Securities Regulation That Works

The BC Model

Commentary on Draft Legislation

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The BCSC acknowledges
the contribution of its Deregulation Project team
in the development of the BC Model

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EXECUTIVE SUMMARY

1. The Need for Change

Canada needs a system of securities regulation that protects investors and market integrity and supports a dynamic and competitive market.

Unfortunately, securities regulation in Canada has grown so complex and unwieldy that both these objectives are threatened.

This publication describes the BC Model — Draft Legislation and Guides that would implement a system of securities regulation that works for the 21st century. Securities regulation works when it protects investors and markets, minimizes the regulatory burden on market participants, and is understood by those it protects and regulates. This is just how the BC Model works. It has new requirements and powers to make regulation more effective, eliminates redundant and outmoded requirements, simplifies those that remain, and writes it all in plain language.

The BC Model is the product of eighteen months of intensive work by the BCSC's deregulation project team, supported by other BCSC staff. The model also reflects the input of over 1700 market participants from across Canada who attended consultation sessions and responded to our previous publications. The BC Model puts the concepts and proposals from those previous publications into concrete form to provide a basis for obtaining more specific comments as we develop our final recommendations for government by December 2003.

Background to the BC Model

In early 2001, the BCSC completed an eight-month streamlining project that eliminated many unnecessary regulatory instruments. The next step planned was an in-depth review of all regulatory instruments in force in British Columbia. This was to begin in April of 2002.

In June 2001, the provincial government established a policy directing all regulatory agencies in British Columbia to reduce their regulatory requirements by one-third over three years. The Minister of State for Deregulation issued guidelines, including a methodology for counting regulatory requirements, and target reductions to be achieved by various dates.

As a result, the BCSC advanced its planned starting date for the second phase of its streamlining project by six months to October 2001 and significantly increased staffing for the project.

Some urged the BCSC to seek an exemption from this government policy, on the basis that securities regulation is too important and sophisticated for this type of

process. They suggested that streamlining and simplifying the requirements in British Columbia would threaten national harmonization and be of limited benefit.

Although these concerns point to serious issues, we concluded that the right response was to accept the government's challenge. We established our deregulation project team and gave it a two-year mandate to review all of our regulatory requirements and make recommendations with a view to achieving two goals:

1. Establish a regulatory system that imposes the minimum regulatory burden on industry necessary for investor protection and market integrity.
2. Ensure that regulatory simplification in British Columbia does not unduly compromise national harmonization.

Our work so far has produced four publications: *New Concepts for Securities Regulation* (February 2002), *New Proposals for Securities Regulation* (June 2002), *Better Disclosure, Lower Costs — A Cost-Benefit Analysis of the Continuous Market Access System* (October 2002) and *New Proposals for Mutual Fund Regulation* (November 2002).

We are now publishing draft legislation — the BC Model — to seek your comments before we make our final recommendations to the British Columbia government at the end of 2003.

The Opportunity for Change

Canadian securities regulation is under intense scrutiny. Governments and regulators are reviewing the structure of our decentralized regulatory system and our approach to securities regulation through several concurrent processes:

- *The federal "Wise Persons Committee"* — This seven person committee appointed by the federal minister of finance is charged with reviewing securities regulation in Canada and recommending a regulatory model that best meets Canada's needs.
- *The provincial ministers process* — Provincial ministers responsible for securities regulation are working toward a more effective, provincially led system of securities regulation.
- *The CSA uniform securities law project* — The Canadian Securities Administrators are developing a proposed uniform securities act and rules to be recommended for adoption in all provinces.
- *The Ontario five year review* — The Ontario government appointed a committee a few years ago to do a statutory review of its securities legislation. The committee released a draft report in May 2002; the final report is expected soon.
- *The BC Model* — As described in this publication, the BCSC is re-writing British Columbia securities legislation to make it more effective and less burdensome. We offer it as a model for securities regulation in Canada.

In addition to these formal processes, the national media has reported and commented on public debate among regulators and market participants about the reform process. These discussions focus on two critical issues:

- Should securities regulation be based primarily on core principles or be centered around detailed rules?
- Should Canadians retain provincial regulation or move to some form of single national securities commission?

The BC Model is the BCSC's unique contribution to that debate. Unlike the other reviews that are focused on eliminating differences among jurisdictions, ours attacks the more acute threats to effectiveness and efficiency caused by excessive regulatory volume and complexity.

If Canadians go ahead with major structural changes, either by moving to a single commission or by adopting uniform legislation, without tackling the volume and complexity of regulatory requirements, we will have missed an opportunity of a lifetime. If we make the right decisions now, however, we can give Canada the kind of regulation it needs to give investors confidence and foster dynamic and competitive markets that will contribute to our economic well-being.

The BC Model
Protecting Investors and Markets

The BC Model is part of a new way to regulate — an approach that attacks threats to investors and market integrity with tools that fit the job. That means simplifying the rules and applying compliance, enforcement, and education tools to help market participants comply with the basic principles of fairness and honesty. It also means deterring and removing from the market those who cheat investors.

The BC Model would benefit investors and markets through more effective regulation. Under the BC Model:

- Public issuers must make all material information available to investors at all times. The model is designed to give investors complete and up-to-date information about the issuers in which they invest, whether or not the issuer has recently filed a prospectus.
- Regulatory requirements are principles-based. This means that, to comply with the rules, market participants will have to focus on what is right for investors, clients and markets. With fewer detailed requirements, market participants will be held accountable for considering the bigger picture — an approach that discourages loophole-hunting.
- The legislation and guidance are written in plain language so that market participants will know what is expected of them, which will improve compliance. Even more important, market participants must draft the disclosure they give to investors and clients in plain language so that the disclosure is understandable and achieves its intended purpose.

- The duties of directors and officers found in corporate legislation will now be included in securities legislation, so that they apply to directors and officers of all types of issuer, and can be enforced using the powers under the securities legislation.
- Registered dealers and advisers, and their representatives, must comply with a code of conduct — a principles-based regime of regulation that imposes broad requirements designed to ensure that their clients are treated fairly, served competently, and told all the important facts about fees and conflicts of interest.
- Individual representatives of dealers and advisers are no longer registered, but the firms that hire them are responsible to clients for their conduct. The registration of individuals by the Commission can create a false sense of security for some registered firms and their clients. Under the firm-only registration system, the lines of accountability will be clear to clients, firms, and representatives.
- There are prohibitions against misrepresentation, fraud, market manipulation, unfair practices, trading on inside information, and front running. Anyone who contravenes these prohibitions will be exposed to administrative and criminal sanctions and civil liability.
- Enforcement powers are strengthened — Commission staff will have broader powers to obtain information from market participants, and the Commission will have broader powers to ban market participants from the markets and to order disgorgement.
- The maximum administrative penalty that the Commission may order is increased to $1 million per contravention of the legislation.
- The maximum fine that a court may order for an offence under the legislation is increased to $3 million, and the court may also make restitution and disgorgement orders against a person who commits an offence. Higher penalties apply in insider trading cases.
- There is a statutory right of action for investors and clients to sue market participants for any material contravention of the legislation.
- With the Commission's permission, anyone can apply to the Commission for a compliance order against a person who is contravening the legislation.
- Foreign issuers have better access to British Columbia markets. Investors here will have more opportunities to participate in the offerings, take over bids and business combinations involving these issuers.
- Investors and clients have improved access to foreign dealers, advisers and mutual funds.

The BC Model
Supporting a Dynamic and Competitive Market

The BC Model minimizes regulatory burden for market participants through more efficient regulation. Under the BC Model:

- The prospectus disclosure system that dates from the 1930s is replaced by a process that streamlines initial public offerings, and eliminates regulatory approval for offerings after the IPO. As a result, issuers will be able to access the public markets much faster and at much lower cost. The cost-benefit analysis of this aspect of the BC Model showed that it will allow issuers to complete an IPO up to 19% faster and up to 51% cheaper. For offerings after the IPO, the analysis showed that under the BC Model issuers will be able to do offerings up to 56% faster and up to 82% cheaper.
- The arcane, complex and burdensome regime of hold periods and resale restrictions known as the ''closed system'' is eliminated for securities of public issuers.
- Mandatory escrow is eliminated. This will allow issuers and underwriters to negotiate management retention and after-market protection arrangements to suit the particular circumstances of each IPO.
- Persons other than registered dealers can provide due diligence services to issuers doing IPOs, opening the opportunity for competition in this area.
- Issuers can raise capital through private placements effectively and cheaply. In addition to traditional forms of private placement, the BC Model will allow issuers who prepare and file an offering memorandum to raise any amount of capital from any number of investors at any time.
- Regulatory requirements are principles-based. This will allow market participants to tailor their compliance systems to meet the needs of the investors and clients they serve and will relieve them of the cost and burden of complying with many of the current detailed and prescriptive requirements that have doubtful value in protecting investors or markets.
- The legislation and guidance are written in plain language. This means that market participants will be able to understand the requirements and apply their own judgment and experience to interpret them for routine compliance, and will be better able to judge when to seek professional assistance.
- Registered dealers and advisers, and their representatives, must comply with a code of conduct — a principles-based regime of regulation that will allow each firm to spend its compliance resources in the areas that are most important for the protection of investors and markets, in the context of the particular characteristics of the firm's business.
- Only dealer and adviser firms are registered — not individual representatives. This will save firms the substantial administrative burden and delays associated with registering individual representatives.

- Individuals who wish to operate as independent owner-operators can be registered to trade and advise, subject to appropriate safeguards.
- Market participants have access to both formal and informal guidance vehicles to assist them with compliance. These will include published guidelines, interactive advice, and other guidance tools.
- Foreign issuers subject to effective regulatory systems outside Canada, or with few Canadian investors, have better access to Canadian markets using documents they prepare under their own laws.

The BC Model
Investor Confidence and Corporate Governance

In light of recent corporate scandals in the United States and the US legislative response, some people have suggested that our promotion of streamlining and simplification is out of step with the times. They say we need to add more rules in Canada, like those recently adopted in the US, to give investors confidence that we have ''robust'' regulation to protect against failures in corporate governance and disclosure that might lead to serious investor losses.

We disagree. The BC Model is a better answer for the times.

Investor confidence cannot be bolstered simply by adding rules that make regulation more complex and burdensome, without actually improving investor protection. Investors would soon realize that the new rules had not delivered what was promised. In the meantime, many would have been tempted to relax their vigilance, assuming that the new rules had taken care of the problem. This would serve only to aggravate their ultimate disillusionment with the new rules.

For too long, regulators have thought more rules are the answer to every problem in the market. The goal of the BC Model is to make regulation more effective and to improve the efficiency and competitiveness of our markets. That is the way to give investors confidence. We want to clear away the clutter from decades of legislating and rule making, and develop a system that is clear, simple, and focused on the goals of investor protection and market integrity.

More regulation might be justifiable if it contributed to better protection of investors and market integrity, but it usually doesn't. In fact, in some cases it is counter-productive. For example:

- The detailed disclosure we mandate sometimes adds little useful information and obscures the disclosure that really matters to investors.
- Our excessively detailed and prescriptive requirements can confuse market participants, causing them to lose sight of the underlying principles.
- The drift towards a prescriptive, rule-based system encourages a loophole mentality, where market participants follow the letter but not the spirit of the rules.

We are not alone in being critical of excessively prescriptive regulation. Many European regulators have raised similar concerns in responding to the impact on their markets of the Sarbanes-Oxley legislation adopted in the US last year.

As a member of the Canadian Securities Administrators, the BCSC is considering several specific initiatives driven by the Ontario Securities Commission's response to the US Sarbanes-Oxley legislation. Initiatives under discussion include:

- a rule requiring public issuers to have their financial statements accompanied by a report of an auditor overseen by the new Canadian Public Accountability Board (CPAB);
- a rule requiring public issuers to have audit committees and specifying their composition, the qualifications of their members, their mandate and responsibilities, and how to carry out their mandate and responsibilities; and
- a rule requiring senior executives of each public issuer to certify the issuer's annual and quarterly financial statements and the adequacy of the issuer's internal controls.

We have included only two initiatives of this sort in the BC Model, both in a way that reflects our principles-based approach to regulation:

- We would have a requirement that public issuers have an audit committee, but no requirements specifying independence or proficiency criteria for audit committee members or prescribing the committee's role or function.

  If we require an issuer to have an audit committee, the board, and each director, will have a duty to ensure that the committee functions properly. This means ensuring that the committee follows appropriate practices (there are extensive resource materials available), and that it is composed of members who can do a credible job. Each board should determine the appropriate composition and duties of its audit committee based on the needs of the public issuer and the expectations of its securityholders. We do not think it is necessary or appropriate to prescribe these details.

- We would have a requirement that public issuers be audited by an auditor overseen by the CPAB.

  The accounting profession has participated with regulators in establishing the CPAB to provide a more rigorous professional oversight and discipline process for firms that audit public issuers. It builds on, and is to be integrated with, the existing processes of provincial accountancy bodies. We currently require that auditors be members of a provincial accounting body, so it makes sense to extend our requirement to include membership in the CPAB.

We would not include a requirement for senior officers of public issuers to certify financial disclosure. There are no certificate requirements of any kind for public issuer disclosure under the BC Model. Under the current legislation, these requirements are used to trigger civil liability provisions. Under the BC Model, civil liability is not dependent on signing a certificate, so they are not needed for that purpose.

Are they needed for other purposes? Some believe that making senior officers sign a certificate focuses their attention on the contents of disclosure and improves compliance. There is certainly anecdotal evidence that, when recently required to certify, senior officers of some US issuers were more diligent in verifying the accuracy of financial disclosure. That probably has more to do with the market climate following the major accounting scandals of recent years than with the certification itself. We are not convinced that the certification requirement will have any significant positive effect on compliance over the long term.

Indeed, isolated certification requirements could have the unintended consequence of lowering the quality of uncertified disclosure. For example, the BC Model depends on the completeness and accuracy of the issuer's continuous disclosure record as a whole. Requiring a portion of that record to be certified might imply that the filings without the certification requirement are less significant. A news release, not likely to be subject to a certification requirement, commonly contains information far more significant to the market than information contained in financial statements.

We are also concerned that requiring senior officers to certify financial disclosure might suggest that the board has less responsibility to exercise due diligence and can instead rely on the certificate.

We continue to discuss corporate governance issues, including matters relating to audit committees and certification, with our CSA colleagues and will publish for comment the proposals that emanate from those discussions. We will consider our position on audit committees and certification in light of the comments we receive on both the specific proposals and the BC Model.

The BC Model
An Alternative to the USL Approach

The CSA Uniform Securities Law initiative (USL) is primarily a harmonization initiative. True to its mandate, it contains few changes for streamlining and simplifying regulation. However, that is a missed opportunity.

Uniformity alone will not make regulation more effective for investors or reduce the regulatory burden on industry in a significant way. Lack of uniformity is part of the problem with our system of regulation, but the bigger burden faced by industry comes from too many rules that are too complex, too rigid, and change too often.

In a survey of public companies conducted by the BCSC in 2002, we found that issuers spend 87% of their compliance time on regulatory provisions that are already substantially harmonized. That suggests we can make more progress in reducing compliance costs through streamlining and simplifying requirements than by harmonizing them.

The USL is focused on eliminating differences among securities legislation in different provinces. It could do more: it could simplify and update the regulatory

system so that it is both more effective for investors, and more efficient for market participants.

This is what the BC Model will do, and it could be used as a template for the USL. If Canada adopts uniform legislation without significant streamlining and simplification, we will have missed a golden opportunity unlikely to reappear for decades to come. Canada's investors, businesses, and markets would be poorer as a result. If you agree, we encourage you to say so in your comments on the USL Concept Paper.

The BC Model
Your Opinion Counts

We invite you to read the BC Model, to discuss it with your associates, advisers, and clients, and to give us your comments. Please tell us what you think of the BC Model and tell us what changes you think we should make to ensure that our system of securities regulation will work for the 21st century.

