



BC Notice 2020/04

Notice of Amendments to the Securities Act

On March 2, 2020, the British Columbia government passed Order in Council No. 101, proclaiming into force most of the amendments in the *Securities Amendment Act, 2019* (the Act amendments). These amendments are effective March 27, 2020.

The Act amendments are significant and extensive and provide the commission with new enforcement, compliance, investor protection and sanction collection tools. You can find a summary of them in BC Notice 2020/03.

In this notice, we discuss consequential changes arising from the Act amendments and describe areas where we anticipate doing further work. We also highlight the effect of the new automatic reciprocal order provisions included in the Act amendments.

Consequential amendments and orders necessary to implement the Act amendments

The Order in Council will also bring into force consequential amendments to the *Securities Rules, Securities Regulation* and National or Multilateral Instruments necessary to fully implement the Act amendments.

The commission is also:

- making a number of other consequential amendments to local blanket orders and policies
- issuing a new policy, and
- making a designation order relating to derivatives.

The executive director will update the status of certain forms and his permission to make certain representations. These will all be effective on March 27, 2020.

All of these amendments, changes and new documents are listed in Appendix A, along with a brief summary.

The Order in Council and each of the revised instruments, policies, the designation order and changes made by the executive director are attached in Appendices B – O.

Automatic reciprocal orders

The amendments to section 162.07 of the Act provide for automatic reciprocal orders. This means that, effective March 27, 2020:

- an order made by, or an agreement entered into with, a securities regulatory authority in Canada imposing sanctions, conditions, restrictions or requirements on a person, takes

effect automatically in British Columbia without notice to that person and without a hearing as if it were made by the commission

- these orders and agreements apply to the extent that the commission had the power to impose the same sanction, condition, restriction or requirement and for so long as the original order or agreement, or any variation, remains in effect
- there must have been a finding or admission of a contravention of securities law
- an order or part of an order requiring the payment of money to the securities regulatory authority that initially issued the order is not automatically reciprocated

The commission, together with other jurisdictions that did not have statutory reciprocal order provisions, adopted Multilateral Instrument 11-103 *Failure-to-File Cease Trade Orders in Multiple Jurisdictions* in 2016, to provide the outcome that cease trade orders issued for failure to file annual financial statements, an interim financial report, annual or interim management discussion and analysis, an annual or interim management report of fund performance, an annual information form, or a certification of filings under National Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings* would be automatically reciprocated. As of March 27, 2020, the outcomes intended under this rule will be addressed in BC by section 162.07 of the Act.

Investor claims to money collected under a disgorgement order

Amendments to s.15 and 15.1 of the Act and to Part 3 of the *Securities Regulation* provide the commission with the ability to design a more flexible claims process for victims of financial misconduct. The commission's approach to the claims process is outlined in new BC Policy 15-603 *Returning Funds to Investors*. It reflects the requirements in s.15.1 of the Act and Part 3 of the *Securities Regulation*.

The Executive Director is revising BC Policy 13-601 *Required Forms*, to remove the specification of Form 12-901F as the form a person must use to make a claim to money the commission receives from a disgorgement order. Instead, the commission will use a tailored claims process that suits the circumstances of each disgorgement order under which we collect funds.

Designation of OTC derivatives to be securities

The Act amendments include the power under section 3.2 for the commission to designate a derivative to be a security. The commission will make a designation order, effective March 27, 2020, designating over-the-counter derivatives to be securities for the purposes of Part 5 (Registration) and Part 9 (Prospectus) of the Act.

This maintains the status quo for these derivative instruments until the derivatives registration and disclosure regime being developed by the commission and other Canadian securities regulators is complete.

Future work

The following Act amendments were not brought into force by the Order in Council. One or more regulations will be required to be passed by the British Columbia government before they

come into force. If passed, further notice will be published at that time:

- repeal of the definition of “investor relations activity”
- amendments to s.34 to add s.34(2) relating to requirements for individuals
- repeal of s.52 [disclosure of investor relations activities]
- addition of s. 163.2 and 163.3 [debtor’s licenses and numbered plates]

With the introduction of a new regime for promotional activities that replaces the current regime for investor relations activities, over the coming months we intend to develop new disclosure rules that would apply to persons engaged in these activities to replace the requirements currently found in s.52 of the Act. These rules will be published for comment following the commission’s usual rule making process. We will recommend that the government bring into force the repeal of s.52 if these rules are adopted.

Further amendments to other National and Multilateral Instruments, local BC Instruments and policies will be required as we fully implement the derivatives and benchmark regime. We will provide notice of such changes and will follow the usual processes for publication and approval, as applicable.

Where to find the Act amendments

The *Securities Amendments Act, 2019* is located on the commission’s website under “Securities Law” and on the BC Legislative Assembly’s website at leg.bc.ca under “Parliamentary Business – Progress of Bills” under Bill 33. When it is available through BC Laws, a consolidation of the updated Act will be posted on the commission’s website under Securities Law – Act, Regulations and Rules.

You will find each of the documents listed in Appendix A on the “Securities Law” – Instruments & Policies page on the commission’s website.

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