the person contravening the provision (Act, s. 102), and

- damages or an accounting, for trading, or recommending to others that they trade, on *inside information*, or passing on inside information to others, against the person who does so (Act, ss. 104 and 105).

The rights relating to a misrepresentation by a public issuer or significant securityholder apply to a misrepresentation in any document that is filed or generally disclosed or in an oral statement if general disclosure was reasonably foreseeable.

Where a plaintiff brings an action for a misrepresentation, the plaintiff does not have to prove that he or she relied on the misrepresentation in order to sue (Act, s. 106).

Not all investors may sue for a misrepresentation by a public issuer or significant securityholder. The investors who can sue are those who traded securities during the period when the contravention was occurring.

In addition, the legislation provides specific rights of action for a misrepresentation in a prospectus where the issuer makes a multijurisdictional offering (Act, s. 126). If an issuer offers securities concurrently in British Columbia and under a prospectus in another Canadian jurisdiction, investors resident in British Columbia have the same rights and remedies as those purchasing under the prospectus in those other jurisdictions (except for the right to cancel the purchase within two days).

B. Defences

Besides any defences available at common law, there are defences in the Act for issuers and their *directors* and *officers*.

An issuer and its directors have a defence if the issuer used a reasonable system to ensure compliance with the Act and Rules and a reasonable process for monitoring the effectiveness of that system (Act, s. 109).

There is also a due diligence defence available to all defendants for *misrepresentation* claims (Act, s. 110). To claim this defence, defendants have to show that after reasonable investigation at the time of the misrepresentation, they had no reasonable grounds to believe there was a misrepresentation. A similar due diligence defence is also available where there has been a failure to disclose (Act, s. 111).

Where the action is for misrepresentation or failure to disclose *material information*, an issuer, its directors and officers may rely on a confidential filing defence if the procedure described in Part III, Section B-4 of this Guide was followed and other conditions were met.

Other defences of interest to issuers include:

- Where there is a misrepresentation in a document, the defendant did not consent to disclosing or filing the document, did not know or have reasonable grounds to believe that it would be disclosed or filed, and objected in writing when it was made publicly available (Act, s. 115).

- Where the action is for a misrepresentation, the defendant was reasonably relying on disclosure by another issuer or a public official (Act, s. 118).

- Where the action is for a misrepresentation in forward-looking information, the required cautions were included and there was a reasonable basis for the information (Act, s. 117). Part III, Section C of this Guide contains more information about this defence and forward-looking information generally.

- Where the action is for misrepresentation based on an expert's opinion or report, the expert consented to the use of the report and other conditions are met (Act, s. 114).

C. Protections for Defendants

There are also protections for defendants. Two of these protections – court approval to commence an action and court approval of any proposed settlement – are intended to discourage strike suits (Act, ss. 119 and 120).

The legislation also limits the damages payable by issuers and individual defendants (unless they acted knowingly or were reckless or willfully blind) (Act, s. 121; Rules, s. 167).

VIII. Foreign Issuers

In British Columbia there are exemptions for certain *foreign issuers*, their securityholders and those making a takeover bid for or soliciting proxies from securityholders of a foreign issuer. These exemptions are contained in BC Instrument 71-502 *Exemptions for Foreign Market Participants*.

A foreign issuer is an issuer whose *principal market* is outside Canada or is based in a jurisdiction outside Canada (BCI 71-502, s. 1). In determining whether an issuer is based outside Canada, you may wish to consider:

- whether the issuer's head office is located, or its *directors* and key *officers* reside, outside Canada (the "mind and management" test), or
- whether the issuer's business is administered from and its operations are conducted outside Canada.

For these issuers, the principal market is the jurisdiction whose *marketplace* accounts for the largest annual trading volume in the issuer's securities, averaged over its last two financial years.

A. Exempt Foreign Issuers

Offerings and continuous disclosure

An *exempt foreign issuer* is a *public issuer* who is a foreign issuer subject to the laws of a *designated foreign jurisdiction* (the UK, Australia, or the US if listed on the NYSE, AMEX or NASDAQ) (BCI 71-502, s. 1). These issuers can use the documents they prepare under those laws to comply with all requirements under Parts 4 (Offerings) and 5 (Continuous Disclosure) of the legislation. (They will also comply with British Columbia Part 4 requirements if they comply with the laws of another province.) If the Commission is the principal regulator for an offering that is made elsewhere in Canada, the relief from Part 4 is not available (BCI 71-502, s. 5(2)).