2. Your Guide to This Publication

This publication consists of four main documents:

- Draft Legislation, which includes the Draft Securities Act and Draft Securities Rules, that will be in force if our proposals are adopted (with some exceptions — see ''Instruments Not Included in the Publication'' below)
- Commentary on the Draft Legislation
- For Issuers — Your Guide to Securities Regulation in British Columbia
- For Dealers and Advisers — Your Guide to Securities Regulation in British Columbia

Throughout these materials, we refer to various local and national instruments and policies that are proposed or currently in force, but that have not been included in this package for one reason or another. You can find these documents on our website at www.bcsc.bc.ca.

Overview of the Draft Legislation

The Draft Legislation is designed to provide a concrete illustration of how regulation would actually work under the BC Model. Although referred to in this publication as Draft Legislation, the Draft Act and Draft Rules are more in the nature of legislative proposals.

The British Columbia government has not yet made any decision about the Draft Legislation, and the Draft Legislation has yet to complete the usual process involved in introducing new legislation, including comprehensive reviews by legislative counsel, senior government officials, government caucus members, and government ministers. This process will begin soon and continue as we move toward our deadline of December 2003 to deliver the final version of draft legislation to the British Columbia government.

Organization and Numbering System

The Draft Act is divided into 16 Parts, each dealing with a discrete subject area. The Draft Rules mirror the structure of the Draft Act.

Part 1 contains definitions and interpretation provisions.

We have organized Parts 2 through 9 according to CSA's national five-digit numbering system. For example, under that system, instruments relating to registration start with the number 3. Therefore, all of our rules in this area are found in Part 3 of the Draft Legislation.

Parts 10 through 16 cover, among other things, Commission governance, administration and powers, compliance and enforcement, and investor remedies.

The Draft Act is significantly shorter than the current Act. It sets out the basic structure and includes the provisions that the law requires be contained in a statute. The details are left to the Draft Rules, where most of the Draft Legislation's requirements are found. This structure will allow us maximum flexibility in future to keep our rules current. The rule-making process, while occasionally time-consuming, moves much more quickly than the process for making legislative amendments but maintains government accountability through the ministerial approval process.

We have prepared the Draft Legislation using plain language principles. We believe that making our rules easier to read and understand is a key part of reducing the detail and complexity of the current system.

Summary

Here is a summary of each Part of the Draft Legislation:

Part 1 — Definitions and Interpretation. Part 1 of the Draft Act contains defined terms that are used throughout the Act and Rules. Part 1 of the Draft Rules contains some additional definitions that are used only in the Rules.

Part 2 — Marketplaces and Market Services Providers. Part 2 establishes a new system for regulating entities like stock exchanges, alternative trading systems (ATSs) and self-regulatory organizations. It creates a new authorization process for these entities that replaces the regimes under the current Act and the national ATS rules, and confers specific powers on entities that exercise regulatory oversight.

Part 3 — Registration. Part 3 deals with the registration requirement, application for registration, and requirements governing registrant conduct, capital and other matters. It also contains several exemptions from the requirement to register to trade or advise on securities.

Part 4 — Offerings. Part 4 implements the public offering aspects of the Continuous Market Access system we described in June, with a few changes. It sets out the procedural and disclosure requirements for going public, replaces the current prospectus requirement for offerings after the issuer's IPO with simple disclosure and filing requirements, and eliminates resale restrictions for securities of public issuers.

Part 5 — Continuous Disclosure. Part 5 sets out the ongoing disclosure obligations for public issuers, insiders and significant securityholders. The provisions in this Part dealing with financial disclosure are largely consistent with those under proposed National Instrument 51-102 *Continuous Disclosure Obligations.* We have not included text relating to management discussion and analysis or proxy solicitations in the Draft Legislation as we anticipate adopting the provisions on those subjects in NI 51-102.

Part 6 — Take Over Bids and Issuer Bids. Part 6 of the legislation will contain the requirements for take over and issuer bids. This publication does not include any legislative text in this area because CSA will be developing, in conjunction with USL, a stand-alone national instrument to regulate bids.

Part 7 — Foreign Market Participants. Part 7 exempts foreign market participants from various requirements of the Draft Legislation. It includes: exemptions for foreign dealers and advisers from the requirement to register; exemptions for foreign issuers from our offering, continuous disclosure, and take over and issuer bid rules; and exemptions for foreign mutual funds from our public mutual fund rules.

Part 8 — Mutual Funds. Part 8 will include our rules for mutual funds. This publication does not contain any legislative text relating to the regulation of public mutual funds. We are awaiting the outcome of several CSA mutual fund projects before determining what changes are appropriate. However, the publication does include in Part 8 an exemption for restricted mutual funds from the point of sale disclosure, continuous disclosure, product regulation and dealer registration requirements.

Part 9 — Derivative Contracts. Part 9 of the Draft Legislation contains our rules relating to exchange contracts and over-the-counter derivatives. This Part does not include any significant substantive changes from the current legislation.

Part 10 — Market Participant Conduct. Part 10 imposes duties on directors and officers to meet certain standards of conduct and imposes other duties on all market participants — for example, to prepare their filings in plain language. It also prohibits certain conduct, such as market manipulation, fraud, unfair practices and misrepresentations.

Part 11 — The Commission. Part 11 deals with Commission governance and financial administration, and sets forth the Commission's powers to exempt, designate and vary.

Part 12 — Compliance and Enforcement. Part 12 includes the Commission's powers to conduct compliance reviews, carry out investigations and make enforcement orders.

Part 13 — Hearings and Reviews. Part 13 deals with hearings and reviews by the Commission.

Part 14 — The Court. Part 14 deals with court powers concerning investigations, decisions made by the Commission, and offences.

Part 15 — Investor Remedies. Part 15 establishes a statutory right of action for material contraventions of the Act or the Rules. It includes defences, protections for defendants, rules for calculating and apportioning damages, and limitation periods.

Part 16 — General Provisions. Part 16 includes the general provisions on filings made with the Commission and information collected by the Commission. It includes a provision that overrides the *Freedom of Information and Protection of Privacy Act* for some specific sections of the Draft Legislation that deal with investigations and hearings, and with access to information that the Commission collects under its regulatory powers.

Instruments Not Included in the Publication

There are a number of instruments that we expect will remain in force in British Columbia substantially in their current form; for this reason, we have not included them in this publication. They are:

- National Instrument 12-201 *Mutual Reliance Review System for Exemptive Relief Applications*
- BC Notice 13-701 *Mutual Reliance Review System — Memorandum of Understanding*
- BC Policy 15-601 *Commission Hearings*
- National Instrument 43-201 *Mutual Reliance Review System for Prospectuses and AIFs*
- National Instrument 13-101 *System for Electronic Document Analysis and Retrieval (SEDAR)* and related documents
- National Instrument 43-101 *Standards of Disclosure for Mineral Projects* and related documents
- National Instrument 54-101 *Communications with Beneficial Owners of Securities of a Reporting Issuer* and related documents
- National Instrument 55-102 *System for Electronic Disclosure by Insiders* and related documents

The Commentary

This Commentary has 16 Parts, each corresponding to a Part of the Draft Legislation.

The Commentary explains the Draft Legislation briefly and identifies the changes it makes from the current legislation.

Some paragraphs in the Commentary are headed ''Harmonized Interface''. These paragraphs discuss issues we have identified relating to differences between the Draft Legislation and the legislation in place in the rest of Canada or that proposed in USL, as described in the USL Concept Paper. These sections describe how the Draft Legislation is designed to operate smoothly with legislation elsewhere in

Canada so that market participants will not be unduly burdened by any differences in requirements, if it turns out that the legislation in British Columbia differs from that in some other Canadian jurisdictions.

There are three Appendices to this Commentary:

- Appendix A shows the disposition of all of the requirements currently in force in British Columbia under the Draft Legislation.
- Appendix B compares the Draft Legislation to the legislation contemplated in the USL Concept Paper.
- Appendix C is the form of risk disclosure that a foreign mutual fund relying on the exemptions in Part 7 must provide to clients.

You will see these terms used frequently in this Commentary:

CSA means the Canadian Securities Administrators
USL means the Uniform Securities Legislation being developed by CSA
USL Concept Paper means the USL project's January 2003 paper *Blueprint for Uniform Securities Laws For Canada*
February Concepts Paper means the BCSC's February 2002 paper *New Concepts In Securities Regulation*
June Proposals Paper means the BCSC's June 2002 paper *New Proposals for Securities Regulation*
November Proposals Paper means the BCSC's November 2002 paper *New Proposals for Mutual Fund Regulation*

The Draft Legislation defines and interprets certain words. Many of these words are used in this Commentary. In some cases, where we wish to draw your attention to a defined term, we have italicized it. However, we have not italicized every term that is defined in the Draft Legislation, nor have we italicized a word each time it is used.

The Guides

Because the Draft Legislation reflects a shift away from a rules-based system to one built on principles, we expect that issuers and registrants will initially have many questions about how the new requirements apply to them and their business. Because of this, we have developed draft Guides designed to help market participants navigate their way through the Draft Legislation and, ultimately, understand the system and their place in it. There are two Guides — one for issuers and one for dealers and advisers.

The Issuers Guide contains appendices setting out the form of AIF and Offering Memorandum as well as reporting forms for restricted issuers and public issuers.

The Dealers and Advisers Guide contains appendices setting out:

- the application form for registration
- the personal information form for partners, directors and officers of dealers and advisers
- the form of risk disclosure that foreign dealers and foreign advisers relying on the exemption in Part 7 must provide to clients.

Part 1 Definitions and Interpretation

Overview

Our approach to definitions in the Draft Legislation is similar to that under the current legislation: most defined terms are found in the definitions section at the beginning of the Act (or the Rules, where the term is used only in the Rules) while others, where this is more convenient, are located in the particular Parts and sections of the Draft Legislation where they are used.

These are the significant changes the Draft Legislation makes regarding definitions:

- It significantly revises a number of definitions (e.g. *adviser*, *insider*, *misrepresentation*, *private issuer*, *senior officer*).
- It adds a number of new definitions (e.g. *significant securityholder*, *market participant*).
- It removes definitions that are unnecessary, such as *distribution,* while retaining other key ones, such as *associate*, *director*, and *person*.

This Part of the Commentary discusses primarily new and significantly amended definitions in the Draft Legislation. (However, we have not covered those new definitions that are self-explanatory, e.g. *AIF*.) At the end of our discussion of each definition, we have specified where in the Draft Legislation the term is most frequently used and the other Parts of this Commentary that include a discussion of the term.

We have also included a discussion of some of the definitions we have eliminated under the Draft Legislation.

1. New and Revised Definitions

accredited investor

RULES 1A1

The Draft Legislation includes a definition of *accredited investor*. It is based on the definition of the same term in Multilateral Instrument 45-103 *Capital Raising Exemptions* and includes financial institutions, pension funds and wealthy individuals and corporations. Unlike MI 45-103, the definition does not include registered charities. Some will be accredited investors because of their level of net assets. Charities that do not meet those criteria should be treated like other investors and receive registration advice, unless another exemption is available. See Draft Legislation, Part 3; Commentary, Part 4.

adviser

ACT 1A1

The Draft Legislation includes a substantially revised definition of *adviser*. The new definition narrows the range of people caught by focusing the definition on managing investment portfolios or providing specific client-centered advice. By narrowing the definition, the Draft Legislation no longer needs to include the current advising exemptions for advising that is ''solely incidental'' to other

activities. It also no longer catches as advisers those who advise generally about investing at seminars and through broadcast media, but do not relate that advice to clients' specific investment needs. There are other provisions in the legislation, such as the prohibition on misrepresentations or unfair practices, that address potentially abusive behaviour in this area. People engaging in this kind of behaviour are potentially subject to administrative and criminal sanctions and investor law suits. The definition of *adviser* is relevant to the discussion of adviser categories and exemptions in Part 3 of the Draft Legislation in particular. See Draft Legislation and Commentary, Part 3.

authorized market delegate

ACT 1A1 Under the Draft Legislation, the Commission may delegate powers to marketplaces and market services providers to which it has granted a market authorization under Part 2. The Draft Legislation defines these entities as *authorized market delegates*; they correspond to recognized SROs under the current legislation. See Draft Legislation and Commentary, Part 2.

connected person

ACT 1A1 The definition of *connected person* in the Draft Legislation is based on the provisions in the current legislation that describe persons in a special relationship with a reporting issuer. As today, the term is used primarily in the context of the insider trading prohibition. See Draft Legislation and Commentary, Part 10.

consultant

RULES 3F1 Defined solely for the purposes of the registration exemptions, a *consultant* is a person to whom an issuer is entitled to trade securities under certain exemptions, such as that for private issuers. See Draft Legislation and Commentary, Part 3.

derivative contract

ACT 1A1 The definition of *derivative contract* consolidates the existing definitions of ''commodity'' and ''futures contract'' and now includes options. See Draft Legislation and Commentary, Part 9.

due diligence provider

ACT 1A1 The Draft Legislation includes a new definition of *due diligence provider*. For a full discussion, see Draft Legislation and Commentary, Part 4.

exempt foreign issuer

ACT 7A1 The Draft Legislation includes a new definition of *exempt foreign issuer*. These issuers may use their home jurisdiction documents to satisfy most disclosure requirements for public issuers under the Draft Legislation. For a full discussion, see Draft Legislation and Commentary, Part 7.

family member

ACT 1A1 The Draft Legislation includes a new definition of *family member*. It covers a number of potential purchasers under the exempt purchaser exemption. See Draft Legislation, Part 3; Commentary, Part 4.

foreign adviser

ACT 7A1 The Draft Legislation includes a new definition of *foreign adviser*. These foreign registrants may advise British Columbia residents on a limited basis without being registered here. For a full discussion, see Draft Legislation and Commentary, Part 7.

foreign dealer

ACT 7A1 The Draft Legislation includes a new definition of *foreign dealer*. These foreign registrants may trade in securities on behalf of British Columbia residents on a limited basis without being registered here. For a full discussion, see Draft Legislation and Commentary, Part 7.

foreign issuer

ACT 7A1 The Draft Legislation includes a new definition of *foreign issuer*. This is a non-mutual fund issuer whose principal market is outside Canada (and can include a Canadian-based issuer). Part 7 contains exemptions from certain disclosure requirements for two classes of foreign issuers: *exempt foreign issuers* and *limited connection foreign issuers*. For a full discussion, see Draft Legislation and Commentary, Part 7.

foreign mutual fund

ACT 7A1 The Draft Legislation includes a new definition of *foreign mutual fund*. These are funds whose securities are traded primarily outside Canada. A *foreign fund company*, also defined in the Draft Legislation, is the company that manages a foreign mutual fund. See Draft Legislation and Commentary, Part 7.

fund company

ACT 1A1 The Draft Legislation includes a new definition of *fund company*. A fund company is the entity responsible for any contravention of the Act or the Rules by a mutual fund. See Draft Legislation and Commentary, Parts 8, 12 and 15.

inside information

ACT 1A1 The Draft Legislation introduces a new definition of *inside information* to cover the concept of undisclosed material information that exists in the current legislation. It is used primarily in the contexts of the insider reporting requirements and insider trading prohibitions. See Draft Legislation, Part 5 and 10; Commentary, Part 5.

insider

ACT 1A1 The Draft Legislation includes a simpler, more streamlined definition of *insider* (which, in turn, incorporates a more principles-based definition of *senior officer*). For a full discussion, see Draft Legislation and Commentary, Part 5.

limited connection foreign issuer

ACT 7A1 The Draft Legislation includes a new definition of *limited connection foreign issuers*. These issuers may use their home jurisdiction documents to satisfy certain disclosure requirements under the Draft Legislation. For a full discussion, see Draft Legislation and Commentary, Part 7.

market participant

ACT 1A1 The Draft Legislation includes a new definition of *market participant*, similar to that in the Ontario legislation. This definition is used for those subject to production orders. The new definition expands the list of those who are subject to production orders under the current legislation. In essence, it covers all those regulated by the legislation. The Draft Legislation extends the existing record keeping obligation for registrants and self-regulatory organizations (SROs) to cover all market participants. Some market participants are also subject to compliance reviews. See Draft Legislation and Commentary, throughout.

market services provider

ACT 1A1 The Draft Legislation includes a new definition of *market services provider*. This new term includes SROs, clearing agencies, regulation service providers and others. For a full discussion, see Draft Legislation and Commentary, Part 2.

marketplace

ACT 1A1 The Draft Legislation includes a new definition of *marketplace*. This new term includes exchanges, quotation and trade reporting systems, alternative trading systems (ATSs) and other marketplaces. This term is currently used in National Instrument 21-101 *Marketplace Operation* and National Instrument 23-101 *Trading Rules*, the national ATS rules. For a full discussion, see Draft Legislation and Commentary, Part 2.

material information

ACT 1A1 The Draft Legislation replaces the definitions of ''material fact'' and ''material change'' with a new definition of *material information*. This refines the current market-based approach to materiality. For a full discussion, see Draft Legislation and Commentary, Parts 4 and 5.

market capitalization

RULES 15D1 The Draft Legislation includes a definition of *market capitalization*. This term is relevant to the calculation of the liability caps under Part 15. See Draft Legislation and Commentary, Part 15.

misrepresentation

ACT 1A1 The Draft Legislation includes a revised definition of *misrepresentation*. The definition has been tailored for the different circumstances in which the Draft Legislation would apply.

