

A New Approach to Securities Regulation

More Effective — Less Costly

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Securities regulators face challenges like never before in pursuing our mandate of protecting investors and promoting a dynamic and competitive market. The video montage you just saw highlights some of the events and forces that are shaping the markets and public attitudes toward them.

We hear constant demands from market participants, the media and even the general public for regulators to intervene with new rules and more enforcement to deal with the latest revelations of fraudulent, abusive, or unfair market conduct. As responsible regulators, we have to sift through all of this noise to figure out what we should and should not do. If we apply our regulatory powers and resources wisely, we can correct problems, deter misconduct, and support the operation of the market. If we make the wrong decisions, we can make things worse. Regulatory intervention is not always the right answer — sometimes what we don't do is more valuable than what we do.

And yet, despite the difficulties of the current market environment, regulators have never had a better opportunity to change the way we work and to deliver greater value to the investors and the public we serve.

For the past few years, the BCSC has been developing and applying a new approach to securities regulation. Our mission

hasn't changed but how we pursue it has. We will tell you a lot today about our new legislation, which we expect to have in force two months from now, but I want to emphasize that this legislation is only one part of a broader set of changes that are making securities regulation in BC more effective and less burdensome.

What we are trying to achieve

Our mission at the BCSC is to protect and promote the public interest by regulating trading in securities:

- to ensure the securities market is fair and efficient and warrants public confidence; and
- to foster a dynamic and competitive securities industry that provides investment opportunities and access to capital.

To fulfill both parts of this mission, we must protect investors from fraudulent, abusive, and unfair practices while allowing market participants to pursue their economic interests without an excessive burden of regulation.

Three years ago, the government challenged all public agencies to review their mandates and articulate visions for the future. We reviewed the market environment and the regulatory landscape and concluded that our mission remains appropriate. Despite the seismic changes in the securities markets over the past two

decades, the fundamental purpose of securities regulation is still valid.

At the same time, we set for ourselves an ambitious vision: To make British Columbia the best place in North America to invest and raise capital.

To achieve this vision, we have to do well at both aspects of our mission, protecting investors and fostering a dynamic market. That will give investors confidence that British Columbia's market is a good place to invest. That will demonstrate to businesses that British Columbia is a good place to raise capital. And that will foster a dynamic securities industry that, both directly and indirectly, provides business opportunities and jobs for British Columbians.

How we are trying to achieve it

So what are we actually doing to make this happen?

The Legislature has given the BCSC some tools to do our job. These include staffing and other resources that are funded by fees collected from market participants and statutory authority to make rules, impose penalties, and grant exemptions. These tools are powerful but they aren't unlimited, so we have to use them prudently and economically to derive the maximum value.

We have five main strategies to achieve our vision:

1. We devote our attention to the most significant threats to investors and use the best mix of regulatory tools to fix them.
2. We limit the volume of rules and make them clear and simple.
3. We foster a culture of compliance among market participants.
4. We act decisively against misconduct in the markets.
5. We educate and inform investors, companies and the investment industry about the risks, rewards, and responsibilities for those who participate in our capital markets.

This problem-oriented approach focuses on making regulation work better by having streamlined rules and using a variety of techniques to attack the threats to investors.

We use industry education, both in person and through our web site, to help market participants understand the standards of conduct set out in our legislation. We use compliance examinations to help the honest but errant to get back on the right path. We use enforcement for those who need a stronger message about the importance of compliant behaviour. And we use investor education

to help reinforce the best protection of all — an informed and skeptical public that won't fall for the schemes of the unscrupulous.

There is a natural symmetry in all of this, as we use the financial penalties from our compliance and enforcement programs to pay for investor and industry education.

The problem of complexity

One of our challenges in making regulation effective is that the complexity of our rules has, itself, become an impediment to compliance. Securities regulators in Canada and abroad have succumbed too easily to the temptation to adopt a new rule to respond to every new problem that comes along. The result is a rulebook of mind-numbing detail and complexity.

This might be justifiable if it contributed to better protection of investors and market integrity, but it doesn't. We mandate mountains of disclosure that is irrelevant to investors' decisions. In some cases, our excessively detailed and prescriptive requirements actually undermine our goals, as market participants follow the letter but not the spirit of the rules.

Why did we do this? I can assure you the adoption of all of these rules was a well-intentioned effort to make our markets work better.

