

Implementing BC's New Securities Legislation

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This is the 4th Capital Ideas conference put on by the BC Securities Commission. Our goal is to provide a forum for discussion with market participants, businesses, and their advisers and to provide a way for you to hear first hand about important regulatory initiatives that will affect your business, and your regulatory obligations. We also hope we can answer questions that you may have about the new securities legislation generally.

This year's conference is particularly significant because we are in the home stretch of developing a new Securities Act for British Columbia. Our focus then is the Commission's new approach to regulation, what it means to your business, how we intend to continue our long-standing work within CSA, and how we believe we can provide better protection for investors and market integrity while reducing the burden on market participants.

We hope that by the end of the conference you will have a better understanding of some of the key provisions in the Securities Act and Rules, what some of the significant changes are, what we expect from you, and, how we intend to work with you to ensure you are able to comply with your regulatory obligations.

Delivering the New Approach

It is probably overstating the case somewhat to say that our approach to regulation is "new". In the last few years our objective has been to focus on important problems—those that pose a risk to investors and market integrity, and to fair, efficient and competitive markets. We have adopted a problem-solving approach to regulation that we are incorporating at all levels within the Commission, from developing our strategic plan to our daily operations

administering the legislation. We have been working towards finding practical and creative solutions to market problems, threats to investors, and novel business transactions.

Let me give you a couple of examples: in a prospectus offering, rather than reviewing the prospectus for strict adherence to completion of all line-item disclosure, our goal is to work with you to ensure that the disclosure contains the relevant information investors need to be able to make responsible investment decisions. This also means requiring the information to be presented in a way that investors can understand.

Another example is in the exemptions area. In reviewing discretionary relief applications, rather than simply saying “no” to a novel business proposal, we start out by saying, “how can we work together to achieve your business goals, while ensuring that investors and market integrity are protected?”.

We have made considerable progress in changing how we regulate, and we are committed to continuous improvement as we gain experience administering the new legislation.

For the past several months BCSC staff have been focused on a major transition effort to prepare themselves and the Commission to regulate under the new legislation. We are endeavoring to make sure our internal structure and processes are aligned to reflect our outcomes-based approach to regulation.

To help you make that same transition, we will be delivering a comprehensive series of industry education sessions starting in October. You will be hearing more about these programs today and you can register for any session through our website or by calling us directly. Please also feel free to talk to any of our staff here today.

Commission Reorganization

To support Commission staff's transition to the new approach, we recently completed an organizational change that will tie the core functions of our Legal and Market Initiatives Divisions more closely to our other regulatory activities. Rather than having LMI as a separate policy-making group, we have made Corporate Finance and Capital Markets Regulation responsible for all aspects of regulating registrants and issuers, including the review of discretionary relief applications and developing rules and policies in their respective areas. This change will provide a closer link between these functions and the front-line administration of regulatory requirements. Most importantly, it will allow us to be more responsive to the changing markets and will, I believe, further opportunities for regulatory innovation.

Working Within CSA

I want to spend some time this morning describing how BC's regulatory system will operate with the larger Canadian regulatory system, and look at how our new legislation might affect harmonization efforts with the Canadian Securities Administrators, or the CSA as it's commonly known.

In developing the new legislation, we did not lose sight of the fact that issuers and dealers operate in national markets. The new legislation is

designed to work in cooperation with the entire Canadian regulatory system. It offers uniformity in several key areas, including mining disclosure requirements, the regulation of mutual funds, and the takeover bid regime. And, as Martin Eady and Lang Evans discussed earlier this morning, the legislation also provides a system of harmonized interfaces in most other areas. These interfaces will generally prevent the legislation from imposing conflicting or duplicative filing requirements on market participants operating nationally.

We are in the process now of reviewing all of our local and national instruments to see which ones we can easily eliminate and which ones we might need to retain, to ensure a seamless system of regulation across jurisdictions.