First, misrepresentation continues to include untrue statements or omissions of material information about issuers, other than mutual funds. Second, it includes untrue statements or omissions of significant information about mutual funds. Third, it includes untrue statements or omissions of other information that would affect a decision to purchase or sell securities or to enter into a trading or advising relationship with a person.

The disclosure standard for the first category of information is the market impact test (i.e., whether the information would reasonably be expected to significantly affect the value or market price of the issuer's securities); for the other two categories, the definition uses the reasonable investor test (i.e., whether the information would be considered important by a reasonable investor in making a decision about a trade in securities or about a trading or advising relationship with another person). See Draft Legislation, Parts 10 and 15; Commentary, Parts 4, 5, 10 and 15.

officer

ACT 1A1 The Draft Legislation includes a revised definition of *officer*. Like the definitions of *insider* and *senior officer*, this definition focuses on the functions performed, not the titles used. See Draft Legislation and Commentary, throughout, especially Part 15.

person

ACT 1A1 The Draft Legislation keeps the same definition of *person* found in the current legislation. Person is very broadly defined and includes not just individuals, but also, for example, corporations, partnerships and trusts. See Draft Legislation and Commentary, throughout.

principal market

ACT 7A1 The Draft Legislation includes a new definition of *principal market*. The principal market is the marketplace with the largest annual trading volume over the past three financial years. For a Canadian based issuer, the principal market will only be considered to be outside Canada if more than 60% of its trading volume during each of the last three years is outside Canada. The term is relevant to our rules on foreign issuers. See Draft Legislation and Commentary, Part 7.

private issuer

ACT 1A1 The Draft Legislation includes a new, simplified definition of *private issuer*. The only restrictions in the definition are simply that the issuer have no more than 50 equity securityholders, not counting employees, and that it not fall into one of the other categories of issuer. Private issuers can only trade securities under the

private issuer exemption in Part 3 of the Draft Legislation. The exemption also contains the resale restrictions for securities of private issuers. See Draft Legislation, Part 3; Commentary, Part 4.

public issuer

ACT 1A1 The Draft Legislation replaces the ''reporting issuer'' definition with a definition of *public issuer* (we described these issuers as ''CMA issuers'' in our June Proposals Paper). An issuer is a public issuer if it files an initial AIF that is accepted by the Commission under Part 4 or becomes a public issuer in the other ways discussed in Part 4. These include issuers that are listed on TSX Venture, those that have completed a reorganization, take over bid, or business combination with a public issuer, and issuers that are currently reporting issuers elsewhere in Canada and file a notice. We will deal with issuers that are currently reporting in British Columbia through transitional provisions in the final legislation. See Draft Legislation and Commentary throughout, but especially Parts 4 and 5.

regulation services provider

ACT 2A1 The new definition of *regulation services provider* refers to marketplaces and market services providers who exercise regulatory oversight. See Draft Legislation and Commentary, Part 2.

regulator delegate

ACT 1A1 Under the Draft Legislation, the Commission may delegate powers to other Canadian securities regulators. The Draft Legislation defines these entities as *regulator delegates*. See Draft Legislation, Part 11.

representative

ACT 1A1 The Draft Legislation replaces the current definition of ''salesperson'' with that of *representative*, which may include a corporate entity. See Draft Legislation and Commentary throughout, but especially Part 3.

restricted issuer

ACT 1A1 The Draft Legislation includes a new definition of *restricted issuer*. Most non-mutual fund issuers that are not public issuers or private issuers will be restricted issuers. A restricted issuer is an issuer other than a private issuer whose securities are not listed, quoted or traded on any marketplace. A restricted issuer is only permitted to sell its securities if it satisfies the conditions in a number of specific exemptions. These include sales to accredited investors, sales to those closely connected to the issuer and sales under the offering memorandum exemption. See Draft Legislation and Commentary throughout, but especially Parts 3 and 4.

restricted mutual fund

RULES 8A1 The Draft Legislation includes a definition of *restricted mutual fund*. Sales of these funds' securities are exempt from the point of sale disclosure, continuous disclosure, product regulation and dealer registration requirements. A restricted mutual fund may only sell its securities to a limited range of permitted purchasers. See Draft Legislation and Commentary, Part 8.

security

ACT 1A1 The Draft Legislation includes a revised definition of *security*. The new definition eliminates many of the items found in the current definition that are obsolete or redundant. To the extent that the eliminated items describe instruments that ought to fall within the Commission's jurisdiction to regulate trading in securities, they will generally fall within one of the remaining branches of the definition of security, such as investment contract or *derivative contract*.

ACT 9A1 The definition no longer excludes exchange contracts. This considerably simplifies the drafting of many provisions in the Act and Rules. There is no change in substance as exchange contracts have been exempted from the Parts of the Act that do not currently apply to them. See Part 9 of the Draft Legislation.

The definition of security under the Draft Legislation also changes the exclusion for deposit instruments under the current legislation. Conventional deposits are not included in the definition, but deposits that are also covered by another head of the definition are. An example is indexed-linked GICs. These are probably not included in the definition of security under the current legislation, but they would be under the Draft Legislation because they are derivative contracts.

RULES 1B1 The definition also excludes prescribed instruments. The Rules provide that membership shares in cooperatives and credit unions are not securities. This replaces an exemption for these securities in BC Instrument 45-502 *Cooperative Associations* (see Part 3 of this Commentary).

See Draft Legislation and Commentary, throughout.

senior officer

ACT 1A1 The Draft Legislation includes a simpler, more streamlined *senior officer* definition. The definition is relevant for the insider reporting requirements in Part 5, as well as other areas where an officer's routine access to non-public material information is germane. The current legislation attempts to catch this group through a title-based and remuneration-based approach with complex exemptions to remove reporting obligations from those who do not have routine access to inside information. The Draft Legislation defines senior officer primarily in terms of executive function and access to inside information and no longer refers specifically to titles or salaries. See Draft Legislation and Commentary, Part 5.

significant information

ACT 1A1 The Draft Legislation includes a new definition of *significant information*. This concept is similar to the term ''significant change'' in National Instrument 81-101 *Mutual Fund Prospectus Disclosure* and was discussed in Chapter 1 of our November Proposals Paper for mutual funds. It incorporates a ''reasonable investor'' test of materiality for mutual fund securities (see definition of *misrepresentation* above). See Draft Legislation and Commentary, Part 15.

significant securityholder

ACT 1A1 The Draft Legislation includes a new definition of *significant securityholder*. This term includes those holding 10% or more of an issuer's voting securities and those who affect materially the control of the issuer. It therefore replaces the current definition of ''control person'' and a portion of the current definition of ''insider''. The definition is relevant for the significant securityholder reporting requirements in Part 5, as well as other areas where disclosure about these holders is material information (e.g. the AIF disclosure requirements — see Appendix A to the Issuers Guide). See Draft Legislation and Commentary, Part 5.

soliciting business from residents of British Columbia

RULES 1A1 The Draft Legislation defines this term for the purposes of the new exemptions we have introduced for foreign advisers and foreign dealers. It also applies to Canadian dealers and advisers from outside British Columbia. See Draft Legislation and Commentary, Parts 3 and 7.

trade

ACT 1A1 **RULES 3F2** The Draft Legislation includes a revised definition of *trade*. The new definition includes the acquisition of a security, which considerably simplifies the drafting of many provisions in the Act and Rules, but necessitates a new exemption for acquiring securities. The definition no longer excludes ''a transfer, pledge, mortgage or other encumbrance of a security for the purpose of giving collateral for a debt''. Since these transactions result in no change in beneficial ownership, they are not ''trades'' in the first place. However, once a lender is realizing on the security, that is a trade and exemptions are provided. See Draft Legislation and Commentary, throughout.

venture issuer

RULES 5A1 The Draft Legislation includes a new definition of *venture issuer*. Venture issuers will be subject to different continuous disclosure requirements than other issuers in some areas, e.g. financial disclosure, AIF disclosure. The new definition is based on one that we expect will be included in the revised version of proposed National Instrument 51-102 *Continuous Disclosure Obligations* that CSA will be publishing. See Draft Legislation and Commentary, Part 5.

2. Definitions Eliminated

We have eliminated a number of defined terms on the basis that the terms are self-explanatory, such as ''business day'', ''Business Development Bank of Canada'', ''class of securities'', etc. Other definitions disappear because they are no longer relevant under the Draft Legislation or because they are replaced by other defined terms.

control person

ACT 1A1 ''Control persons'' are now contemplated in the new definition of *significant securityholder*. As discussed in Part 5, there appears to be no reason to distinguish between these investors and any other significant securityholders.

distribution

ACT 1A1 Along with the prospectus requirement, we have eliminated the ''distribution'' concept. Under the Draft Legislation, an issuer may not *trade* its own securities to a person unless it is a public issuer or it sells under one of the exemptions available in Part 3.

investor relations activities

ACT 12D1(1)(d)(vi) We have eliminated this definition and related provisions in the Draft Legislation. Any concerns with these activities are addressed through the prohibitions on misrepresentations and unfair practices in Part 10. Where it finds abusive conduct, the Commission can prohibit individuals from doing investor relations activities through a broader power to prohibit a person from ''working for a market participant in a management or consultative role''.

material change and *material fact*

ACT 1A1 These two terms are replaced by the new definition of *material information*. See Part 5 of the Draft Legislation and the Commentary.

portfolio manager

ACT 1A1 Managing an investment portfolio is one aspect of the definition of being an *adviser.* There is no longer a need for this definition.

private mutual fund

This definition is no longer necessary as we have eliminated the exemption for private mutual funds. See Part 8 of the Commentary.

promoter

People who are currently included in the definition of ''promoter'' and that should be regulated are caught in the functional test for director or officer, so a separate definition is not required. The current definition is also confusing as it does not match normal industry usage of the term ''promoter''.

reporting issuer

ACT 1A1 This concept is replaced by the *public issuer* concept in the Draft Legislation. See above under ''New and Revised Definitions''.

underwriter

The Draft Legislation does not include a definition of ''underwriter'', for a number of reasons: we have eliminated the separate underwriter registration category; we will no longer require underwriter certificates in connection with a public issuance of securities; and we will allow approved non-registrants — *due diligence providers* — to perform the due diligence function at the IPO stage. See Part 4 of the Commentary.

3. Harmonized Interface

The main interface issue arises from using a term that has a different meaning elsewhere in Canada (such as *adviser*, *insider, misrepresentation, officer*, and *private issuer*). For most of these — for example, insider — the definitions in British Columbia are narrower than the definitions elsewhere in Canada and therefore fall into the category of requirements in force elsewhere that simply do not apply in British Columbia.

ACT 1A1 In two cases, however, we have tailored definitions to fit our new regime, and the result is that we could have the same terms defined differently in British Columbia than in other Canadian jurisdictions. The first of these is the definition of *misrepresentation*, which has a broader meaning in the Draft Legislation than under the current legislation, which is likely to remain unchanged under USL. See discussion above.

ACT 1A1 The second is the definition of *security*, also discussed above, which would include some deposit instruments that would not be included elsewhere in Canada under the current definition (also unlikely to change under USL).

Another interface issue is making sure that those national instruments we intend to retain will work with the terms we have used in our legislation. For example, the legislation when finalized will indicate that a reference to ''reporting issuer'' in a national instrument includes a *public issuer.* Most of National Instrument 14-101 *Definitions* will continue to be in force in British Columbia so that definitions used there to accommodate use of a single document in multiple Canadian jurisdictions continue to have meaning in British Columbia. Appendices that set out references to particular section numbers will need updating. We may need to either carve out of particular definitions in NI 14-101 if retaining them will cause undue confusion (such as ''jurisdiction'', which is defined in NI 14-101 to mean Canadian jurisdiction) or choose to use a different word.

Part 2 Marketplaces and Market Services Providers

Overview

Part 2 of the Draft Legislation establishes a new system for regulating entities like exchanges, alternative trading systems (ATSs), quotation and trade reporting systems (QTRSs), and self-regulatory organizations (SROs) — entities it calls *marketplaces* and *market services providers*. It:

- creates a new authorization process for marketplaces and market services providers that replaces the existing regimes under the current Act and the national ATS rules, and
- confers investigation and hearing powers on *authorized regulation services providers* — authorized marketplaces and market services providers who exercise regulatory oversight.

In addition, the Draft Legislation keeps the powers over authorized marketplaces and market services providers that the Commission has today. Under Part 12, the Commission may prohibit a person from being a marketplace or market services provider.

1. Authorization Process

General

ACT 2A2 2A3 The Draft Legislation allows the Commission to:

- authorize marketplaces and market services providers to operate in British Columbia, and
- require a marketplace or market services provider to apply for authorization.

These provisions replace the current prohibition against exchanges carrying on business in British Columbia unless they are recognized.

ACT 2C1 The Commission may also delegate powers to authorized marketplaces and market services providers.

Conditions and restrictions of authorization

ACT 2A4 Even today, the recognition process is essentially a negotiation. The approach in the Draft Legislation recognizes that the circumstances of each application are likely to be different, and allows the Commission and the applicant to tailor the conditions and restrictions of the authorization to match the applicant's business or function and to protect the public interest. Once settled, these conditions and restrictions will form the applicant's regulatory regime.

This approach eliminates the need for:

- Section 26 of the current Act (which lists the core duties and responsibilities of SROs and exchanges).

- Section 31 of the current Act (which sets out auditor requirements for SROs, exchanges and QTRSs).
- The sections of the national ATS rules (National Instrument 21-101 *Marketplace Operation* and National Instrument 23-101 *Trading Rules*) dealing with market integrators, and some other provisions that are unnecessary because they anticipate market conditions that have not developed. Other provisions of the ATS rules are unnecessary because they duplicate requirements found elsewhere in the Draft Legislation (such as record keeping and other obligations on dealers that are found in the Code of Conduct or elsewhere in the Rules).
- Various prescribed forms — each situation is unique, so a common form has little utility.

The provisions in NI 21-101 and NI 23-101 that set out relevant terms and conditions for authorizations (such as access to the facilities of the marketplace or market services provider, making rules that are in the public interest, reporting requirements, and many other such provisions setting out ongoing requirements) will be incorporated into authorization orders as appropriate.

ACT 2A2 All authorizations will be public documents so the conditions and restrictions will be transparent to industry and the public. However, the application itself will be confidential.

Rationale for Draft Legislation approach

The system contemplated by Part 2 replaces the current system, which dates from a time when both the Investment Dealers Association (IDA) and the exchanges functioned as SROs, and exchanges were the only organized marketplaces.

Times have changed. We now have three SROs — the IDA, the Mutual Fund Dealers Association (MFDA) and Market Regulation Services Inc. (RS Inc.). The IDA has taken over the member regulation that was previously done by the exchanges, and the exchanges have contracted out their market regulation to RS Inc. (although they are still principally responsible for market and issuer regulation). Meanwhile, new forms of marketplace, such as ATSs and QTRSs, have emerged. All of these entities occupy unique niches in the market system, and have different purposes.

