

**Summary of Public Comments on  
Proposed Securities Rules, BC Instrument 61-502 *Takeover Bids and Issuer Bids* and  
BC Instrument 81-509 *Mutual Fund Requirements***

**Summary of Comments**

**Part I Background**

On June 21, 2004, the Commission published for comments the rules and other instruments necessary to implement the new Securities Act. The comment period expired on August 23, 2004. The Commission received submissions from the 38 commenters listed at the end of this table.

The Commission has considered the comments received and thanks all commenters.

The questions contained in BC Notice 2004/31 and the comments received in response to them are summarized below. The item numbers below correspond to the question numbers in the original Notice. Below the comments that respond to specific questions in the original Notice, we have summarized numerous other comments on the proposed rules. Some of the comments are addressed in another document on our website called 'Questions and Answers on the new British Columbia Securities Act'.

This summary of comments does not respond to comments received on BC Instrument 61-502 *Takeover bids and issuer bids*. Those comments apply equally to the current regime in B.C. and elsewhere in Canada. The revisions required to address the concerns would result in non-harmonized requirements for takeover bids and issuer bids in BC. These comments will be forwarded to the appropriate CSA committee.

The section references in this summary are to the sections in the rules and other instruments as published for comment.

	Comments	Responses
	<b>Comments in response to questions in the original Notice</b>	
	<b><i>Question 1: What will be the expected impact, if any, of the increased threshold from \$97,000 to \$150,000 on capital raising?</i></b>	
	Three commenters opposed the increase in the threshold. They noted that the higher threshold results in investors reaching beyond their financial capability in a desire to participate and reduces the opportunity for investors to diversify their holdings, increasing investment risk. It also deprives investors of an opportunity to invest.	We retained the increased threshold for this exemption because it is intended to reflect sophistication on the part of the investor. The amount required has not increased since the exemption was implemented many years ago. Also this is consistent with the threshold in many Canadian jurisdictions.  The commenters' concerns can be addressed by using other available exemptions that do not have minimum acquisition limits, such as the offering memorandum exemption or the accredited investor exemption.
	<b><i>Question 2: Is the offering memorandum exemption still needed for private placements of non-public mutual funds, given the pooled fund exemption, accredited investor exemption and other exemptions that are available to them?</i></b>	
	Four commenters supported allowing mutual funds to continue to use the offering memorandum exemption. They noted that time and resources had been spent to build the business operations to use this exemption and in some cases, there were no other exemptions available.	We retained this exemption for mutual funds given the negative impact on specific business operations, the fact the exemption is available in some other jurisdictions and the lack of problems with use of the exemption.
	<b><i>Question 3: Is there any reason to have a different threshold for number of members in the case of cooperative associations compared to number of securityholders for a private issuer?</i></b>	
	One commenter that represented the cooperative sector thought that there were good reasons to have a different threshold and opposed the decrease from 150 to 50 members.	The exemption for cooperatives retains the 150 member threshold currently imposed in BCI 45-502 as requested by the commenter. There is a rationale to treat cooperatives differently than other issuers and the current higher limit have not caused problems.
	<b><i>Question 4: Is there any reason to retain the exemption for takeover bids made through the facilities of an exchange?</i></b>	
	One commenter noted that the TSX was repealing its rules on take over bids.	The exemption has been eliminated.

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	<i>Question 5: The proposed rules contain a new requirement for dealers and advisers to keep for three years written communications, either received or sent, that relate to the business and relationship with the client for 3 years. These are based on current SEC requirements, which are useful in dealing with cases of alleged misconduct by firms and representatives. What are the compliance implications associated with the new requirement for dealers and advisers to keep for three years written communications, either received or sent, that relate to the business and relationship with the client?</i>	
	One commenter noted that they keep records longer than the period required under the rules. Another commenter requested that we consider limiting the communications that must be kept to material communications because ‘any written communication’ was overly broad.	We revised the requirement to ensure that only those records about the firm’s business with clients and its relationship with clients would be required to be kept.