So how will the BCSC work with CSA? In the past, some Commissions have moved ahead of others with regulatory innovations. This has sometimes been criticized as undermining harmonization efforts and cooperation, but it has often been the catalyst for change, resulting in better regulation, stronger investor protection, and simplified rules in some cases.

As with past initiatives, we will be able to share our experiences under the new legislation with our CSA colleagues. We'll be able to "road test" some of the innovative concepts that you've heard about this morning and will contribute positively to the dialogue and development of national initiatives. Experience tells us that when new ideas get tested and proven to be effective, they are eventually adopted in other jurisdictions.

Let me give you an example. Two years ago we worked with the Alberta Securities Commission to develop new rules for private placements that made it easier for companies to raise capital while giving investors better disclosure, clear risk warnings, and enhanced legal remedies. These rules were adopted last year by several other provinces in Canada. Working through a national exemptions rule, these rules will be adopted in virtually every province in Canada within the next year.

We've successfully worked with CSA over the years to introduce one-stop shopping under the Mutual Reliance Review System. We plan to build on this success by continuing to participate in improving that system for prospectuses and discretionary relief applications. We are also currently working with CSA on a National Registration System, also based on the principles of mutual reliance. I can say with confidence today that there will be no negative impacts to the MRRS system.

Last year the BCSC participated in 20 or more CSA projects, while at the same time developing the new BC legislation. We will continue working closely with our CSA colleagues to further streamline and harmonize rules. In the process, we will have the benefit of our experience under the new legislation to contribute to that process.

As you may know, the Alberta Securities Commission is leading an initiative to harmonize legislation through the Uniform Securities Legislation Project. We participated actively in that project last year and we will continue to contribute to its development. In fact, we are currently

working with CSA to respond to comments on the draft Uniform Act published late last year.

Before I give Doug the last word this morning, I want to briefly let you know about some of the regulatory initiatives being worked on by CSA.

National Exemptions Rule

First, the national exemptions rule. We are working diligently with CSA to develop a rule that will largely harmonize statutory exemptions across jurisdictions. In the process, we have been able to bring to the discussion table benefits identified in a BCSC study done in developing the new legislation. These are some of the exemptions that Martin Eady referred to earlier in our discussions. This rule will incorporate the exemptions for private placements, otherwise known as the capital-raising exemptions rule.

One of the criticisms of having different exemptions scattered in various provincial securities acts is the inconsistent interpretation and application of those exemptions. These inconsistencies should largely fall away under the rule, since the primary goal of the project is to harmonize the exemptions. I know there are a lot of legal practitioners here today, and I know that you've had to deal with the unenviable task of hunting through various securities acts to find corresponding exemptions to produce a table of concordance. For the most part, exemptions will now be contained in one rule, although some local exemptions may still be preserved, either to reflect regional interests or, in some cases, because of limited rule-making authority. We expect CSA to publish that national rule this fall.

National Registration System

The other system we are working on is the National Registration System. We're developing rules to implement a national registration system for firms and their representatives. NRS, as it will become known to you, is a mutual reliance system for registration, building upon the same principles of mutual reliance that we have for prospectuses and discretionary relief applications.

NRS provides a framework for registering firms and individuals in more than one jurisdiction. In response to market participants, it will eliminate duplicate filings and overlapping regulatory reviews and, we hope, the related frustrations. Whether you are a firm or an individual, you will file only one application with your home jurisdiction, and you will deal with only one commission to obtain registration in all jurisdictions where you are seeking to be registered. I think you will find that the process will be much more streamlined.

While the BCSC will participate in the processes established by the NRS system, I want to point out that we have already begun to speed up our registration process without compromising our review standards. As an example, we have streamlined investment counsel, portfolio manager and mutual fund dealer applications for firms that are registered in good standing with other Canadian jurisdictions. This is another way in which here in BC we've already started on the path to applying new approaches to securities regulation.

As we prepare to implement the new legislation, we will continue to work on other important regulatory projects, all with a view to improving Canada's system of securities regulation—one that protects investors and the integrity of our markets, while at the same time enhancing the effectiveness and competitiveness of business in B.C.