The current regime has tried to address this by creating different recognition and filing requirements for exchanges, QTRSs, ATSs and SROs. The resulting recognition and oversight machinery is complex and, to some degree, inflexible. For example:

- Exchanges and QTRSs cannot carry on business in British Columbia without a recognition order, but SROs and clearing agencies can.
- Once recognized, an entity's regulatory regime is spread among its recognition order, the national ATS rules, and the memorandum of understanding among regulators regarding its oversight.

- ATSs have various regulatory options for joining the system, but most favour the filing of an Initial Operation Report, a prescribed form, which allows them to operate under the ATS rules. However, because most ATS applicants have unique circumstances, there are challenges in interpreting the form, leading to lengthy discussions between the ATS and regulatory staff.

The Draft Legislation implements one authorization process for all marketplaces and market services providers. The result is a single, streamlined process that allows for authorizations tailored to the needs of both the applicant and the public interest.

Although we will no longer ''recognize'' marketplaces or market services providers, we will maintain in some form the current local instrument that lists those entities we have already recognized as exchanges or SROs (BC Instrument 21-501 *Recognition of Exchanges, Self-Regulatory Bodies and Jurisdictions*).

Application and review process

We will develop guidance to Part 2 to identify the factors an applicant must address in its application and will describe the application review process.

There are certain core requirements in all current recognition orders. These core requirements, and the terms and conditions of authorizations made under the new system, will serve as a guide to applicants and Commission staff:

- Applicant's business plan
- Corporate governance
- Access to services
- Order and trade transparency (if applicable)
- Fees and financial viability
- Business systems and risk management.

In reviewing new applications, Commission staff will focus primarily on the major public interest criteria associated with the application. These will usually be items such as fitness of management, fairness and effectiveness issues, financial viability, business systems, and risk management.

Reviews are likely to be simpler for applicants who do not have direct regulatory oversight responsibilities, or who are subject to SRO or exchange rules governing aspects of their conduct. For example, today the IDA has a policy that regulates bond trading by its members. For a dealer applying to be an ATS to trade only in bonds, compliance with that policy might well replace many of the requirements normally imposed on such an applicant.

Harmonized interface

According to the USL Concept Paper, the USL will likely retain the current processes for SROs and marketplaces and will require all marketplaces to apply for recognition.

Existing market services providers and marketplaces will continue to operate under their current orders or regimes unless they choose to apply for authorization under British Columbia's rules, or the Commission determines that it is in the public interest for them to apply for authorization under the new rules. In the meantime, memoranda of understanding developed between commissions for oversight of these entities will continue to operate, and the Commission will continue to participate in oversight under those arrangements.

New marketplaces or market services providers who apply for authorization in British Columbia will be able to take advantage of the new streamlined approach, at least in dealing with the Commission.

2. Powers of Authorized Regulation Services Providers

ACT 2B1 The Draft Legislation continues to recognize the important role played by SROs. In the new regime, these entities are called *authorized regulation services providers*.

ACT 2B2 The Draft Legislation gives the Commission authority to confer new enforcement powers on these entities. The intent is to provide them with powers that will allow them to better enforce their existing regulatory regimes. If we are to rely on them as partners in regulation, we think it makes sense that they have access to better investigation and enforcement powers.

ACT 2B2-2B8 The new powers will not be available to an authorized regulation services provider until the Commission gives specific approval. They include the power:

- to compel witnesses to attend and produce documents at the investigative stage,
- to compel witnesses to attend and produce documents at a hearing,
- to apply to court for contempt orders to enforce the compulsion powers,
- to apply to court for contempt orders generally,
- to file decisions as decisions of the court, and
- to apply to court for the appointment of a receiver of the property of those under its regulatory jurisdiction.

ACT 2B2 2B9 An authorized regulation services provider will have jurisdiction over those who are under its regulatory jurisdiction, and those who were under that jurisdiction at the time of the alleged misconduct. It will also, along with its directors, officers and employees, have statutory immunity from civil liability for acts done in good faith in the conduct of its regulatory responsibilities.

We have included these provisions in the Draft Legislation because we want to ensure that our front-line regulators have all the tools they need to do an effective job of enforcing their regulatory regimes. However, we recognize that providing statutory powers to these entities may involve the *Charter of Rights and Freedoms* and may have other implications for the whole of their regulatory regimes, such as bringing them within the ambit of the *Freedom of Information and Protection of Privacy Act*. We will discuss these issues with the SROs.

3. Commission Powers

ACT 2A5 The Draft Legislation also empowers the Commission to obtain information from, and make any decision about, an authorized marketplace or market services provider. Its powers in this area are similar to the powers it has over recognized SROs, exchanges, QTRSs and clearing agencies under sections 27 to 29 of the current Act.

Part 3 Registration

A. Regulation of Registrants

Overview

Part 3 of the Draft Legislation deals with the registration requirement, application for registration, and requirements governing registrant conduct, capital and other matters.

These are the significant changes from the current legislation:

Registration requirement

- The Draft Legislation creates a ''firm-only'' registration system; individuals will no longer need to register to trade in or advise on securities if they work for a registered firm.
- The firm-only registration system allows greater flexibility for individuals to choose other forms of business organization, such as corporations, under which to carry on their trading and advising activities for a firm.
- The Draft Legislation contemplates a registration ''passport'' system similar to that currently being developed by CSA.
- Independent owner-operators will be permitted to register.

Categories of registration

- The Draft Legislation replaces the numerous existing registration categories with four: investment dealer, mutual fund dealer, restricted dealer and registered adviser.

Code of Conduct

- A Code of Conduct for all registrants and their representatives replaces many of the current detailed, complex and prescriptive rules relating to registrant conduct and qualifications.

The firm-only registration and Code of Conduct regimes represent significant shifts in the regulatory approach to the registration of dealers and advisers. Although we believe the approach in the Draft Legislation will confer significant benefits on both investors and industry, we are mindful that any major shift in regulatory approach can impose unexpected costs and regulatory burdens. We are therefore doing a regulatory impact and cost-benefit analysis on these two concepts. We will make the results of these studies public when they are completed later this year.

1. The Registration Requirement

(a) Firm-only registration

RULES 3F5

The Draft Legislation requires only the firm, and not the firm's representatives, to register before trading in securities. This approach differs from the current legislation, which requires both individuals and firms to register to trade or advise.

The firm-only registration system in the Draft Legislation maintains the integrity of the current registration system, but through alternative means. The Commission retains appropriate compliance and enforcement powers, but the ultimate responsibility for the conduct of representatives rests where it should — with the registered firm. The system preserves market integrity without the extremely high regulatory costs and burdens associated with the requirement to register individuals, and removes the risk that firms, investors, or clients take false comfort in the registration requirement (discussed below).

Requiring individual registration is costly and cumbersome for industry. We examined the objectives of the individual registration requirement and concluded that these objectives could be met in other ways. The objectives we identified are:

- Stop unsuitable individuals from becoming representatives at the outset.
- Monitor representatives when they change firms.
- Deal effectively with representatives who contravene the legislation or act contrary to the public interest.
- Make information about representatives available to the public.

An interesting issue when considering a firm-only registration system is the recently completed National Registration Database system (NRD) that became operational on March 31, 2003. NRD is a system designed to do one thing: register individuals. A cost-benefit study was done when NRD was being developed that showed it would confer significant benefits on industry. Some of those commenting on our June proposals said that even though NRD would benefit them, they believed a firm-only registration system would confer even greater benefits. As noted above, we are doing a regulatory impact and cost-benefit analysis of the firm-only registration system, and the base case for that study will reflect the current NRD environment.

Stopping unsuitable individuals

RULES Code, Principle 7(3)

The Draft Legislation shifts the responsibility for keeping unsuitable representatives out of the securities industry from the Commission to the registered firms. Under the Draft Legislation, the Code of Conduct (see below) imposes an obligation on firms to hire only those representatives who are suitable, and to ensure that they are properly supervised. The Code maintains and enhances the ethical obligations expected of those working in the industry and applies to both registered firms and their representatives.

Because the directors and officers of a firm shape the firm's overall compliance culture, the Draft Legislation requires personal information from these individuals.

Firms are responsible to regulators for the conduct of their representatives, and the firm, and its directors and officers, face civil liability if a representative commits a material contravention of the legislation (see Part 15). Under this regime, firms are likely to be vigilant about those whom they hire.

This approach also makes it clear where the responsibility lies. There have been occasions when firms, in cases of a representative's misconduct, have attempted to shift at least part of the blame to the Commission, since it currently has the responsibility to screen applicants and to admit them to the industry. The involvement of the Commission in the registration process creates in some firms and investors a ''seal of approval'' perception. This is inappropriate, and creates a false sense of security. It is much more likely that both firms and investors will be inclined to look after their own best interests if they are not under the false impression that the Commission is doing it for them.

ACT 1A1 Firm-only registration also allows firms to make whatever arrangements they wish with representatives who wish to be ''employed'' through a corporation or partnership for tax purposes (see definition of *representative* in Part 1). Under the Draft Legislation, firms are responsible for those who work for them, be they employees or independent contractors in corporate form.

Monitoring representatives when they change firms

Under the current legislation, firms must file a uniform termination notice (UTN) when a representative leaves the employment of a firm. The UTN gives the Commission notice that the representative has left, and requires the firm to give detailed reasons for the employee's departure. The filing of this form triggers a review of the representative's file by Commission staff, and sometimes leads to compliance measures being taken.

ACT 3C1(2) (3) (6) Under the Draft Legislation, UTNs would no longer be filed with the Commission. Firms will be responsible for those whom they hire, whether the representative is new to the industry or coming from another firm. In fact, the hiring decision about someone coming from another firm is likely to be easier, because the Draft Legislation requires that the former firm provide the hiring firm with all of the information that the former firm has about the representative that would reasonably be considered relevant to the hiring decision. The former firm is protected against defamation suits brought by a representative through a common law qualified privilege defence. The defence arises because the obligation to disclose the information is imposed by statute. The Draft Legislation also overrides private sector personal information protection laws for this purpose. These private sector privacy laws are expected to be in force by January 2004.

Effective enforcement powers

ACT 3B2 3B3 12D1(1)(d)(iv) The Commission's current power to suspend, revoke or attach conditions to registration, as it applies to individual registrants, is replaced in the Draft Legislation by new powers that allow the Commission to prohibit any person from being a representative, either temporarily or permanently, or to restrict a person to being a representative only on terms and conditions. Under the current legislation, Commission staff has the authority to impose conditions and restrictions on a registrant. This is continued for registered firms under the Draft Legislation, and includes the right to impose conditions and restrictions relating to representatives.

Public access to information

RULES 3D9 In today's regime, the public can get information from the Commission by phone and over the internet about registered individuals. They can find out if the individual they are dealing with is registered, and if so, some details about the individual's registration history. Under the Draft Legislation, a firm must keep a publicly accessible current list of its representatives on its website. This will allow the public to confirm that the individual they are dealing with is a representative of the firm, and has the added benefit of focusing the investor or client on the firm, rather than the Commission, as the entity responsible for overseeing the representative.

(b) Registration passport

A registration ''passport'' system allows a person registered in only one province to become registered to do business in any Canadian jurisdiction by dealing only with the person's home regulator. CSA recently adopted some interim measures to facilitate this (see CSA Staff Notice 31-305 *Registration Streamlining System*) and is working on a more comprehensive and permanent system in connection with the USL project. The CSA system would create a streamlined national system, under which a registrant would simply be required to notify the regulator in its home jurisdiction that it wished to do business in other jurisdictions and pay the appropriate fees.

RULES 3B4(2) British Columbia is a participant in that project and the final version of our legislation will reflect the outcome of that project if it is completed in time. In the meantime, the Draft Legislation provides for a ''one-way'' registration passport concept. It allows an applicant for registration to submit, instead of a registration application form, evidence of registration from another Canadian jurisdiction. Those registered elsewhere in Canada to conduct business will be permitted to do business in British Columbia once they file evidence of their registration here and pay the applicable fees.

(c) Registration of independent owner-operator firms

An independent owner-operator is, at its most basic level, a one-person investment dealer or mutual fund dealer.

The current legislation does not practically allow this type of business organization for dealers, but in the new regime they are permitted to register as restricted dealers. There does not appear to be any policy basis on which to reject these arrangements as a matter of principle. We believe we should not prohibit individuals from carrying on business in this form in the absence of compelling reasons to do so. If an individual can meet our regulatory requirements for firms, there seems to be no reason why the individual should not be registered as an independent owner-operator. A properly designed independent owner-operator registration model need not compromise either investor protection or market integrity.

This approach to independent owner-operators seems to work well in other financial services industries in Canada (for example, the insurance industry) and exists under securities regulation in other jurisdictions, including the United States (to some degree) and Australia. We will continue to acquire more information about how these jurisdictions address the risks inherent in self-oversight to ensure that appropriate safeguards are included in the registration conditions and restrictions for these registrants.

Today, the Investment Dealers Association (IDA) and the Mutual Fund Dealers Association (MFDA) do not permit the registration of independent owner-operators, so these entities will be registered in the restricted dealer category (see discussion below) and will be overseen by the Commission directly.

There are more details about the requirements for independent owner-operators in the Dealers and Advisers Guide.

2. Registration Categories

RULES 3B1

The Draft Legislation reduces the numerous existing registration categories to four:

- Investment dealers
- Mutual fund dealers
- Restricted dealers
- Registered advisers

This regime eliminates the categories of security issuer, real estate securities dealer, exchange contracts dealer, scholarship plan dealer and underwriter. Dealers that are not investment dealers or mutual fund dealers will be restricted dealers. The adviser category includes those formerly in the investment counsel and portfolio manager categories. The securities adviser category is eliminated. Persons in this category — those who publish advice through general-circulation media — will no longer be required to be registered. The protections afforded by the registration requirement for general advisers have been replaced by the prohibition against misrepresentations, and the other market participant conduct provisions, and investor remedies.

RULES 3B1(4) 3B2

The registration regime for investment dealers and mutual fund dealers is largely unchanged from the current legislation — most requirements are embodied in the

IDA and MFDA rules. However, we will be encouraging these SROs to take measures corresponding to the streamlining and simplification initiatives reflected in the Draft Legislation. For restricted dealers, the specific rules have been eliminated, but requirements appropriate to each registrant's business will be reflected in the conditions of registration of current and future registrants in this category.

RULES 3B1(4)

In British Columbia there are fewer than 20 dealers (from various categories) that will move into the restricted dealer category, and many of them are engaged in businesses quite different than others in the same category. We have therefore chosen to regulate dealers in this category through the conditions of their registration, rather than through rules. To preserve transparency, the conditions of registration of these dealers will be public.

3. Code of Conduct

RULES 3D1

The Draft Legislation includes a comprehensive Code of Conduct for registered firms and their representatives that replaces many of the complex and prescriptive rules that registrants must follow today.

This approach reflects our view that the registration system works best when registrants are focused on their broader obligations to their clients and the market and are accountable for meeting them. A system like the current one, with many complex, detailed requirements creates two problems. First, sometimes registrants follow the detailed rules and do not consider their broader obligations. Second, prescriptive rules also make it difficult for us to keep regulatory requirements aligned with commercial practice. The market changes far faster than we can revise rules. The current system does not offer the flexibility that is needed for the fast pace of change in the industry.

The Code of Conduct replaces complex and prescriptive rules with general principles. General principles force firms to think about the reasons behind the rules as opposed to blindly following them. We want to avoid the ''loophole'' mentality that comes with detailed, complex requirements. Firms and their representatives must consider each principle and ask themselves whether behaviour falls within the spirit of a specific principle or violates it.

By casting registration requirements in general, principled terms, we create a framework that protects both investors and Canadian markets while encouraging innovation. Under the Draft Legislation, firms are responsible for enforcing the Code and are accountable to regulators and liable to investors for breaches of the Code by their representatives (see Part 15). We think this will motivate firms to take an active and continuing interest in compliance.

