

# 2010 BCSECCOM 347

## Headnote

Securities Act s. 48,76 Other - Exemption from s. 34(1)(a) requirement to be registered as a dealer for a trade and s. 61 requirement to file a prospectus for a distribution other than in connection with a corporate acquisition or reorganization; business associates; debt settlements; or employee investment plans and consultants - An issuer wants relief from certain trades made by a person in a security of a mutual fund to an employee savings plan or a participant in an employee savings plan - The filer complies with BCI 45-524 *Registration and Prospectus Exemption for Certain Capital Accumulation Plans* (CAP exemption) except that it is not a “tax assisted” plan as required by the definition of “capital accumulation plan” in the CAP exemption; the decision includes a sunset clause

## Exemption Order

### Vancouver Employees’ Savings Plan

#### Sections 48 and 76 of the Securities Act, R.S.B.C. 1996, c.418

## Background

- ¶ 1 The Nominees (the Nominees) of the Vancouver Employee Savings’ Plan (VESP) have applied for an exemption from the requirements to be registered to trade and to file and obtain receipts for a preliminary prospectus and prospectus in sections 34(1)(a) and 61 of the Act (the registration and prospectus requirements) for trades and distributions of mutual fund securities by a person to VESP or to a member of VESP as part of the member’s participation in VESP.

## Representations

- ¶ 2 The Nominees, on behalf of VESP, represent that:
1. VESP is a non-registered savings plan that was established by the City of Vancouver (the City) for certain of its employees;
  2. the purpose of the establishment of VESP was to provide employees an additional benefit as part of their compensation package and to encourage employees to have savings;
  3. since its establishment in 1951, other employer groups joined VESP and currently, the employers who have employees participating in VESP consist of the City; Vancouver School Board (the School Board); Canadian Union of Public Employees Local 15- Vancouver Municipal Education and Community Workers (the Union); B.C. Assessment Authority; Britannia Community

## 2010 BCSECCOM 347

Services; Vancouver Public Library; Emily Carr University of Art & Design; H.R. McMillan Space Centre; Langara College; Little Mountain Residential Care and Housing Society; Ray-Cam Cooperative Centre; Vancouver Maritime Museum; Vancouver Museum Commission; and International Association of Fire Fighters, Local 18 (collectively referred to as the Employer Groups);

4. VESP is governed by the provisions of a trust agreement, made as of June 15, 2007 (the Trust Agreement), among the City, the School Board, the Union, Canadian Western Trust, acting as trustee (CWT) and the Nominees;
5. the Nominees are comprised of individuals employed by the City, School Board, and the Union with powers and duties under the Trust Agreement related to the administration of VESP, including ensuring compliance with the Act;
6. only employees of the various Employer Groups participate in VESP and the participation of the employees are largely as a result of the terms of collective bargaining agreements negotiated between unions representing the employees and the Employer Groups; all employees are also members of the B.C Municipal Pension Plan; persons who cease employment with one of the Employer Groups may elect to keep funds in VESP but former employees do not make any new contributions to VESP;
7. under VESP, employees of the various Employer Groups contribute certain percentage of their wages and the employee contributions would be matched, to varying amounts, by the Employer Groups; the contributions are established largely through the collective bargaining agreements negotiated between unions representing the employees and the Employer Groups;
8. the contributions of the employees and the Employer Groups are invested in various funds set up by VESP; an employee participating in VESP may select from four funds they want their monies allocated to and in what proportions; participants give direct instructions to an administrator retained by the Nominees who then instruct CWT on aggregate allocations to each of the investment options;
9. VESP meets the definition of “capital accumulation plan” under B.C Instrument 45-524 *Registration and Prospectus Exemption for Certain Capital Accumulation Plans* (BCI 45-524) except that VESP is not a “tax assisted” savings plan; and

## 2010 BCSECCOM 347

10. participants in VESP are provided with the information required by section 2.1 of BCI 45-524 which includes investment information, investment tools and expense and fee information relating to VESP and VESP operates in compliance with all the requirements of BCI 45-524, notwithstanding that it is not a “tax assisted” plan.

### **Order**

¶ 3 Considering that it is not prejudicial to the public interest, the Commission orders that:

1. a trade by a person or company in a security of a mutual fund to VESP or to a member of VESP as part of the member’s participation in VESP is exempt the registration requirements of section 34 (1)(a) of the Act; and
2. a distribution of a security of a mutual fund to VESP or to a member of VESP as part of the member’s participation in VESP is exempt the prospectus requirement of section 61 of the Act,

provided that the trade and/or the distribution satisfies the conditions in section 2.1 of BCI 45-524 for the trade or distribution to be exempt, except for the requirement that the subject investment or savings plan be “tax assisted” as required by the definition of “capital accumulation plan” in BCI 45-524.

This decision will terminate on the earlier of:

- (a) 90 days after the coming into force of any rule, other regulation or blanket order or ruling under the Legislation that incorporates non “tax assisted” plans into the definition of “capital accumulation plan” in the registration and prospectus exemption for certain capital accumulation plans; and
- (b) three years from the date of this decision.

¶ 4 March 20, 2009

Martin Eady, CA  
Director, Corporate Finance  
British Columbia Securities Commission