#### Comments on Securities Rules

Section in published draft	Issues	Comments	Responses
4	<i>Excluded securities</i>	One commenter that represented credit unions raised concerns about excluding credit union shares from the definition of security. They were particularly concerned about the impact of the <i>Business Practices and Consumer Protection Act</i> on credit unions, which have capital requirements.	As a result of these comments, we removed the reference to securities of a credit union being excluded from the definition of security. Instead we broadened the registration and prospectus exemption for credit union securities to reflect the regulation by FICOM and the disclosure required under the incorporating legislation.
15	<i>Independence</i>	One commenter requested a bright line test for independence and expressed concern that the test based on “reasonable person” would invite litigation.  Another commenter preferred BC’s more flexible approach over the approach in other CSA jurisdictions and urged the Commission to influence CSA towards a more flexible approach.	We did not move to a bright line test for independence. The reasonable person standard is used in numerous places throughout the legislation. We do not anticipate litigation to result but, if it did, the courts are very familiar with dealing with that standard.
17	<i>Responsibilities of Audit Committee</i>	One commenter suggested using “disagreements with management” rather than “contentious issues”. The term “disagreement” is well established in the CICA Handbook and in other documents dealing with communications between audit committees and auditors.	Text was changed to reflect standard industry terminology.
30	<i>Firms’ Obligations to</i>	One commenter was concerned that the proposed information sharing regime amongst firms may prove to be burdensome on an	The Commission views the full exchange of information about representatives to be critical to the proper functioning of the

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	<i>Share Information</i>	<p>ongoing basis. They also noted that there was not enough certainly what standard of disclosure will be provided by firms to fulfill this duty.</p> <p>Two commenters were concerned that there were practical difficulties with this requirement. How would a firm communicate a request without tipping off the current employer that the person is considering leaving?</p> <p>One commenter suggested that we consider making information available to the public like is done in the US about an individual's education, industry experience, and other relevant background information (including past regulatory infractions). Firms are also able to conduct pre-hiring searches on a NASD database containing current and historical registrant related information.</p>	<p>securities industry. This why the information sharing provisions and the code focus on hiring practices. Additional information has been added to the dealer/adviser guide to assist firms in meeting this obligation.</p> <p>This concern is not unique to the securities industry and is faced by most employees/potential new employers even without this obligation. Most employers perform a reference check with the current or most recent employer, immediately before finalizing an offer of employment. Where there is a sensitivity about contacting the previous employer before an offer is made, it is common practice to contact the previous employer only after a conditional offer of employment is made.</p> <p>We are unable right now to make the changes necessary to our website or to create a database to respond to this comment. We will consider this request in the future.</p>
32	<i>Code of Conduct – General</i>	<p>Two commenters suggested adding an interface exemption for the Code otherwise an entirely separate compliance regime would have to be set up to satisfy BC requirements.</p> <p>One commenter suggested that we replace the code with that proposed by the Joint Forum in February, 2004. They also asked that we consider adding a provision that the interests of clients are paramount to all other conditions.</p>	<p>We did not add an interface exemption, but compliance systems for the requirements of other provinces and of self-regulatory organizations will, with some exceptions, be sufficient for compliance with the Code. Firms will have to meet higher standards for managing conflicts of interest, disclosing provided to clients, hiring practices and communicating with clients in plain language. We think it is good policy to require compliance with these higher standards and informal responses from the IDA and other industry representatives support this view.</p> <p>In drafting the code, we looked at many of the codes in existence. The Joint Forum code covers a subset of relationships covered by our code so is not sufficient for our purposes. There is a principle requiring the interests of clients to be put first (Principle 1).</p>
59	<i>Trade for \$150,000</i>	<p>One commenter suggested that we limit the distribution of hedge funds based on the proficiency of the planner coupled with full disclosure to the investor of the risks and advantages of hedge funds.</p>	<p>We do not regulate planners and we are not at this time aware of problems with the distribution of hedge funds under this exemption.</p>
67	<i>Trade in</i>	<p>One commenter noted that this exemption should permit trades to</p>	<p>Given the disclosure available to investors, the exemption has</p>