This approach allows each firm to take the Code's general principles and develop them into a compliance system that works for that particular firm and its representatives. This means firms can design systems tailored to their particular needs that will yield better quality results. Time currently spent filling out forms and going through checklists can instead be spent on employee education, policy-

making, supervision, and solving problems using the broad principles as guidance.

Some firms may incur transition costs to adapt their compliance systems to a Code approach, but they will ultimately have more control over costs because they can design the details of their compliance systems rather than having the details imposed on them. As noted above, we are doing a regulatory impact and cost-benefit analysis on the Code of Conduct provisions in the Draft Legislation.

Other organizations that regulate the securities industry have their own codes of conduct. For example, the IDA has a Code of Ethics and Conduct that deals with ethics and compliance-related issues of importance to representatives of IDA member firms. We will be consulting with the IDA and other self-regulatory organizations (SROs) to ensure that the Code in our rules and the regulatory objectives of the SROs are consistent with, and support, each other.

The Code and guidance for its application is contained in the Dealers and Advisers Guide.

4. Other Ongoing Requirements

(a) Record keeping

RULES 3D2 3D3 10A1

The Draft Legislation requires a registered firm to keep records of information sufficient to record its business activities and its clients' transactions and includes outcomes-based criteria for those records. Records relating to the firm's working capital, segregation of client funds, and the trading and advising authority of the firm's employees are all contemplated.

These outcomes-based provisions replace pages of detailed and prescriptive rules relating to a firm's record keeping practices. While we think a basic requirement to maintain adequate business records is appropriate, we do not think we need to instruct firms on the details of the records they need to keep to run their business. As part of our compliance review of a firm we will examine the records it keeps and identify where we think improvement is needed.

(b) Plain language

RULES 10A2 Code Principle 2(4)

Under the Draft Legislation, a new provision requires anyone who files documents with the Commission to prepare them in plain language. In addition, the Code of Conduct requires that registrants and their representatives ensure that all disclosure provided to clients is prepared using plain language.

These requirements are consistent with the Commission's own commitment to express the Act, Rules and all other regulatory instruments in plain language so that market participants can understand what is expected of them.

(c) Bonding

RULES 3B1(4) 3E1

The Draft Legislation retains the existing bonding requirements for advisers; all other bonding requirements in the current legislation are eliminated. We will deal with bonding requirements for restricted dealers through their conditions of registration.

The IDA and the MFDA also have bonding requirements, along with ''deposit insurance'' requirements. IDA members must participate in the Canadian Investor Protection Fund (CIPF). The MFDA has proposed a new Investor Protection Corporation (IPC) to cover its members. These SRO rules appear adequate and supersede the requirements of our current legislation.

(d) Capital

RULES 3B5 3D6

The Draft Legislation replaces the specific capital requirements in the current legislation with the requirement that a registered firm maintain capital sufficient to meet its business obligations. As part of its application for registration, a firm applying for registration as an adviser must state the amount of capital it considers sufficient to meet its obligations, and file a calculation of capital showing this sufficiency.

RULES 3E3 3E4

Registered advisers must make a similar annual filing with the Commission. In addition, these registrants will also have to notify the Commission immediately if their capital level falls below the amount they previously reported. (We are not imposing the same ongoing review and disclosure requirements on investment dealers and mutual fund dealers as they are subject to their own requirements through their SRO membership.)

Current capital requirements exist ostensibly to ensure that firms remain solvent and that the owners have significant equity at risk. Capital requirements have not historically been imposed, and we do not recommend they be imposed, to ensure that firms have sufficient funds to satisfy potential client lawsuits. The following paragraphs address these arguments for capital requirements, and our responses.

Solvency

RULES 3D6

As noted above, the Draft Legislation mandates that the firm maintain capital at a level sufficient to meet the demands of its business. For small firms that merely provide advice and have no control or custody over client funds, the capital requirements may be very low. For larger firms that hold client funds, prudence would dictate higher amounts. Because circumstances vary greatly among firms, it seems pointless to specify a dollar amount for capital.

RULES 3E4

From a solvency perspective, what is necessary is that the firm have the resources to remain in business, or at least have sufficient reserves so that there is enough time to warn regulators so they can arrange for steps to be taken, if necessary, to protect client funds. This is achieved through the requirement that a registered adviser notify the Commission immediately if its reserve falls below the level previously reported. We have not imposed this same notification requirement on

investment dealers and mutual fund dealers because they are subject to similar notification requirements through SRO rules and CIPF or IPC coverage, as discussed above.

Capital at risk

A traditional goal of capital requirements has been to require that the owners have personal capital at risk, presumably so that they are more interested in the success of the business.

Under the approach to solvency set forth above, investors will be protected by an adequate capital shield, monitored by the Commission, or by the registrant's SRO or protection fund. In such a regime, it does not seem necessary to go further and impose additional requirements intended to motivate owners to do the right thing. It seems preferable to rely on a principles-based objective test for capital for investor protection than on owner sentiment. But more importantly, the degree to which a specified minimum capital requirement acts as a motivator is entirely dependent on the means and personality of the individual concerned. For some, the potential loss of $25,000 of personal capital would be a great motivator. For others, the potential loss of $100,000 or more would be of little concern.

Moreover, the regulatory system itself imposes major start-up costs that themselves act as a barrier to entry. Anyone who enters the system and successfully obtains registration will have invested substantial amounts.

Funding lawsuits

Above we noted that the purpose of capital requirements was not to ensure that firms had sufficient capital, through cash or insurance, to fund potential client lawsuits. The Draft Legislation does not require that capital requirements be set at levels necessary to achieve this objective, nor does it mandate errors and omissions insurance. There does not appear to be a problem that needs fixing in this area, and such requirements would impose huge costs on industry. The new civil liability regime in the Draft Legislation (see Part 15) might move some to say that such a requirement should be considered, but firms are exposed to civil liability at common law now, and there is no requirement along these lines. Similarly, we have no requirement for issuers to set aside a reserve out of prospectus proceeds for a period of time to fund potential liability under current statutory liability for prospectus misrepresentations.

For these reasons, the Draft Legislation does not impose minimum-dollar capital requirements. However, for some firms, the objective standard imposed by the Draft Legislation might exceed the dollar-specific requirements in place today.

5. Harmonized Interface

(a) Firm-only registration

The USL Concept Paper does not propose including firm-only registration or independent owner-operator registration in the USL.

The interface for firm-only registration is fairly straightforward. Registered firms carrying on business in British Columbia will not have to register their representatives to deal with residents of British Columbia. Firms based in British Columbia that operate in other Canadian jurisdictions will have to register, under the laws of those jurisdictions, the representatives who will be dealing with residents of those jurisdictions.

A representative registered in another jurisdiction, need not register to carry on business in British Columbia if the representative's firm is registered here. An individual who trades or advises in British Columbia as a representative of a registered firm and who wishes to become registered in another Canadian jurisdiction would have to apply for individual registration in that jurisdiction, and then use that jurisdiction as the representative's home jurisdiction for the purposes of getting registered elsewhere under the passport system.

Representatives who operate as independent contractors or through corporations or other entities will be accommodated in British Columbia, but might not be in other jurisdictions. The same is true for those registered as independent owner-operators. We do not see that as a reason not to make these options available to persons here.

(b) Code of Conduct

RULES 3D1

The Code of Conduct will apply to all firms and representatives doing business in British Columbia. The most significant interface issue here is that some may perceive the Code as imposing requirements not contemplated under the securities laws of other Canadian jurisdictions, for example in the area of conflicts of interest. However, we think that in most respects, compliance with other Canadian registration regimes will constitute compliance with the Code.

(c) Ongoing requirements

USL will continue to prescribe capital requirements for restricted dealers and advisers. The USL Concept Paper also proposes that the USL include bonding, insurance, and margin requirements, as those are largely harmonized already.

RULES 3E5

British Columbia-based firms registered in, British Columbia will have to comply with British Columbia requirements (and, of course, the requirements of any other jurisdiction in which they choose to operate). The Draft Legislation contains an exemption from the British Columbia principles-based capital requirement for advising firms based outside British Columbia that are registered here if they comply with their home jurisdiction capital and bonding requirements.

B. Trading Exemptions

Overview

The Draft Legislation includes fewer exemptions than the current legislation from the requirement to register to trade securities. We have consolidated some

exemptions and eliminated others that no longer make sense given changes in the financial services industry or our enforcement experience.

The registration exemptions in the Draft Legislation fall into these categories:

- General
- ''Safe'' securities
- Protection is provided by another regulator or regime
- Public, restricted and private issuers and issuer transactions
- Foreign dealers, advisers and mutual funds
- Mutual funds

Exemptions in the first three categories are discussed in this Part. The exemptions for public, restricted and private issuers and issuer transactions, although found in Part 3 of the Draft Legislation, are discussed in Part 4 of this Commentary. Part 7 of the Draft Legislation contains exemptions for foreign dealers, advisers and mutual funds and those exemptions are discussed in Part 7 of this Commentary. The other mutual fund exemptions are found in Part 8 of the Draft Legislation and are discussed in Part 8 of this Commentary.

1. General Exemptions

There are five exemptions in this category. The Draft Legislation includes these exemptions because the protections a registrant provides are either present or unnecessary:

(a) Purchase of securities

ACT 1A1
RULES 3F2

As under the current legislation, the Draft Legislation does not require a person to be registered or use a registrant to purchase a security. The purchaser is protected by applying the registration requirement or exemption to the seller. The current legislation excludes a purchaser from the definition of ''trade'', so the registration requirement does not apply to it. The Draft Legislation includes a purchase in the definition of *trade*, which is useful for purposes other than the registration requirement, and provides an exemption from registration for a purchase.

(b) Trades to or through a dealer

RULES 3F3

Several exemptions under the current legislation for trades to or through a dealer are consolidated in this exemption.

We provide this exemption because if a trade is to a dealer, the dealer is certainly sophisticated enough to understand the implications of the trade without having to get advice from another registrant. If the trade is through a dealer, the buyer is protected by the dealer's involvement.

Since underwriters are no longer a separate category of registrant it is not necessary to give them their own exemption (see section 45(2)*(16)* of the current Act).

(c) Isolated trade

RULES 3F4

The Draft Legislation keeps the existing exemption for isolated trades but limits its application to securityholders (the current legislation also makes the exemption available to issuers).

We suspect issuers do not use the current version of this exemption very often, if at all. However, even if they do, narrowing its availability is appropriate. Issuers that cannot find another exemption among the wide array available to them under the Draft Legislation should apply for a discretionary exemption. This will give the Commission the opportunity to see how the proposed trade fits the established criteria for dispensing with protection by a registrant (the purchaser is sophisticated, has adequate information about the issuer, or can judge management's trustworthiness and capability, etc.).

We have also eliminated the references in the current exemption to the trade being ''not in the course of continued and successive transactions of a similar nature'' and ''not made by a person whose usual business is trading in securities'' because these phrases add nothing to the plain meaning of the word ''isolated''.

(d) Representative of registrants

RULES 3F5

This is the exemption in the Draft Legislation that creates the firm-only registration system. It exempts an individual from the registration requirement if the individual is a representative of a registered dealer or registered adviser.

(e) Trades back to the issuer

RULES 3F6

The Draft Legislation version of this exemption simplifies the version in the current legislation. An issuer does not need registrant protection when deciding whether to acquire its own securities back from a securityholder.

2. ''Safe'' Securities

RULES 3F16

The Draft Legislation preserves and consolidates several of the existing exemptions for certain ''safe'' securities.

Canadian government debt

The Draft Legislation preserves the exemption for debt issued by federal, provincial and territorial governments, and government strip bonds. The rationale for this exemption is that the risk of default is minimized by the taxing authority of governments and that these governments are well known to Canadians.

Other debt

The Draft Legislation exempts debt from governments outside Canada and financial institutions that is rated by a designated rating agency. The current legislation exempts government debt only for jurisdictions specifically recognized by the Commission. We do not think the Commission should be choosing which governments are eligible for the exemption. In some provinces, the exemption applies to any jurisdiction in the world. We think that is too broad. Requiring that the debt be rated should provide appropriate protection. The exemption also applies to short-term debt or commercial paper of public issuers and to guaranteed investments issued by any Canadian financial institution whose deposits are government guaranteed.

3. Protection Provided By Other Regulator or Regime

In this group of exemptions, either protection is provided by another regulator or the trade takes place under court supervision or within very restricted legal boundaries.

(a) Trades in variable insurance contracts

RULES 3F17

Unlike the current version of this exemption, the Draft Legislation version places no limits on the kinds of variable insurance contracts eligible for the exemption on the basis that insurance products and agents are licensed, and investors are protected by the insurance regulation regime. Furthermore, we are not aware of any investment products that we are regulating today because they fall outside the restrictions in the current exemption. Over time, we will work with the Financial Institutions Commission and through the Joint Forum of Financial Market Regulators to address any discrepancies between the regulatory treatment of similar products under the two regimes (for example, mutual funds and segregated funds).

(b) Trades in mortgages

RULES 3F18

The Draft Legislation keeps the exemption in the current legislation for trades in mortgages that are not syndicated mortgages but does not preserve the current exemption for ''qualified'' syndicated mortgages — mortgages on small residential buildings. We understand that the restrictions on the exemption are so extensive that it has rarely been used, and there appears to be no compelling policy reason to support the exemption. The new form of offering memorandum (see Appendix B to the Issuers Guide) has been adapted for use for syndicated mortgage offerings.

(c) Trades in real estate securities

RULES 3F19

The Draft Legislation keeps an exemption for real estate securities. Like the current legislation, the Draft Legislation draws a distinction between real estate investments where the main purpose is to generate a return and those where the main purpose is the occupation of property. Those in the former category

are regulated by securities legislation, those in the latter category by the *Real Estate Act*.

The main purpose of a real estate investment is determined by whether the seller of the security markets the expected economic benefits of any pooling or management arrangements related to the security. If not, and if the owner is entitled to occupy the property for 30 days or more per year, the main purpose is considered to be the occupation of property. Otherwise, the main purpose is considered to be the generation of a return.

See Appendix B to the Issuers Guide for information about the use of the offering memorandum form in the context of real estate securities.

RULES 3F24 The specific resale relief in current BC Instrument 45-513 *Resale of Real Estate Securities* is replaced by the resale provisions in the Draft Legislation that apply to restricted issuers. Alternatively, holders can make use of this exemption by following the *Real Estate Act* requirements. See Part 4 for a discussion of resale of restricted issuer securities generally.

(d) Trades under legal authority

RULES 3F20 The Draft Legislation preserves and consolidates several existing exemptions in the current legislation dealing with debt collection, estate administration, bankruptcies and so on. The Draft Legislation covers most situations in which persons are either overseen by another legal authority (e.g. a court) or their powers are narrowly defined in the instruments authorizing them. Most of these persons do not qualify for the isolated trade exemption because there is an element of repetition and continuity to the trades.

(e) Canadian dealers and advisers outside British Columbia

RULES 1A1 3F21 3F26 The Draft Legislation contains new exemptions that allow dealers and advisers registered elsewhere in Canada whose clients move to British Columbia to continue to deal with them. They also allow a Canadian dealer or adviser registered elsewhere to deal with British Columbia residents who seek its services if the dealer or adviser does not *solicit business from residents of British Columbia*.

(f) Persons and markets outside of Canada

RULES 3F22 The Draft Legislation exempts residents of British Columbia who sell securities to someone outside Canada in compliance with the other jurisdiction's securities laws from the registration requirement. It also allows public issuers or their securityholders to sell through marketplaces outside Canada.

(g) Harmonized interface

RULES 3F23 The Draft Legislation exempts a person from the British Columbia registration requirements if a trade takes place in both British Columbia and another Canadian

jurisdiction and if the trade is exempt from the registration requirements of the other jurisdiction.

4. Exemptions Eliminated

These exemptions in the current legislation are eliminated and not replaced by any others under the Draft Legislation:

(a) Unsolicited trades by bank or trust company

These exemptions were originally intended to address the difficulty investors in remote parts of the province had in communicating with registrants. Telecommunications access is now virtually universal, so this no longer appears to be a sound basis to keep the exemption. Furthermore, the opportunity exists for the exemption to be used for unintended and inappropriate purposes.

