

BACKGROUNDER
THE NEW BRITISH COLUMBIA *SECURITIES ACT*
SBC 2004 c 43

The Legislature of British Columbia passed a new *Securities Act* in May 2004 to implement a new approach to securities regulation. Together with the more detailed rules to be issued by the British Columbia Securities Commission and new guidebooks for those whose activities it will govern, the new Act demonstrates how streamlined and simplified securities laws can strengthen investor protection while imposing the minimum burden necessary on business.

When it is brought into force, likely in November 2004, the new legislation will replace the existing *Securities Act*, rules and policies with a streamlined and simplified rulebook for the securities market. It moves away from an outmoded system of regulation based on an excessive volume of detailed, prescriptive rules toward a responsive and flexible, results-based system.

Streamlined regulation: better investor protection at lower cost

The new legislation was built through a zero-based review of regulatory requirements. The system it is designed to replace imposes costs on public companies and securities firms that are higher than necessary and, in some cases, exceed the benefits in investor protection. Since investors ultimately bear the cost of regulation, we have crafted a system that will provide better protection at lower cost.

The new legislation looks different from the current law because it is updated, simplified, and written in plain language. However, it is founded on the same fundamental principles that underlie our laws today. Issuers must disclose material information to investors. Dealers and advisers must maintain adequate capital, have appropriate education, and comply with rigorous standards of business conduct.

There are four kinds of changes:

1. Obsolete or redundant requirements eliminated
2. Requirements recrafted to better achieve their purposes
3. Requirements simplified and put in plain language
4. Some new requirements added to fill existing gaps

The system is designed so that issuers and registrants can read and understand the regulatory requirements and, in many cases, use their own judgment and experience in determining how to comply. Securities markets and regulation are complex, so market participants will still need to get professional advice, but that should not be necessary for routine compliance matters. By keeping the rules as simple as possible, writing them in plain language, and providing accessible guidance and comprehensive industry education programs for market participants, we can enable market participants to understand what is expected of them and we can hold them to high standards of disclosure and conduct, providing better protection for investors and market integrity.

Modernized requirements for today's market

The new legislation incorporates some significant changes to key elements of securities regulation, many of which were designed in the 1930s, to fit the needs of today's markets and investors. The new legislation will:

- Replace the outdated prospectus disclosure system for public companies with a streamlined public offering process based on a requirement to disclose all material information at all times.
- Retain private placement exemptions, eliminating hold periods for public companies that provide full continuous disclosure and keeping restrictions on trading securities of non-public companies.
- Put investors in public companies on an equal footing, whether they buy their securities from the company in a public offering or private placement, or buy them in the market from other investors.
- Replace a large number of detailed rules about behaviour with an outcomes-based Code of Conduct for securities dealers and advisers and their representatives.
- Give investors the right to sue companies that make misrepresentations in offering documents, or in their ongoing material information disclosure, while providing companies with a shield against abusive litigation.
- Increase enforcement powers and penalties to provide stronger deterrence against misconduct and give the regulator more tools to act decisively against those who engage in illegal market activity.

The following sections describe the major changes to regulation in more detail.

Enforcement

The new legislation maintains prohibitions against misrepresentation, fraud, market manipulation, unfair practices, and unregistered trading and broadens prohibitions against trading on inside information and front running. Anyone who contravenes these prohibitions will be exposed to administrative and criminal sanctions, which are strengthened as follows:

- The Commission will have broader powers to ban market participants from the markets and order disgorgement.
- The maximum administrative penalty that the Commission may order is increased to \$1 million per contravention of the legislation.
- The maximum fine that a court may order for an offence under the legislation is increased to \$3 million, and the court may also make restitution and disgorgement orders against a person who commits an offence. Higher penalties apply in insider trading and fraud cases.
- Anyone who believes another person has contravened the legislation can ask the Commission to hold a hearing in the matter.