Securities regulation tries to circumscribe the conduct of people who manage, in one way or another, the savings of others in a business loaded with potential conflicts of interest. When we provide guidance through high level principles or standards, those on the front lines ask for more detailed rules, so they don't have to exercise judgment in interpreting the principles.

Unfortunately, that approach puts us on a treadmill, where we have to keep adopting more and more rules to deal with the myriad of circumstances devised by the creative minds in the capital markets. For example, we have lots of detailed rules on dealer conflicts of interest, but we regularly discover some obviously egregious conduct that is not specifically prohibited. This discovery is usually followed by the appointment of a blue ribbon committee, which dutifully issues a report recommending even more rules.

We are getting off that treadmill and moving to a higher plane, by establishing some clear, simple, fundamental standards of conduct that apply to everyone in the securities business. We intend to get you to think about what is right and wrong, not what you can or can't do under the rules.

Obviously, we can't move completely away from prescriptive rules and detailed guidance. The Ten Commandments provide a good guide to ethical behaviour but we have found some elaboration is

helpful for interpretation. In some places, bright line tests, like stop signs, do help things move more smoothly. But the balance in Canadian securities regulation has shifted much too far toward prescriptive rules. We have too easily decided that a rule is the answer to every problem in the market. Sometimes we have made new rules because people weren't complying with the old rules, as if they would take the new ones more seriously.

In British Columbia, we are reversing the tide.

The new legislation

We launched a streamlining project four years ago to simplify our rules. Between June 2000 and June 2001, we reviewed all of our notices, blanket orders and local policies, eliminating more than 140 instruments and streamlining those we kept.

Three years ago, we ramped up the streamlining process by establishing a special team, under vice chair Brent Aitken, with a mandate to review all of our legislation and rules and to recommend changes. The objective was to make regulation less burdensome and more effective.

The team reviewed each of our regulatory requirements and asked:

- o what problem was it was intended to address?
- o is that still a problem needing attention?

- o if so, is a regulatory requirement still the best way to address the problem? and
- o if so, can the requirement be simplified or otherwise improved?

At a higher level, the team looked at the key elements of the regulatory system and considered whether we should make fundamental changes to bring regulation into the 21st century.

We consulted broadly, through a series of publications and focus group meetings across Canada, on the new ideas and proposals that the team developed and on the draft legislation that resulted. The outcome of that process was a new Securities Act, passed last May, and new rules, forms and guidance that we are finalizing as we speak.

We will be ready to have all of this in force by November 15 and, as you will hear later, we have a comprehensive plan for industry education to make sure that you will be ready too.

The provincial government has provided tremendous support to the BCSC throughout this process and we continue to work closely with government officials as we move toward implementation. We still need some more government approvals to actually get the legislation in force and, of course, nothing is certain in this world. I

want to emphasize though that, even if the legislation is delayed for some reason, we will be able to proceed with some of the key reforms we are talking about today through rules or orders under the current Act.

More important, the development of the new legislation has contributed to the evolution of our thinking about how to regulate effectively, and we are already incorporating that change of thinking into our day-to-day regulatory activities.

In short, the new legislation is a key element of our new approach to regulation, but the change in approach will continue with or without the new legislation.

Steve Wilson

In talking about our new approach, I want to pay tribute to the critical role of Steve Wilson, who will be retiring as executive director on October 1. Since joining us five years ago, Steve has been instrumental in transforming the BCSC into a more efficient, results-oriented organization.

Under Steve's leadership of the staff, we have developed sound and effective management systems and processes, more efficient services for industry, more timely policy responses, proactive compliance and enforcement, and stronger communications and education programs. Steve has also played a key role in CSA,

serving two years as chair of the executive directors committee and contributing significantly to the completion of our major national systems projects, SEDI and NRD, and the establishment of a CSA systems management framework.

I hope you will all join me in thanking Steve for his enormous contribution to the BCSC and BC's securities markets.

Brenda Leong

Now let me introduce our next speaker, and the moderator for the rest of the morning, Brenda Leong.

Brenda is currently the BCSC's director of Legal and Market Initiatives. In that role she has been responsible for developing regulatory policy and rules, reviewing and deciding on exemption applications, responding to legal and regulatory issues in takeover bids, and assisting market participants in understanding their regulatory obligations.

On October 1, Brenda will be assuming the position of executive director. As the chief operating officer of the BCSC, she will be responsible for directing the activities of the staff in administering and enforcing the Securities Act.

Brenda will introduce the remainder of the program and discuss steps we are taking to implement our new approach to regulation.