(b) Conditional sales contracts

The Draft Legislation does not include the exemption for conditional sales contracts. These trades usually occur in the commercial factoring context and do not seem to involve the policy concerns that securities regulation addresses.

(c) Charities

The current exemption allowing charities to trade their securities is eliminated now that the capital raising exemptions are significantly more flexible.

(d) Cooperative associations and credit unions

Today, registration is not required to trade in shares of credit unions, or membership shares of cooperatives.

ACT 1A1 In the Draft Legislation, credit union membership shares and cooperative membership shares are excluded from the definition of *security*. The Act therefore no longer applies to trades in them and no exemption is required.

However, non-membership shares in credit unions and cooperatives are treated like any other securities. They can be traded through a registrant or under one of the many exemptions available for capital raising.

As membership shares will not be included in the definition of security in the Draft Legislation, members of cooperatives and credit unions can rely on remedies under the *Trade Practices Act*, the common law, and some *Company Act* remedies that have been imported into the cooperatives and credit union regulatory regimes.

(e) Trades on an exchange through telecommunications

Whatever problem the exemption in section 45(2)*(23)* of the current Act was designed to fix, the exemption has never been used and the Commission has never recognized an exchange for the purpose of this exemption.

(f) Trades in self-directed RESPs

ACT 1A1 Under the Draft Legislation, the exemption in BC Instrument 45-510 *Trades in Self-directed Registered Educational Savings Plans* is not necessary because self-directed RESPs are no longer included in the definition of *security*.

5. Harmonized Interface

See Part 4 for a discussion of the interface issues arising in the exemptions context.

C. Advising Exemptions

RULES 3F25 3F26 7B2 There are only three advising exemptions in the Draft Legislation. One corresponds to the exemption for dealers from other Canadian jurisdictions (see ''Canadian dealers and advisers outside British Columbia'' above) while another exists for foreign advisers (see Part 7). The third is for registered IDA members; these dealers are not required to register to manage investment portfolios on behalf of their clients if they follow the IDA rules for providing portfolio management services.

No other adviser exemptions are necessary because only those who are in the business of advising are required to register. Those who are in the business of advising must register, even if they are advising only on securities sold under exemptions, because the purchaser is relying on their expertise as advisers. The current legislation has exemptions for classes of persons whose advising activities are ''incidental'' to their primary business. It is not necessary to provide an exemption on that basis — if a person is not in the business of advising, the person need not be registered in the first place.

Part 4 Offerings

This Part of the Commentary deals with public offerings and private placements by issuers (other than mutual funds, which are covered in Part 8).

A. Public Offerings

Overview

Part 4 of the Draft Legislation implements the public offering aspects of the Continuous Market Access (CMA) system described in our June Proposals Paper, with a few changes. It:

- sets out the procedural and disclosure requirements for going public,
- requires an issuer filing its initial AIF to use an underwriter or other due diligence provider,
- eliminates mandatory escrow,
- replaces the current prospectus requirement for offerings after the issuer's initial public offering with simple disclosure and filing requirements, and
- eliminates resale restrictions for public issuers.

The rules for surrendering public issuer status are found in Part 5 of the Draft Legislation and are discussed in Part 5 of this Commentary.

1. Going Public

Process

ACT 4A1 4B1

Under the Draft Legislation, an issuer that wants to sell its securities to the public without restrictions must be a public issuer. The principal way to do this will be to file an initial AIF (the document that replaces the prospectus at the IPO stage) that is acceptable to the Commission; however, like today, there will be other ways to become a public issuer. The initial AIF filing process under the Draft Legislation is essentially the same as today's prospectus filing process, although there are no formal ''preliminary'' and ''final'' documents and the vetting process is streamlined.

ACT 4B1 4B2 **RULES** 4B2 4C1-4C4

Under the Draft Legislation, the issuer files a draft initial AIF and financial statements with the Commission, which staff reviews. This filing is not public. Once the issuer resolves any staff comments, the initial AIF and financial statements are finalized, the Commission accepts them, and the document is filed publicly on SEDAR. The issuer is now a public issuer and may begin offering securities.

ACT 4B2

The Commission has the discretion whether to accept the initial AIF. The basis for its decision — like any Commission decision under the Draft Legislation — is the

public interest (see Part 11). Commission's vetting of the document will be more limited than today. In most cases staff review will be focused on identifying:

- unsuitable directors and officers,
- significant non-compliance with the form, or
- public interest concerns (the guidelines to the AIF set out examples of these; see Appendix A to the Issuers Guide).

ACT 4B2(2) Before the commission decides not to accept an AIF, it must give the issuer an opportunity to be heard.

ACT 5B1 Once the initial AIF is accepted, a public issuer must make any changes to the material information it contains through the timely disclosure regime (see Part 5); the issuer need not file another AIF until it is next required to file its annual financial statements. This also replaces the provisions that currently govern prospectus amendments after a receipt has been issued.

RULES 4B4 5E3 Consistent with the approach to delivery of continuous disclosure materials under the Draft Legislation, issuers need deliver the initial AIF to investors only on request. This is another change from today — under the current legislation, delivery of the prospectus is mandatory.

Disclosure

RULES 4B2 4B3 The Draft Legislation replaces the current prospectus form with a required AIF form and a related set of Guidelines (see Appendix A to the Issuers Guide). Like today, the Draft Legislation also specifies other forms (such as share exchange take over bid circulars) as acceptable alternatives to the initial AIF. However, unlike today, the acceptance process will still apply to these alternate documents under the Draft Legislation. Today, if an issuer files a share exchange take over bid circular, it becomes a reporting issuer and we do not vet the document.

The significant differences between the initial AIF and prospectus disclosure requirements are:

ACT 1A1 4B1(3)
- *Disclosure standard.* Under the Draft Legislation, the initial AIF must disclose all *material information* about the issuer and any transaction. A prospectus must contain full, true and plain disclosure of all ''material facts''. In practice, we do not think there is any difference between these two standards. We have chosen to use *material information* as the standard for a public issuer's disclosure record as a whole primarily because people associate the term material fact with the prospectus requirement; however, the current prospectus forms require disclosure of information that is not, strictly speaking, ''material''. See Part 5 for a further discussion of materiality under the Draft Legislation.

- *Length of form.* The AIF form is significantly shorter than the prospectus forms under the current legislation. What we have removed is much of the detail and prescription and some of the items requiring disclosure of non-material matters. In some cases, we have done this by moving the substance of the prospectus forms into the guidelines to the AIF.

RULES 10A2

- *Plain language mandatory.* The Draft Legislation requires all documents required to be filed with the Commission to be drafted in plain language. Although the disclosure in a prospectus is theoretically supposed to be plain (''full, true and plain disclosure''), experience has shown that far more emphasis has been placed on ''full'' and ''true'' (especially ''full'') than on ''plain''.

- *Executive compensation.* The executive compensation disclosure requirements in the initial AIF form are significantly different from those under the prospectus form. See Part 5 for a discussion of our new approach to executive compensation disclosure.

- *Material contracts.* The Draft Legislation does not require an issuer to make its material contracts available to the public, but the issuer must describe the important aspects of these agreements to the extent this is material information. This is intended to result in more meaningful disclosure than the abbreviated disclosure that is sometimes found in current prospectuses, justified on the basis that the contract is available for public view. As a practical matter, shareholders will receive copies of any agreement to which they are a party, such as limited partnership agreements.

- *Resource issuer technical reports.* Like today, public issuers with mineral properties will have to comply with National Instrument 43-101 *Standards of Disclosure for Mineral Projects.* This instrument will be reviewed in 2004, when we intend, preferably with CSA, to conduct a regulatory impact and cost-benefit analysis. The Commission will be considering the approach to oil and gas disclosure when that proposed rule is brought forward by CSA for adoption.

Financial statements

The financial statement requirements at the initial AIF stage are consistent with the current requirements for prospectus filings and those that CSA is considering for a new national long form prospectus rule, except as follows:

RULES 1C6 4C1 4C2

- The Draft Legislation requires three years of financial statements, but allows the first two years to be unaudited, unless audited statements already exist for those years.
- The Draft Legislation does not require the issuer's audit committee, if any, to review the financial statements before they are filed — the Draft Legislation does not impose the audit committee requirement until the issuer becomes a public issuer. However, the Issuers Guide suggests that an issuer intending to go public may want to consider appointing an audit committee, since the requirement applies immediately after the issuer's IPO.
- Under the Draft Legislation, transactions involving a reverse takeover or significant acquisition, or where the securities are guaranteed, are discussed in guidance rather than prescribed by rules (see Appendix A to the Issuers Guide).

An issuer in the development stage must provide a breakdown of material expenses (see Appendix A to the Issuers Guide).

Forward looking information in initial AIFs will be treated the same as for continuous disclosure (see Part 5).

Harmonized interface

RULES 4B3(b) Our replacement of the prospectus requirement with our rules for AIFs will not affect issuers conducting an IPO in more than one province. The Draft Legislation provides that an offering document prepared in accordance with the laws of another Canadian jurisdiction will satisfy our AIF requirements. The Issuers Guide explains that if an issuer filing a prospectus, either at the IPO stage or after that, chooses British Columbia as its principal regulator for MRRS purposes, we will vet the prospectus, applying the appropriate prospectus rules. British Columbia investors participating in a multijurisdictional prospectus offering will be entitled under the Draft Legislation to the prospectus remedies they have elsewhere in Canada (see Part 15).

Due diligence providers

RULES 4B5 The Draft Legislation requires an issuer to retain a due diligence provider for its initial AIF, which reflects the Commission's current practice to refuse to receipt an IPO prospectus unless the issuer retains an underwriter (who we expect will do due diligence on the issuer before the offering to protect itself from liability). For offerings after the IPO, the Draft Legislation does not require the use of a due diligence provider, which also reflects current practice.

This approach is different from what we proposed in our June Proposals Paper. At that time, we said we would require junior issuers to use a due diligence provider for all public offerings. However, market participants made persuasive arguments that there is no reasonable basis for imposing the additional requirement on junior issuers. Size, they said, is not a reliable indicator of competence or integrity, and indeed experience seems to bear this out. Non-brokered private placements are also an important source of capital for small reporting issuers today, and requiring the involvement of a registrant would have a serious negative impact on their ability to raise capital at a reasonable cost.

RULES 4B6 Unlike the current legislation, which only permits registered underwriters to perform a due diligence function, the Draft Legislation allows registered dealers and advisers, and other competent third parties that have been approved by the Commission, to act as due diligence providers. There is significant support for this approach in the issuer community — especially among small cap issuers. (In a survey the Commission conducted in 2002, 23% of issuers who responded said that if they had the opportunity they would use a firm other than a dealer for due diligence. Among small-cap issuers, this proportion rose to 62%; see *Better Disclosure, Lower Costs: A Cost-Benefit Analysis of the Continuous Market Access System* on our website at www.bcsc.bc.ca/bcproposals.)

The report we prepared with the assistance of our New Economy and Adoption of Technologies (NEAT) project committee also identifies the requirement for

underwriters to sponsor an issuer and conduct due diligence as a major problem. See *Making Securities Regulation Work for BC's New Economy*, on our website.

The Issuers Guide lists examples of criteria a person applying for approval as a due diligence provider should satisfy. Initially we will consider applications from non-registrants on a case-by-case basis until we have sufficient experience to provide appropriate guidance. For each applicant, we will consider whether our approval will be approval to act as a due diligence provider generally, or be limited to a given transaction or industry sector.

Elimination of mandatory escrow

The Draft Legislation does not require escrow. Today, we typically require an IPO issuer to escrow previously-issued securities on the terms set out in National Policy 46-201 *Escrow for Initial Public Offerings*.

There are a number of stated and unstated purposes of escrow:

- According to NP 46-201, it is to tie management to an issuer for a reasonable period of time after the issuer's IPO to carry out the issuer's business plan disclosed in its prospectus.
- It keeps cheap stock from depressing the aftermarket in the issuer's securities.
- It has the collateral benefit of deterring market abuse by unscrupulous promoters and underwriters who might otherwise bring an issuer to market and then dump the stock.

However, the mandatory escrow regime in NP 46-201 has these disadvantages:

- It restricts the sale of shares held by shareholders who are not key to carrying out the issuer's business plan.
- It does not account for the duration of the investment or the price paid for the security, and therefore often offends investors' sense of fairness.
- It is a ''one-size-fits-all'' approach.

In addition, we have concluded that mandatory escrow is not necessary for investor protection. The problems it is intended to solve can be solved in other ways. We think it is time to allow the market to develop other methods to achieve the various purposes behind escrow.

Tying management to the issuer. We have no evidence that, in the absence of escrow, management will leave the issuer. There may be no problem to solve here (those managing a legitimate business generally stay with the issuer to prove out the business plan and realize the pay-off), but if there is one, there are other ways of encouraging management to stay. For example, the underwriter could require the issuer to provide for management retention through performance-based incentives, management contracts and non-competition agreements.

Preventing cheap stock from depressing the aftermarket. Underwriters tell us that if it were not mandatory, they would impose escrow by contract. This is what happens in the US — there, underwriters typically impose ''lock-ups'' of pre-IPO stock for this reason. An advantage of this approach is that instead of relying on a

''one-size fits all'' approach, the underwriter and issuer can design arrangements appropriate to each transaction.

Deterring market abuse. This is not an articulated reason for mandatory escrow, and to the extent this deterrent has value, it comes at the expense of regulatory burden on the honest. In most cases, management does not bring a company public to dump the stock. Rather than punish everyone, through the significant burden of a mandatory escrow agreement, for the abusive behaviour of a few, we should approach that problem directly using other tools.

The Draft Legislation has some provisions that address this issue:

- The initial AIF form requires issuers to disclose the arrangements they have made to encourage key management to stay with the issuer, as well as risk disclosure (see Appendix A to the Issuers Guide). In most cases, the risk of losing key management or investors will be material information.

RULES Code, Principle 6(4)

- The Code of Conduct requires dealers acting as underwriters to act in the best interests of investors and the market. Whether a dealer acting as an underwriter employs appropriate steps to deal with the risks to the market will be a review item in compliance reviews.

2. Offerings After the IPO

No prospectus or other offering document required

ACT 5B1

The Draft Legislation implements the CMA system described in our June proposals. Under the Draft Legislation, a public issuer is required to make all material information available at all times (see Part 5 for a discussion of continuous disclosure requirements). Therefore, no mandated offering document is necessary, and the Draft Legislation does not require one. This is a significant change from today — the current prospectus requirements apply to all public offerings.

ACT 5B1

If the fact of the offering is *material information* — as will be the case with most general offerings — the issuer must issue and file a news release under Part 5 of the Draft Legislation. The Issuers Guide provides guidance about what this news release should contain.

Although there is no mandatory offering document after the IPO, issuers may prepare offering documents if they wish. In fact, we expect that many issuers will produce offering documents to help market the issue.

RULES 4E1

If a public issuer uses an offering document to make a general offering, the Draft Legislation requires it to file the document on SEDAR so it becomes part of the issuer's continuous disclosure record, but the Commission will not vet the document. (The Commission may review the document later as part of a continuous disclosure review.)

The Issuers Guide explains that a public issuer should take a balanced approach in presenting information in an offering document to ensure that it does not contain a misrepresentation. If it does, or if the issuer uses unfair practices to sell the

securities, the issuer will be subject to enforcement action and civil liability (see Parts 12 and 15).

RULES 5A11 The Draft Legislation includes a new requirement to allow Commission staff to keep track of capital raising activity in our public markets (they do this today through the prospectus review process). Under the Draft Legislation, a public issuer must make an annual filing, within 30 days of its year-end, that discloses all offerings made in the past 12 months (see Appendix E to the Issuers Guide for the required form.

Harmonized interface

Our elimination of the prospectus requirement will not affect issuers conducting an offering in more than one province. For issuers that choose another province as principal regulator for MRRS purposes, the requirement to file a prospectus will simply not apply in British Columbia. The Issuers Guide explains that if an issuer filing a prospectus chooses British Columbia as its principal regulator for MRRS purposes, we will vet the prospectus, applying the appropriate prospectus rules. British Columbia investors participating in a multijurisdictional prospectus offering will be entitled under the Draft Legislation to the prospectus remedies they have elsewhere in Canada (see Part 15).