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	<i>investment share of credit union</i>	non-members of a credit union as the <i>Credit Union Incorporation Act</i> requires disclosure to be filed and delivered to investors.	been expanded to permit trades of any security of a credit union to both members and non-members.
	<i>Exemption for index linked deposits not in draft rules</i>	One commenter raised concerns about the status of index-linked deposits in the new regime.	Index-linked deposits have the same status under the new legislation as the current legislation, with one exception. The exemption for trades in institutional financial derivatives has been broadened to cover any derivatives trading by financial institutions and registered dealers unless the derivative being traded is also a security under another branch of the definition of security. This broadened derivatives exemption should address the commenter’s concerns.
	<i>Exemption for solely incidental activities not in draft rules (definition of “adviser” in Act)</i>	One commenter requested that we include an advising exemption for lawyers because it would appear that they are caught by the definition when providing legal services to their clients. Other commenters requested a similar exemption for financial institutions when the advice provided is solely incidental to their principal business.	We did not add the exemptions because persons in the business of providing legal, accounting, or other advice related to but not directly about trading do not fall within this definition. An adviser provides advice on trading, not the law, accounting practice, or some other discipline. This is clarified in guidance.
91	<i>Offering exemption – other jurisdictions and other interface exemptions</i>	One commenter expressed concerns that the interface exemptions would not work as intended at the operational level. Another applauded the interface exemptions because they help to ensure the simplification of the BC requirements does not add to the overall complexity faced by those subject to securities regulation in multiple Canadian jurisdictions.	<p>We have reviewed the interface exemptions and are confident they will work as intended. We have made clear in guidance that if a market participant makes a good faith effort to comply with home jurisdiction requirements, Commission staff are unlikely to bring forward an enforcement case. On the civil remedies side, a plaintiff must prove both causation and damages and is entitled to a number of protections against abusive litigation. These provisions should protect against lawsuits based on inadvertent non-compliance.</p> <p>If problems develop in practice, we can provide blanket relief and ultimately amend the rules.</p>
115	<i>Technical report under NI 43-101</i>	Two commenters raised substantive concerns about the technical report requirements in the legislation. One argued the requirement was redundant given the requirements in NI 43-101 and that independence should not be required if not required under NI 43-101. The other pointed out that a report and independence is not required if an issuer is raising money under an offering memorandum under NI 45-103 unless the OM disclosed work would be done on the property.	<p>This provision has been substantially revised to address the comments:</p> <ol style="list-style-type: none"> <li>1. The provision no longer refers to independence. NI 43-101 sets out when independence is required, which for an offering memorandum is if resources or reserves are reported for the first time or increase by more than 100%.</li> <li>2. A technical report is only required if the issuer has disclosed that it intends to spend money on a material property.</li> </ol>

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			These changes make the requirements for a CMA offering more consistent with an OM offering under MI 45-103.
116	<i>Report of offering</i>	Another commenter noted the reference to a news release for a CMA offering under section 115 and the requirement for a report under 116. This commenter suggested the news release for a CMA offering should be mandatory.	We have not mandated a news release for CMA offerings. CMA may be used for a wide variety of offerings, some large, and others very small. The Issuer's Guide makes it clear that virtually all public offerings and most non-public offerings will be material and thus require a news release.
142	<i>Plain language</i>	<p>Three commenters expressed concern about the plain language requirements in the legislation. One suggested keeping existing terms like "offering" and "public issuer" and existing drafting of exemptions was preferable. Another suggested that having a plain language requirement would mean that issuers would need to prepare two different styles of document.</p> <p>A third supported requiring plain language but indicated we needed to include an objective test.</p>	<p>The requirement for industry to communicate in plain language to their clients and investors is an important part of the improved investor protection of the new legislation. We have attempted to write the rules and guidance in plain language. Retaining the current provisions, particularly in the exemption area, would not be conducive to plain language drafting. Plain language in our Act and rules will make it easier for market participants to understand their basic obligations and therefore comply.</p> <p>The issuer's guide recognizes that it may be difficult for issuers to comply with form requirements elsewhere and use plain language. The guide indicates that issuers will not be forced to re-write documents or use more than one style of required document.</p> <p>In response to the concerns of the commenters, particularly the need for an objective test, we have added a new section (s. 8) that sets out the standard expected for plain language. It reads:</p> <p>For the purpose of these rules, a record is in plain language if its form, style, and language enable an ordinary investor or client, applying reasonable effort, to understand it.</p>
Division C, Part 5	<i>Insider Reporting</i>	One commenter suggested that insider trading provisions should not apply to negotiated derivative transactions.	There is no need to exclude derivatives from the insider trading requirements of the Act. The existing defences to insider trading address the specific issues the commenter raised.
148	<i>Issuer list of insiders</i>	One commenter pointed out that the requirement to file a list of insiders was a unique BC requirement. They noted that amendments to NI 55-101 will, when adopted, require insiders to	We have revised the provision to respond to these comments: 1. Issuers will need only to maintain a list rather than to file a

