

Appendix A

BC Instrument 51-509

Issuers Quoted in the U.S. Over-the-Counter Markets

Summary of comments and Commission responses

List of Commenters

1. Clark Wilson
2. Bacchus Corporate and Securities Law

Introduction

The headings and section numbers refer to the final version of the Rule. Terms in this summary that are used in the Rule have the same meaning.

1. Section 1 Definitions – “OTC issuer”

A commenter said stock exchanges outside North America should be included in the list of exchanges and quotation systems whose listed or quoted issuers are exempt from the Rule. The commenter provided us with the names of nine issuers whose securities are listed or quoted on an international exchange and the Pink Sheets but not one of the North American exchanges and quotation systems whose listed or quoted issuers are exempt from the Rule.

Response

We addressed this comment in Appendix A to our previous notice. We researched the nine issuers whose names were provided by the commenter. None of the nine issuers had any of the significant connections with British Columbia set out in the Rule for designation as a reporting issuer in British Columbia.

2. Section 2 – Reporting issuer designation

The commenters said the conditions for designation of an OTC issuer as a reporting issuer are too broad, will result in an unwarranted burden on legitimate businesses with a peripheral connection to British Columbia, and will harm investor relations companies and other British Columbia companies and individuals because OTC issuers will not do business with them.

The commenters objected to the provision introduced in the draft published with our previous notice that designated an OTC issuer as a reporting issuer if it distributed a security to a British Columbia resident before it received a ticker symbol. A commenter said that distributing one security to one British Columbia resident was not a “significant connection”. A commenter said that the Rule should apply only to shell companies that have a majority of their directors or shareholders resident in British Columbia, or a majority of their shares held by British Columbia residents.

Response

We addressed the comments in the first paragraph in Appendix A to our previous notice.

Designating an OTC issuer as a reporting issuer when it receives its ticker symbol if it has distributed securities in British Columbia is appropriate to protect British Columbia seed stock investors, without regard to whether they form a majority of the issuer's investors, for at least a year after the issuer goes public. Any bright-line formula for the number of directors, shareholders or shares held in British Columbia may be easily manipulated to avoid application of the Rule.

3. *Section 10(2) – Resale of seed stock*

A commenter pointed out that forming a shell company, taking it public on the OTC Bulletin Board and selling it in a reverse merger transaction are legal activities if the issuer discloses its status as a blank check shell company in its SEC filings. The commenter objected to the Rule's restriction on resale of seed stock because it would curtail this activity and suggested we amend or retain the discretion to grant an exemption from that provision.

Response

The purpose of the Rule's restriction on the resale of seed stock is to prevent an undisclosed transfer to an undisclosed principal of securities in an OTC issuer whose shell status is undisclosed. The Commission has the jurisdiction to grant an exemption from the restriction on resale of seed stock in appropriate circumstances.

4. *Section 11 – Legends on certificates*

A commenter said that it would be inconvenient or impossible for issuers to recall share certificates for seed stock to place legends on them.

Response

We addressed this comment in our previous notice.

5. *Parts 3 and 4 – Registration and prospectus exemptions*

A commenter said that the Rule should not apply to OTC issuers that are reporting issuers when the Rule comes into force.

Response

We addressed this comment in our previous notice. The revised version of the Rule is far less burdensome for existing reporting issuers than the initial version of the Rule, because the disclosure requirements are more closely aligned to the general reporting issuer requirements.