3. No Resale Restrictions

The Draft Legislation eliminates the hold periods and resale restrictions (the ''closed system'') in the current legislation for securities of public issuers because disclosure of all material information all the time eliminates the need for them. All of a public issuer's securities — whether issued before, on or after its IPO, and whether issued in a public offering or a private placement — are free trading. As a result, securities of a public issuer that is a reporting issuer in another Canadian jurisdiction will be free trading in British Columbia, even if they are subject to restrictions in the other jurisdiction.

Because the Draft Legislation eliminates the closed system for public issuers, it does not contain any special rules for offerings that public issuers make to purchasers outside of British Columbia. The existing rules in this area are designed to keep securities outside of British Columbia for an appropriate period before they ''flow back'' to British Columbia investors. With no ''closed system'' for public issuers, ''flowback'' is no longer relevant.

There are no interface issues in this area. Where a British Columbia issuer sells securities outside the province, either British Columbia law or that of another jurisdiction will apply — just as today. To help investors and issuers understand this, we have explained in the Issuers Guide how securities laws of other Canadian jurisdictions apply to a British Columbia based issuer that makes an offering outside British Columbia.

4. Multijurisdictional Disclosure System

The multijurisdictional disclosure system (MJDS) is a reciprocal agreement between Canadian regulators and the US Securities and Exchange Commission (SEC) that allows Canadian and US issuers to access each other's markets using their home jurisdiction documents. Sales by Canadian issuers to US purchasers, or ''southbound'' MJDS, is governed by the SEC rules, so the changes in the Draft Legislation from the current system do not interfere with the use of MJDS by Canadian public issuers.

The Issuers Guide also explains that if an MJDS issuer elects the Commission as its principal regulator and prepares its offering document under the securities laws of another province, we will review the document in accordance with those laws.

B. Private Placements and Other Non-Public Offerings

Overview

The Draft Legislation contains a number of registration exemptions for public issuers, restricted issuers and private issuers, and to facilitate issuer transactions. Although these exemptions are found in Part 3 of the Draft Legislation, we discuss them here in Part 4 because they are more relevant to issuers and their securityholders than to registrants. (Part 7 of the Draft Legislation contains an exemptions for foreign registrants and foreign mutual funds and those are discussed in Part 7 of this Commentary. The other mutual fund exemptions are found in Part 8 of the Draft Legislation and are discussed in Part 8 of this Commentary. All other registration exemptions are found in Part 3 of the Draft Legislation and Commentary.)

The exemptions for issuers and issuer transactions fall into these categories:

- Private placements
- Issuer transactions
- Private issuer offerings

The Draft Legislation also contains rules that securityholders of non-public issuers must follow when reselling their securities.

1. Private Placements

A private placement is an offering done without a dealer involved. The Draft Legislation contemplates five types of private placement:

- Offerings to those with a close connection to the issuer, called exempt purchasers
- Rights offerings
- Offerings to those who are sophisticated or who can bear the risk of loss, called *accredited investors*
- Offerings made using an offering memorandum
- Offerings by an employee venture capital corporation registered under the *Employee Investment Act*

The exempt purchaser, accredited investor and offering memorandum exemptions are substantially the same as exemptions in Multilateral Instrument 45-103 *Capital Raising Exemptions*, except that some of the restrictions and limitations in that instrument will not apply in British Columbia.

(a) Exempt purchasers

RULES 3F9

This exemption captures the exemptions in Part 3 of MI 45-103 for family, friends and business associates. The exemption also simplifies and consolidates various exemptions available under the current Act.

RULES 3F9(1)(c)(e)(f)(g)

The most significant change to the exempt purchaser exemption since the June Proposals Paper is that we have expanded the list of purchasers to include spouses of employees and consultants, and in-laws, holding entities, and trusts and estates of directors and senior officers. These additions correspond to exemptions found in proposed Multilateral Instrument 45-105 *Trades to Employees, Senior Officers, Directors, and Consultants* and revisions the CSA is proposing for the next version of MI 45-103.

Here is how various existing exemptions are dealt with under the new exempt purchaser exemption.

Designated exempt purchaser

The Draft Legislation captures the current exempt purchaser exemption under section 45(2)*(4)* of the Act not through the new exempt purchaser exemption, but through that for accredited investors (see below).

RULES 1A1

Today, an exempt purchaser is someone who applies to the Executive Director on a case-by-case basis for that designation. It is essentially unused (only one investor is currently designated). Under the Draft Legislation, an investor can apply to be designated an accredited investor (see below).

Trades to employees and consultants

RULES 3F9(1)(e)

The current exemptions in BC Instrument 45-507 *Trades to Employees, Executives, and Consultants* and the proposed exemptions in proposed MI 45-105 are replaced by a much simpler provision in the exempt purchaser exemption.

The existing instruments place conditions on the use of the exemption that are designed to mitigate various risks. The Draft Legislation deals with these conditions as follows:

- Proposed MI 45-105 imposes the condition on offerings by certain unlisted issuers that securityholder approval be obtained before the securities are issued. The Commission has decided that if MI 45-105 is adopted this will not apply in British Columbia since we have not imposed a similar condition in the past and are not aware of any abuses of the current exemption in section 74(2)*(9)* of the Act. Other restrictions in MI 45-105 correspond to the limitation that some stock exchanges impose on issuing securities to related parties. The Commission has

also decided to carve BC out of these aspects of the instrument since we see no need to duplicate exchange policies. The Draft Legislation is consistent with these decisions.

ACT 10B3
- The prohibition against inducing employees to purchase is replaced by the prohibition against unfair practices (which include putting unreasonable pressure on a person to buy a security). We have drawn this interpretation to issuers' attention in the Issuers Guide.

- The existing exemption is not available to investor relations consultants. This is because of past concerns that issuers would use this exemption to issue shares to complicit consultants as part of a scheme to manipulate the market. However, the Draft Legislation has provisions to deal with that type of market misconduct that are more effective and targeted directly at that conduct (see Part 10). Therefore, the Draft Legislation makes this exemption available so that legitimate arrangements can be made between issuers and their consultants.

Vendors

RULES 3F9(1)(h)
This part of the Draft Legislation exemption consolidates current exemptions for vendors of mining, oil, or gas properties and trades of other property, interests in property, or assets for securities.

Bonus or finders' fee

ACT 5B1
RULES 3F9(1)(j)
Insiders are no longer prohibited from receiving securities as a bonus or finders' fee, but public issuers must consider if such a transaction is material information and, if so, disclose it to the market.

(b) Rights Offerings

RULES 3F7
The exemption in the Draft Legislation for trades to existing securityholders replaces the exemption in the current legislation for rights offerings (see section 45(2)*(8)* of the current Act and National Instrument 45-101 *Rights Offerings*). For public issuers, the current requirement for an offering circular is not consistent with the CMA concept.

RULES 3F7(2)
The exemption is also available to restricted issuers on the basis that once an investor has invested in a restricted issuer, the investor has formed a relationship with the issuer. The investor is no longer a member of the ''public'' in relation to that issuer, so the exemption is appropriate. The only limits on a restricted issuer's use of this exemption is where the existing securityholder has no real relationship with the issuer, because the security was acquired either under an offering memorandum or by happenstance, such as through an inheritance.

(c) Accredited investors

RULES 1A1 3F10
The Draft Legislation captures the accredited investor exemption in Part 5 of MI 45-103. The Draft Legislation definition of *accredited investor* is very similar to

that under MI 45-103; however, we have eliminated registered charities from the list.

RULES 1A1 As discussed above, a person not caught by the Draft Legislation definition may apply to be designated as an accredited investor.

The Draft Legislation does not continue the current exemptions for trades in a prescribed minimum amount (the $97,000 and $100,000 exemptions). In developing MI 45-103, we concluded that minimum prescribed amount tests are poor proxies for the investor's sophistication or ability to withstand financial loss. We understand this exemption is used to sell securities to some venture capital funds. Once this exemption is eliminated, those funds can apply to be accredited investors, which will allow them to continue to purchase on an exempt basis, and give them more flexibility in doing so.

Trades to trust companies and insurers

RULES 3F1(2) The Draft Legislation deems only registered dealers and advisers to be acting as principal when purchasing under various exemptions. The effect of this is that the exemption is no longer available for trades to trust companies and insurers purchasing as principal for accounts fully managed by them. To enjoy the benefit of this exemption when acting as portfolio managers, these institutions will have to be registered as advisers. Trust companies and insurers have an exemption as accredited investors when they are purchasing for their own account, and trust companies also have an exemption for the exercise of their duties as fiduciaries (see Part 3).

(d) Offering memorandum

RULES 3F11 The offering memorandum (OM) exemption allows a public or restricted issuer to sell its securities to anyone in any amount if it provides the purchaser with an OM and the other requirements of the exemption are met. The discussion that follows explains the differences between the requirements under the Draft Legislation and those in Part 4 of MI 45-103.

Limits on individual purchases

In some jurisdictions that have adopted (or will adopt) MI 45-103, the issuer cannot sell more than $10,000 worth of securities to any one purchaser, unless the purchaser meets certain assets or income tests or gets advice from a dealer. We have not adopted these restrictions because:

RULES 3F11(1)(b)
- In British Columbia we had similar restrictions in the past, and we did not find them to be effective in protecting investors. The asset and income tests are by their nature arbitrary and we found them unsatisfactory as proxies for sophistication. We found the advice requirement served little purpose unless coupled with a requirement that the adviser be independent, and even then was easily, and frequently, circumvented. Rather than impose these types of restrictions, we chose to require issuers to alert investors that they are purchasing in the exempt market and notify them of the risks. This approach

gave rise to the blunt risk warning that purchasers must sign so the issuer can use the exemption (see Appendices C1 and C-2 to the Issuers Guide).

- The reason for capital raising exemptions such as the exempt purchaser, rights offering accredited investor and OM exemptions is to facilitate the raising of capital, especially for small issuers. Imposing individual purchase caps to some extent dilutes the effectiveness of the OM exemption because it makes it harder for issuers to raise the capital they need. Given our opinion that the caps are not effective for investor protection, we have not imposed them.

Disclosure standard — all material information

RULES 3F11(2) The Draft Legislation uses different language to describe the disclosure standard in an OM than does MI 45-103. Under that instrument, an issuer must not make a ''misrepresentation''. Under the Draft Legislation, the issuer must disclose in the OM all *material information*, the standard used for issuers filing an initial AIF (see ''Public Offerings'' above and Part 5).

ACT 1A1 There is no practical difference between the two standards. A misrepresentation under the current legislation includes untrue statements of a material fact and omissions that result in false or misleading disclosure. A material fact is a fact that could reasonably be expected to significantly affect the market price or value of the securities, which is essentially the definition of *material information* under the Draft Legislation. (See Part 5 for a discussion of how the new material information standard replaces the current definitions of ''material fact'' and ''material change''.) Therefore, a prohibition against misrepresentations and a requirement to disclose all material information impose, in practice, the same disclosure standard.

Form of offering memorandum

The Draft Legislation consolidates all existing OM forms into one (see Appendix B to the Issuers Guide). The Draft Legislation form of OM is based on the current OM form for non-qualifying issuers but accommodates all types of issuers and offerings and so replaces the current forms for:

- Non-qualifying issuers (Form 45-102F1)
- Qualifying issuers (Form 45-103F2)
- Real estate securities (BC Form 45-906F)
- Syndicated mortgages (BC Form 45-901F)

The guidelines to the form (see Appendix B to the Issuers Guide) give guidance for completing the form for offerings involving securities such as syndicated mortgages or real estate securities. For example, the form permits inclusion of the disclosure required under the *Mortgage Brokers Act* and *Real Estate Act*, thus avoiding duplicate disclosure.

Public issuers, similar to today, will be able to satisfy OM disclosure requirements by referring to their continuous disclosure record.

RULES 3F23 The Draft Legislation contains an exemption permitting Canadian issuers outside British Columbia to use OMs prepared under MI 45-103 to sell securities to British Columbia shareholders. This is part of a general exemption that applies to all exempt trades made both in BC and elsewhere in compliance with the exemption rules in another Canadian jurisdiction.

(e) *Employee Investment Act*

RULES 3F12 This exemption for trades to employees under the labour-sponsored investment fund legislation is in the current legislation. The Draft Legislation keeps it in simplified form by eliminating the conditions that duplicate ones already set out in the *Employee Investment Act*.

2. Exemptions Related to Issuer Transactions

The Draft Legislation includes registration exemptions for parties to various issuer transactions involving an issuance of securities:

- To effect a reorganization, business combination or take over bid
- Under direct purchase plans
- As dividends in kind and distributions on winding up

(a) Reorganization, business combination or take over bid

RULES 3F13 The Draft Legislation consolidates the current exemptions relating to reorganizations, business combinations, and take over bids (see sections 45(2)*(9), (24)* and *(28)* of the current Act), and simplifies the language.

(b) Direct purchase plan

RULES 3F7 Direct purchase plans are arrangements that allow investors to acquire small numbers of securities from an issuer at regularly scheduled intervals. In some ways they are similar to dividend reinvestment plans (for which there is an exemption) except the participant need not hold a qualifying share. The investor can take advantage of dollar cost averaging and saves commission. The issuer raises capital without the usual costs and broadens its shareholder base.

RULES 3F15 To prevent possible abuse, the direct purchase plan exemption in the Draft Legislation requires that the plan be administered by a Canadian financial institution, and that the number of securities that can be issued under the plan in each year not exceed 2% of the issuer's outstanding equity securities at the beginning of the year.

(c) Dividends in kind and distributions on winding up

RULES 3F7 Code, Principles 2(2) 6(3) The exemption in the Draft Legislation for trades to existing securityholders replaces the existing exemption for stock dividends and distributions on dissolution or winding up (section 45(2)*(12)* of the current Act). Under the current legislation, these exemptions are only available if no commission or other remuneration is paid. Under the Draft Legislation, those restrictions are removed.

Existing securityholders of public issuers will get information about commissions through the issuer's disclosure, if it is material. For existing securityholders who seek registrant advice, the Code of Conduct requires that the registrant provide this information. The exemption is also available to restricted issuers given the relationship between the investors and the issuer, subject to the limits where there is no real relationship (see ''Rights Offerings'' above).

RULES 3F14 The Draft Legislation contains a separate exemption that covers dividends in kind of securities of another issuer, provided that issuer is a public issuer.

3. Private Issuers

RULES 3F8 The Draft Legislation continues the exemption for private issuers in Part 2 of MI 45-103. This is to ensure that the requirements of securities legislation are not imposed inappropriately on the multitude of small business and personal corporations of various kinds.

RULES 3F8(3) The Draft Legislation version of the exemption differs from that in MI 45-103 slightly in that it does not include, in the list of persons to whom securities may be sold, ''persons who are not the public''. This is because we believe the existing list covers anyone in the ''non-public'' category, as that term has been interpreted in case law. Under the Draft Legislation, a private issuer must not recognize transfers to persons outside the permitted group.

RULES 3F8(2) Securityholders of a private issuer may sell to the same purchasers as the private issuer itself.

This exemption includes those purchasers we think a private issuer is most likely to sell to. A private issuer wanting to sell securities to a purchaser not listed in the private issuer exemption must become a restricted issuer (or a public issuer, if there is no other exemption available to it).

4. Resale Rules for Restricted Issuers

RULES 3F24(1) The ''resale rules'' for those holding securities of a restricted issuer take the form of an exemption for trades by restricted issuer securityholders. Holders of restricted issuer securities can resell to persons who have adequate information about the issuer, are sophisticated, can withstand financial loss, or where some other regulatory regime provides protections.

RULES 3F24(2) The exemption prohibits an issuer's directors and officers from purchasing under the exempt purchaser exemption and immediately reselling to securityholders who would otherwise not qualify as purchasers.