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		<p>keep a list of those insiders that are exempt and those that are not exempt. Alternatively, issuers under NI 55-101 can submit an undertaking to provide a list on request.</p> <p>Another commenter noted the unique requirement and suggested an interface should be provided.</p>	<p>list annually. Issuers will be required to provide the list during a compliance review or in response to a production or investigation order.</p> <p>2. Issuers that comply with designated requirements in another Canadian jurisdiction (NI 55-101 as amended) will be exempted from this requirement.</p>
152	<i>Personal information of directors and officers</i>	One commenter indicated that the requirement to provide a personal information form would subject issuers to differing requirements in BC than in other jurisdictions. They also pointed out that NI 44-101 requires issuers to file a personal information form with an annual information form. They suggested providing an interface for issuers complying with that requirement.	The provision already included an interface in that issuers could file here what they file with their exchange. Both TSE and TSXV require personal information forms from directors and officers. For those issuers that comply with NI 44-101 and are not listed on a Canadian exchange, we will provide an interface through a blanket exemption order.
158	<i>Exemption for trading to qualified party</i>	One commenter raised concerns about the \$25 million net asset limit in 158(f) compared to the \$5 million net asset limit for corporations under the accredited investor definition.	As a result of this comment and further internal consideration, the tests for qualified party have been amended. Qualified party now includes both individuals and other persons with net assets of \$5 million. This makes the dollar thresholds consistent with equivalent dollar thresholds under the accredited investor definition.
160	<i>Exemption for institutional financial derivatives</i>	Two commenters raised concerns that the limits contained in the definition of institutional financial derivative were very restrictive and did not recognize the normal commercial practice of financial institutions in the derivative area. The commenters also noted that the derivative business conducted by financial institutions is constantly changing and that any attempt to provide an exhaustive list of exempted derivatives was bound to fail. One commenter also noted that the list was redundant in some places and out of date.	In response to these comments, we have broadened the exemption for institutional financial derivatives. The exemption now applies to any trades between financial institutions and registered dealers on the one hand and their clients or customers on the other. Only if the OTC derivative involves a security otherwise captured by the definition of security is the exemption not available. This more open approach recognizes the rapidly changing nature of the derivatives market and limits Commission regulation to more traditional securities that may also be derivatives.
167	<i>Limits on Liability</i>	One commenter noted that the liability limits for experts, which is the greater of 1 million and the amount the expert received, was substantially higher than that for directors, officers, significant security holders, fund managers and offerors, which is \$25,000 or 50% of total compensation received.	These amounts are equivalent to those in the November 2000 CSA proposal and Ontario Bill 198. However, we changed the cap to remove the \$1 million limit leaving the only limit as the amount the expert and its affiliates received from the issuer and its affiliates in the last year. This recognizes the devastating effect an award of \$1 million could have on an expert that is a small operation or even a one person shop while retaining a liability cap that should still provide significant deterrence value.
Code – s. 4	<i>Integrity and</i>	Three commenters had concerns about this principle. One	We revised the principle to address these concerns. Instead of