Accounting principles and auditing standards

Exempt foreign issuers do not have to apply Canadian accounting principles, auditing standards or auditor qualification requirements, if they comply with the corresponding requirements of their designated foreign jurisdiction (BCI 71-502, s. 5(4)).

Corporate governance

Exempt foreign issuers are exempt from British Columbia rules relating to corporate governance if they comply with the corresponding requirements of their designated foreign jurisdiction (BCI 71-502, s. 5(5)).

Notice of reliance

If you wish to rely on these exemptions, you must file a notice stating this (BCI 71-502, s. 13(1)). You can find the required form of notice, Form 71-502F7 *Notice by Foreign Issuer of Intention to Rely on BC Instrument 71-502*, on the Commission website at www.bcsc.bc.ca.

You must submit to British Columbia's jurisdiction and appoint an agent with an address in British Columbia as your agent for service of any process for any proceeding under the Act or relating to the issuer's securities (BCI 71-502, s. 13(2)). The required form of notice includes wording for this purpose.

B. Limited Connection Foreign Issuers

A *limited connection foreign issuer* is an issuer that is based outside Canada, or whose principal market is outside Canada, and that has less than 10% of its equity securities owned by Canadian residents (BCI 71-502, s. 1).

In determining the percentage of securities owned by Canadian residents, an issuer should:

- use reasonable efforts to identify securities held by a broker, *dealer*, bank, trust company or nominee or any of them for the accounts of Canadian resident customers,
- count securities beneficially owned by residents of Canada as reported on reports of beneficial ownership, including insider reports, and
- assume that a customer is a resident of the jurisdiction in which the nominee has its principal place of business if, after reasonable inquiry, information regarding the jurisdiction of residence of the customer is unavailable.

Continuous disclosure

These issuers can use the documents they prepare under the laws of their relevant jurisdiction – i.e. the jurisdiction of their principal market (or, if the issuer is not traded on a market, the jurisdiction of its head office) – to satisfy all requirements under Part 5 (Continuous Disclosure) of the legislation (BCI 71-502, s. 7(2)).

Accounting principles and auditing standards

Limited connection foreign issuers do not have to apply Canadian accounting principles, auditing standards or auditor qualification requirements, if they comply with the corresponding requirements of their relevant jurisdiction (BCI 71-502, s. 7(3)).

Corporate governance

Limited connection foreign issuers are exempt from British Columbia rules relating to corporate governance if they comply with the corresponding requirements of their relevant jurisdiction (BCI 71-502, s. 7(4)).

Notice of reliance

If you wish to rely on these exemptions, you must file a notice stating this. You can find the required form of notice, Form 71-502F7 *Notice by Foreign Issuer of Intention to Rely on BC Instrument 71-502*, on the Commission website at www.bcsc.bc.ca (BCI 71-502, s. 13(1)).

If these issuers rely on the exemptions available to foreign issuers, they cannot use the CMA exemption (available for *public issuer*s in section 18(3) of the Act) (Rules, s. 119). They can use any other exemption available for issuers in British Columbia or can file a prospectus to offer securities in British Columbia.

C. Canadian-Based Issuers Using Foreign Issuer Exemptions

Under the legislation, a Canadian-based *public issuer* may use the exemptions for certain *foreign issuers* (BCI 71-502, s. 1) if its principal market is outside Canada. An issuer is based in Canada if its mind or management or business and operations are here.

For these issuers, the principal market is outside Canada only if the foreign *marketplace* had more than 60% of the issuer's annual trading volume over each of its past two financial years. Otherwise the issuer's principal market is the Canadian marketplace where its securities trade.

D. Conditions for Using the Foreign Issuer Exemptions

Issuers who use these exemptions must comply with various requirements, including the following:

- They must apply the laws in the foreign jurisdiction for the benefit of British Columbia securityholders as if those securityholders were residents of the foreign jurisdiction (e.g. BCI 71-502, s. 5(1)). For this purpose, these securities laws include the requirements of any *marketplace* that the issuer is subject to in that jurisdiction.

- They must file any offering documents sent to British Columbia purchasers (BCI 71-502, s. 5(1)(c)).