Enhanced Investor Protection, Including New Remedies

The new legislation preserves the remedies in the current legislation and adopts new ones. For example, investors under the new legislation can sue market participants for damages caused by:

- a) misrepresentation by a company in offering or bid documents and in the company's continuous disclosure, or in oral statements by company officials
- b) failure to disclose material changes
- c) illegal insider trading
- d) front running, that is profiting by trading ahead of client orders to buy or sell securities

Defences for Market Participants

To protect against unreasonable or abusive litigation, the new legislation provides clear defences and procedural protections for defendants, and limits on the damages that can be awarded to investors. For example, a company with a reasonable system of ensuring compliance with disclosure requirements, which includes a process for monitoring the effectiveness of the system, has a clear defence available to its directors. This new system of liability for securities law violations establishes a balance between providing a fair and meaningful remedy for aggrieved investors and preventing unfair exposure to liability for persons who act responsibly.

Continuous Market Access

The new legislation will introduce a new system of capital-raising that takes advantage of Canada's high disclosure standards and eliminates the need for an issuer to file a prospectus after its initial public offering. Modern laws and technology have rendered this traditional "snapshot-in-time" document redundant, as investors using the internet are now able to access public companies' continually-updated material disclosure whenever they choose.

Under Continuous Market Access (CMA), a new issuer enters the system by filing a prospectus. It must then begin filing continuous disclosure information, including an annual information form (AIF), annual and quarterly financial statements with management discussion and analysis, and timely news releases to disclose any new material information. Since all material information about the issuer is then available to investors all the time, the issuer can raise subsequent capital simply by issuing a news release setting out material information about its securities offering. Any offering document the issuer chooses to provide to investors forms part of its public record. All the issuer's disclosure is subject to the general prohibitions against misrepresentation and fraud.

CMA puts all investors on the same footing, whether they buy from the issuer or in the secondary market. It brings the public offering system into the 21st century by enabling issuers to access the public markets faster and at a lower cost. There is no longer any need for the complex system of prospectus exemptions and resale restrictions for public issuers.

The Commission's regulatory impact analysis of CMA shows that public companies could cut their time to market, and their costs, by as much as half. This would free them to focus on raising capital and operating their businesses rather than producing documents that are seldom read. Investors benefit from better disclosure and improved performance from companies less burdened by regulatory delays and costs.

Code of Conduct

A new Code of Conduct for securities dealers and advisers will replace many intricate rules about behaviour with 25 rules, organized under eight principles. These rules will compel firms and their representatives to focus on the purpose of, and reasons behind, our regulatory standards. In a market that moves faster than rules can be revised, a code of conduct provides a sound basis for regulators to hold industry to high standards of ethical conduct.

Under the results-based requirements of the Code, market participants will be able to comply in ways that fit the size and nature of their businesses, rather than having to adapt to detailed, "one size fits all" rules. Instead of focusing on fulfilling technical requirements and hunting for loopholes, they will have to focus on what is right for investors, clients, and markets.

Regulatory Impact

The BC Securities Commission rigorously analyzed the impact of the most significant changes in the new legislation in five studies published between October 2002 and May 2004. These studies can be found at www.bcsc.bc.ca/policy (select "Regulatory Impact Analyses") and are described below.

1. *Better Disclosure, Lower Costs* examines the impact of the Continuous Market Access system. It shows that it would achieve both better disclosure and lower costs for all types of companies.
2. *Strong and Efficient Investor Protection* examines the regulatory impact of the Code of Conduct for dealers and advisers. It shows that strong and efficient investor protection would result from emphasizing outcomes that help firms align their compliance focus with the interests of investors and markets.
3. *Cost Savings Under a Firm-Only Registration System* quantifies the potential savings to industry from dropping the requirement and processes for registering representatives of dealers and advisers. It shows that firm-only registration, if adopted nationally, would cut industry's internal registration costs in half. The Commission is not proceeding with the firm-only registration system at this time because of the complexities of implementing it in only one province.
4. *Investor Remedies in Securities Regulation* examines the impact of the Commission's earlier proposal to significantly broaden civil liability under the *Securities Act* to foster a culture of compliance among market participants. Based on the study, the Commission dropped some proposed new remedies either because they would not add to common law remedies already available, or because the impact on market participants could not be quantified. The study shows that the more targeted extension of liability in the new legislation provides

a meaningful deterrent without penalizing compliance-minded market participants by unduly increasing their liability risk, or imposing unnecessary costs.

5. *Enforcement of Outcomes-Based Securities Regulation* compares the enforcement actions taken under the current legislation to the corresponding provisions of the new legislation. It shows that the new legislation, compared to the current legislation, would provide an equal, if not stronger, foundation for enforcement action against misconduct.