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	<i>Fairness</i>	commenter was concerned that the imposition of the obligations under this principle were overreaching and will require firms to adopt costly and complex compliance measures to ensure that a sufficient level of background ‘due diligence’ is conducted with respect to each client’s trades. Another commenter noted that the onus to take all reasonable steps may be difficult to discharge.	requiring ‘all reasonable steps’ to be taken, the principle prohibits facilitating conduct that could bring the reputation of the securities market into disrepute or threaten the integrity of the securities market.
Code – s. 10	<i>Confidentiality</i>	<p>One commenter suggested that information that is in the public domain be excluded from this obligation.</p> <p>One commenter noted that it should be made clear that representatives must disclose the referenced information to their dealers.</p>	<p>We agree and have revised this obligation to ensure that all non-confidential information is excluded.</p> <p>This is an issue that firms should be addressing directly with their representatives through employment contracts if necessary.</p>
Code – s. 19	<i>Compliance systems</i>	One commenter thought that ‘ensure compliance’ was too high a duty to impose on a firm. One suggested saying ‘designed to ensure compliance’.	We did not revise this principle because it is consistent with current section 65 of the Rules that applies to compliance officers today.
	<i>Independent Owner Operator</i>	One commenter requested that sufficient flexibility be built into the regulatory regime for independent owner operators (IOOs). The commenter also requested that IOOs not be required to be a member of a self regulatory organization	We will be developing the proposal for IOOs and publishing it for comment in the first half of 2005. An IOO would be a type of restricted dealer so that the rules applicable to an IOO would be contained in its conditions of registration. SRO membership would not be required unless SRO rules were changed to accommodate independent owner operators.
	<i>Existing exemption orders</i>	Two commenters asked whether existing discretionary orders remained in effect after the new Act.	<p>All discretionary orders under the old Act remain in effect under the new Act by operation of the Interpretation Act.</p> <p>Some orders will no longer be required as the specific requirements they exempted from have not been carried forward in the new Act. We will be issuing a notice clarifying the application of the New Act to existing exemption order.</p>

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s. 3	<i>Pooled funds</i>	One commenter questioned the need for the condition to this exemption requiring that the adviser have discretion over the account.	We have retained the condition. This exemption permits the efficient operation of pooled funds. Pooling is only permitted where discretionary trading is allowed so the condition is necessary to ensure the exemption is limited appropriately. Requiring the adviser to have discretion is the basis of this exemption, and the current equivalent exemption in BCI 45-505.
34	<i>Payments to dealers</i>	One commenter suggested that we take a prescriptive approach to the sales practices area, as the commenter believes that specific requirements are necessary and the elimination of NI 81-105 would be detrimental. Without bright line tests a firm operating only in BC will be uncertain whether its policies and procedures are sufficient.	We will provide an exemption from NI 81-105 for companies that comply with section 34. We believe that outcomes based rules are capable of being complied with.

## **Securities Rules, BCI 62-502 and BCI 81-509**

### **List of Commenters**

1. Advocis, Sara Gelgor
2. Access Law Group, Jonathon Reilly
3. Alexander Holburn Beaudin & Lang, Robert Pakrul
4. British Columbia Cooperative Association, John Restakis
5. Canadian Bankers Association, Warren Law
6. Canadian Charitable Annuity Association, Gord Nelson
7. Canadian Coalition for Good Governance, David R. Beatty
8. Canadian Council of Christian Charities, Teresa Douma
9. Canadian Listed Company Association, Bruce McLeod and Don Gordon
10. Canadian Securities Institute, Marc Flynn
11. Central Financial Corporation (1989) Ltd., Charles Milne
12. (The) Christian and Missionary Alliance of Canada, Peter Bergman
13. Christian Blind Mission International, Grace Soukup and Kelly Wilkinson
14. Clark Wilson, Bernard Pinsky
15. Credit Union Central, Charlene Loui-Ying
16. Farris, Vaughan, Wills & Murphy
17. Jeffrey Giesbrecht
18. Haywood Securities, Chris Perkins
19. Karen Horcher
20. Independent Financial Brokers
21. International Swaps and Derivatives Association, Francois Bourassa
22. (The) Investment Funds Institute of Canada (John Murray)
23. Irwin, White, Jennings, Jill McFarlane
24. Phil Knight
25. KPMG LLP, Alan Van Weelden
26. Lang Michener, Cory Kent
27. Link Charity, Harry Houtman
28. Macdonald Shymko & Company Ltd., Doug Macdonald,
29. Manulife Securities International Ltd.
30. Mutual Fund Dealers Association of Canada
31. Odlum Brown, Brooke Campbell
32. RBC Financial Group, Gary Tamura
33. Simon Romano
34. (The) Salvation Army, Patrick Corlett
35. United Church of Canada, Gary Magarrell
36. Van Arbor Asset Management Ltd., Andrew Parkinson
37. Vertex One Asset Management, Matthew Wood
38. Donald Williamson