- They must file either the continuous disclosure document or a notice in the required form on SEDAR explaining where investors will find their continuous disclosure materials (you can find the required form of notice, Form 71-502F3 *Notice by Foreign Issuer – Continuous Disclosure*, on the Commission website at www.bcsc.bc.ca.). (See BCI 71-502, s. 5(3)(b) and other similar provisions.)

All foreign *public issuers* and their *directors* and *officers* are subject to civil liability in British Columbia based on British Columbia rules, like any other public issuer.

An exempt foreign issuer or limited connection foreign issuer that does any of the following must file a notice stating that (BCI 71-502, s. 14):

- Changes its name
- Changes its foreign issuer category
- Changes its designated foreign jurisdiction (exempt foreign issuers only)
- Changes its relevant jurisdiction (limited connection foreign issuers only)
- Ceases to rely on the foreign issuer exemptions

There are no exemptions specifically for any foreign issuers that are not described above. These issuers must comply with the legislation, rely on an exemption available to all issuers or apply for discretionary relief.

E. Additional Filing Requirements

If an exempt foreign issuer or a limited connection foreign issuer that is a *public issuer* sends a document to its securityholders or files a document with a *marketplace*, *regulatory organization*, government agency, or other entity that regulates trading in securities or administers or enforces securities laws, that contains *material information* not already filed with the Commission, it must file the document with the Commission**.** Alternatively, the issuer may file a notice indicating that the document is available on the Internet, with instructions on how to locate it. The requirements for this filing are set out in sections 11 and 12 of BCI 71-502.

F. Takeover Bids

A person making a takeover bid for an exempt foreign issuer or a limited connection foreign issuer does not have to comply with British Columbia takeover bid requirements if it:

- follows the laws of the foreign jurisdiction,

- files a notice in the required form and the foreign takeover bid documents (or, if the documents are on the Internet, a document explaining how to access them) (BCI 71-502, ss. 5(7) and 7(6)). (You can find the required form of notice, Form 71-502F4 *Notice by Person Making Takeover Bid for Foreign Issuer*, on the Commission website at www.bcsc.bc.ca. There is no required form for the document explaining how to access bid documents on the Internet.), and

- applies the foreign laws for the benefit of investors resident in British Columbia as if they were residents of the foreign jurisdiction.

G. Proxy Solicitation

A person soliciting proxies from the securityholders of an exempt foreign issuer or limited connection foreign issuer does not have to comply with British Columbia proxy solicitation requirements if it:

- follows the laws of the foreign jurisdiction,

- files a notice in the required form and the foreign proxy solicitation documents (or, if the documents are on the Internet, a document explaining how to access them) (BCI 71-502, ss. 5(8) and 7(7)). (You can find the required form of notice, Form 71-502F5 *Notice by Person Soliciting Proxies from Securityholders of Foreign Issuer*, on the Commission website at www.bcsc.bc.ca. There is no required form for the document explaining how to access documents on the Internet.), and

- applies the foreign laws for the benefit of investors in British Columbia as if they were residents of the foreign jurisdiction.

H. Insider Reporting

A securityholder of an exempt foreign issuer does not have to comply with British Columbia insider reporting requirements if the securityholder complies with the corresponding requirements in the issuer's designated foreign jurisdiction (BCI 71-502, ss. 5(6) and 7(5)).

I. Sending Documents to Canadian Securityholders

Foreign issuers who wish to communicate with their securityholders should be aware that, in order to reach the beneficial owners of their securities, they will need to pay the fees of intermediaries and depositaries. We refer you to National Instrument 54-101 *Communication with Beneficial Owners of Securities of a Reporting Issuer.*

J. Language

If a document that is filed under a foreign issuer exemption is not in English, it must be accompanied by an English translation (BCI 71-502, s. 10).

IX. Leaving the System

If you have 50 or fewer security holders (both debt and equity), not including current or former employees, and your securities are not traded through a *marketplace*, you may surrender your *public issuer* status by filing a notice (Rules, s. 155). The notice must state your intention to cease to be a public issuer and include the date that that will occur.

You may file the notice by fax. The fax number is listed in the "Contact" section of the Commission's website (www.bcsc.bc.ca). We will acknowledge receipt of the notice. The acknowledgement is proof that you have filed the notice. If you do not receive an acknowledgement, you should telephone us. The telephone number is also listed in the "Contact" section of our website.

If you do not fit these criteria but wish to surrender your public issuer status, you can apply to be designated not to be a public issuer (Act, s. 152(1)). This application must include reasons why the issuer should no longer be a public issuer.