RULES 3F22 As discussed in Part 3, the Draft Legislation includes a registration exemption for sales to persons outside of Canada. The exemption allows a restricted issuer to sell securities into another jurisdiction if it complies with the laws of that jurisdiction. Holders of securities in restricted issuers that wish to resell them in Canada can sell those securities only to those people entitled to acquire securities under the resale rules exemption.

The Draft Legislation mirrors a ''closed system'' concept for restricted issuers. The Draft Legislation allows resales to a broader group of associated securityholders than regimes elsewhere, but presents no particular interface challenges. This is an example of a restriction that applies elsewhere, but not in British Columbia.

Under the Draft Legislation a restricted issuer must not recognize transfers to persons outside the permitted group.

5. Harmonized Interface

According to the USL Concept Paper, USL will maintain most of the current exemptions regime. This is partly because of its harmonization focus, and partly because it is keeping a prospectus regime and therefore needs to ensure that its registration exemptions track its prospectus exemptions. Many of the conditions attached to the exemptions today are there to address disclosure issues that arise under a prospectus regime, and therefore do not have to be maintained in the CMA system.

RULES 3F23 The Draft Legislation includes an interface rule for exempt trades made both in British Columbia and elsewhere in compliance with the exemption rules in another Canadian jurisdiction. In all cases where the use of the equivalent exemption in another jurisdiction requires the person to meet conditions that do not apply in British Columbia, the person can follow the securities laws in another jurisdiction and that will be acceptable in British Columbia.

Persons relying on exemptions in the current legislation today, or under USL in the future, will meet the requirements of the exemptions under the Draft Legislation and will not have to do anything additional for trades in British Columbia.

Part 5 Continuous Disclosure

Overview

Part 5 of the Draft Legislation sets out the ongoing disclosure obligations for public issuers, insiders and significant securityholders. It also contains rules relating to an issuer's advertising activities and the procedure for surrendering public issuer status.

The Issuers Guide, which is designed to help issuers and others better understand their disclosure obligations, explains this area of the Draft Legislation in more detail.

These are the significant changes from the current legislation:

Periodic disclosure

- The continuous disclosure in British Columbia will include requirements corresponding to the parts of National Instrument 51-102 *Continuous Disclosure Obligations* dealing with financial disclosure, change of auditor, management discussion and analysis (MD&A), proxy solicitation and additional filing requirements. It will not have provisions corresponding to the other parts of NI 51-102.
- National Instrument 43-101 *Standards of Disclosure for Mineral Projects* will remain in force in British Columbia, but will be reviewed in 2004, when a regulatory impact and cost-benefit analysis will be done on this instrument.

Timely disclosure

- A public issuer's continuous disclosure record must contain all *material information* — a new term that replaces the current concepts of ''material fact'' and ''material change'' — about the issuer.
- The material change report requirement is eliminated — all material information must be disclosed by news release as soon as practicable.

Insider reporting

- The Draft Legislation, through new definitions of *insider* and *senior officer*, imposes insider reporting obligations only on ''true'' insiders.

Significant securityholder reporting

- A new system of trade reporting for *significant securityholders* replaces the current disclosure obligations we impose on major securityholders outside the take over bid context.

Advertising

- The restrictive rules for advertising are relaxed.

Ultimately, the continuous disclosure regime in British Columbia will include requirements corresponding to NI 51-102 relating to an issuer's annual and interim financial statements and change of auditor (all in streamlined form), MD&A, and proxy solicitation. However, the British Columbia regime will not include provisions corresponding to the remaining parts of NI 51-102, including:

- AIF disclosure,
- executive compensation disclosure,
- material change reporting,
- significant acquisition and disposition disclosure,
- restricted share disclosure, and
- filing of material documents.

RULES 5A3-5A9 These differences can be documented by British Columbia's adopting NI 51-102 with the appropriate carve-outs, or by our opting out of the instrument altogether and implementing our own rules that correspond to the portions of NI 51-102 that we intend to follow. We have not yet decided which of these paths we will follow but, for the purposes of the Draft Legislation, we have set forth simplified versions of the annual and interim financial statement and change of auditor requirements (except the change of year-end provisions which are not included in the Draft Legislation). The Draft Legislation does not contain any provisions relating to MD&A and proxy solicitation because we do not expect that any provisions in these areas that we ultimately adopt in British Columbia will differ substantively from NI 51-102.

Like today, public issuers with mineral properties will have to comply with NI 43-101. This instrument will be reviewed in 2004, when we intend, preferably with CSA, to conduct a regulatory impact and cost-benefit analysis. The Commission will be considering the approach to oil and gas disclosure when that proposed rule is brought forward by CSA for adoption.

1. Periodic Disclosure

ACT 5A1 There are two types of continuous disclosure obligations: periodic and timely. Periodic disclosure requires the issuer to update its disclosure record at regular intervals, for example, by issuing annual and quarterly financial statements.

NI 51-102 will replace the periodic disclosure requirements for reporting issuers in all Canadian jurisdictions that adopt it.

(a) Financial statements

Financial statement requirements under the Draft Legislation will be consistent with the requirements in NI 51-102 and yet to be published National Instrument 52-107 *Acceptable Accounting Principles, Auditing Standards and Reporting Currency* (which largely reflects current requirements in this area), with a few exceptions.

Accounting principles and auditing standards

RULES 1C1-1C3 1C7

As under the current legislation, financial statements must be prepared in accordance with Canadian GAAP, audits and audit reports must follow Canadian GAAS, and audit reports must be prepared and signed by those legally authorized in Canada to sign audit reports. We will also permit Canadian issuers who file under SEC rules to follow US GAAP and GAAS and use US auditors.

RULES 1C3(2)

The Draft Legislation requires that public issuers use auditors subject to the oversight of the Canadian Public Accountability Board, as that body becomes fully operational.

The current draft of NI 52-107 covers various other matters, none of which we expect to adopt in British Columbia. They include provisions relating to:

- foreign issuer filing requirements (these are replaced by Part 7 of the Draft Legislation), and
- significant acquisitions and pro forma financial statements (these are covered in the Issuers Guide).

Audit committee

RULES 1C6

The Draft Legislation includes a requirement that public issuers have an audit committee, but no requirements specifying independence or proficiency criteria for audit committee members or prescribing the committee's role or function.

If we require an issuer to have an audit committee, the board, and each director, will have a duty to ensure that the committee functions properly. This means ensuring that the committee follows appropriate practices (there are extensive resource materials available), and that it is composed of members who can do a credible job. Each board should determine the appropriate composition and duties of its audit committee based on the needs of the public issuer and the expectations of its securityholders. We do not think it is necessary or appropriate to prescribe these details.

If the issuer's corporate legislation permits, board approval of interim statements may be delegated to the audit committee.

Annual & interim financial statements

RULES 5A1 5A4 5A6

Under the Draft Legislation, a *venture issuer* must file its annual financial statements within 120 days of the year-end, and its interims within 60 days of the quarter end. A *venture issuer* is an issuer whose securities are not listed on specified major marketplaces in Canada or the US, or on any marketplace outside Canada or the US. Other public issuers must file their annual and interim financial statements within 90 days and 45 days, respectively. These filing periods are shorter than those under the current legislation, but are consistent with NI 51-102.

MD&A

Public issuers must provide quarterly and annual MD&A in accordance with NI 51-102, which requires venture issuers without significant revenues in their last

two years to provide a breakdown of certain material expenses in their financial statements or MD&A.

Future oriented information

Future-oriented disclosure is currently covered by National Policy 48 *Future-Oriented Financial Information*, which deals with financial forecasts, and National Policy 51-201 *Disclosure Standards*, which deals with future-oriented disclosure in other contexts. CSA is reviewing these instruments. We will be participating in this review.

(b) AIF

RULES 5A2

Like NI 51-102, the Draft Legislation includes an AIF requirement. However, the Draft Legislation version of this requirement differs from that under NI 51-102 in a number of ways.

First, it requires that all public issuers file an AIF. Under NI 51-102, venture issuers will be exempt from this requirement.

We believe it is appropriate for all public issuers to make this annual filing — this additional requirement is offset by the benefit of being able to access the market immediately at any time, with no hold periods or resale restrictions being imposed on the issuer's securities. As well, under the Draft Legislation, it is the AIF that provides an annual statement of *material information* which, when updated by the issuer's other continuous disclosure filings, gives the issuer a disclosure platform from which it can offer securities. Since the Draft Legislation eliminates the prospectus requirement for all but initial public offerings, it is important that all public issuers file an AIF. In our cost benefit analysis of the Continuous Market Access system, we accounted for the extra costs issuers would incur under this filing requirement, and the benefits of the system significantly outweighed these costs. See *Better Disclosure, Lower Costs: A Cost-Benefit Analysis of the Continuous Market Access System* on our website at www.bcsc.bc.ca/bcproposals.

RULES 5A2(3)

Second, the Draft Legislation contemplates a different AIF form (see Appendix A to the Issuers Guide). The British Columbia form covers the same disclosure as the AIF under NI 51-102, but is simpler. However, an AIF that meets the requirements of NI 51-102 will be acceptable in British Columbia. See Part 4 for a discussion of the British Columbia form of AIF.

Third, the requirement in NI 51-102 to include material contracts with an issuer's AIF will not apply in British Columbia. The guidelines to the British Columbia form of AIF (see Appendix A to the Issuers Guide) makes it clear that the key terms of material contracts, if material, must be disclosed. This is likely to result in more meaningful disclosure than the abbreviated disclosure that is often now justified on the basis that the contract is available for public view. As a practical matter, shareholders will receive copies of any agreement that they are party to, such as limited partnership agreements.

Finally, the Draft Legislation eliminates the following filings:

- The annual report, because it is superseded by the AIF
- The year-end report of supplementary financial disclosure, because it is superseded by the new MD&A requirements

(c) Executive compensation

AIF Form 3.6

The Draft Legislation executive compensation disclosure requirements are found in the AIF form (see Appendix A to the Issuers Guide).

In its AIF, the issuer:

- must provide disclosure for all of its senior officers as a group and individual compensation disclosure for each of the chief executive, chief financial and chief operating officers,
- has more flexibility about how it presents compensation information,
- must make disclosure in the context of the issuer's circumstances, and
- must discuss the rationale for the compensation given.

Group and individual disclosure

The combined group and individual disclosure requirements under the Draft Legislation are a change from the current legislation, which requires only disclosure about an issuer's chief executive officer and four highest paid executive officers on an individual basis. Although compensation disclosure for the primary executives is of interest to investors, we have been told in our consultation sessions that it is also useful to know what the issuer is spending on the executive group as a whole.

Less prescriptive

The Draft Legislation approach is less prescriptive than the current legislation in the detail it requires. Issuers can decide how to present the information, but they must include certain disclosure, including information about base salary, cash bonuses and stock options.

Today, issuers provide executive compensation disclosure through a long, complicated and prescriptive form. The emphasis under the current legislation is on the accuracy and completeness of the compensation information, rather than on making the information meaningful for investors. This emphasis has led to a form that prescribes exactly how to calculate and present the various components of executive compensation. This approach results in much detail, but does not provide any context in which investors can evaluate the information. For example, this disclosure item in NI 51-102 covers over 20 pages and contains six separate tables.

Putting information in context

The Draft Legislation form also requires that the disclosure be put in a context that investors can use to assess the appropriateness of the compensation paid. Under

this approach, investors are more likely to be able to determine whether the issuer's key executives are being paid fairly relative to the issuer's performance. It will also be open to issuers to address how their compensation compares to industry standards; in such cases, the issuer would likely want to explain any apparent discrepancies.

Rationale for compensation

The requirements in the Draft Legislation emphasize the rationale for the compensation paid to key executives. To avoid ''boilerplate'' disclosure, and ensure that issuers address all factors relevant to the compensation of their executives, the Draft Legislation requires issuers to explain the relationship between a number of factors, such as the issuer's performance against its objectives, and the compensation paid to the issuer's three most senior executives.

RULES 5A12 Most issuers who report in British Columbia will be reporting issuers elsewhere in Canada and therefore will also be required to report executive compensation disclosure under NI 51-102. Under the Draft Legislation, this form of disclosure will be acceptable in British Columbia. CSA has expressed interest in making executive compensation more meaningful and may be prepared to adopt an approach similar to the British Columbia model in the future.

(d) Material change reporting

ACT 5B1 The requirement in NI 51-102 to file a material change report is replaced with British Columbia's requirement to disclose all material information by news release. See ''Timely Disclosure'' below.

(e) Significant acquisition and disposition disclosure

ACT 5B1 The detailed requirements in NI 51-102 for significant acquisition disclosure will not apply in British Columbia. Under British Columbia's material information disclosure standard (see below under ''Timely Disclosure''), issuers will be required to disclose all material information about an important acquisition. The Issuers Guide discusses the types of information issuers should disclose in this context.

(f) Restricted share disclosure

The requirements in NI 51-102 for restricted share disclosure would not apply in British Columbia. We once had similar requirements in British Columbia but we eliminated them because the prohibition against misrepresentations (see Part 10) mostly addresses the problem they are aimed at (they essentially require issuers not to describe non-voting shares in misleading ways).

(g) Filing of material documents

See above under ''AIF'' for the Draft Legislation approach to material contracts.

2. Timely Disclosure

(a) Material information standard

ACT 1A1 5B1 To satisfy its continuous disclosure obligations, an issuer must also make ''timely disclosure''. Under the Draft Legislation, this means that an issuer must keep its continuous disclosure record current by disclosing all material information as soon as practicable by news release. Part 1 of the Draft Legislation defines *material information* as information relating to the business, operations or securities of an issuer that would reasonably be expected to significantly affect the value or market price of any or all of the issuer's securities.

This definition replaces the two materiality concepts contained in the current legislation — ''material fact'' and ''material change''. Like material information, both are defined in terms of the significance of their impact on the value or market price of an issuer's securities, however, each is used for different purposes. Prospectuses require full, true and plain disclosure of ''all material facts'' and timely disclosure must be made when there is ''a material change''.

We have chosen to use the term *material information* because the term ''material fact'' connotes to many the disclosure required in prospectus forms. However, these forms require disclosure of much information that in many circumstances is not ''material''. Therefore, if we were to use the term ''material fact'', it could lead to a misunderstanding that issuers had to maintain prospectus-level disclosure at all times. This would be impractical, unnecessary, and is not what we intend.

Conversely, ''material change'' is not an appropriate standard because it may not require disclosure of all information that should be disclosed.

ACT 1A1 Our definition of *material information* eliminates two key concepts found in the current materiality definitions:

ACT 5B2
- We have removed the retroactive assessment. In the current definition of ''material fact'', an event is also material if it ''significantly affects'' the market price of the securities. This allows materiality to be determined retroactively on the basis of actual market activity, even if there was no reasonable ground for management to expect, when they decided whether the fact was material, that the fact would have a significant effect on the market price. The Draft Legislation requires only that issuers and their management exercise reasonable business judgment based on the information that was available to them at the time of determining whether a given event was material.
- We have removed the reference to pending decisions. The current definition of ''material change'' includes a decision to implement a change by senior management who believe that confirmation of the decision by the directors is probable. We consider this to be more relevant to timing of disclosure than to the materiality of the information.

Despite these changes, a public issuer's timely disclosure obligations under the Draft Legislation are not much different than those of an issuer listed on a

Canadian equity exchange today. For more discussion, see the June Proposals Paper, Chapter 1 and Appendix F.

The Issuers Guide contains guidance drawn from NP 51-201, including those provisions that give issuers guidance about their timely disclosure obligations and best disclosure practices.

Harmonized interface

RULES 5B2 The most significant interface issues here arise from a perception that a public issuer could comply with the material change requirements under NI 51-102 and not meet our material information standard and thus be liable to investors. As explained above, we see no practical difference between the two standards. However, there is a safe harbour in the Draft Legislation for public issuers that are subject to timely disclosure obligations in another Canadian jurisdiction. So long as these issuers comply with the material change disclosure requirements in proposed NI 51-102 they will be exempt from the Draft Legislation news release requirement. While we do not think this safe harbour is necessary, we have included it to respond to potential concerns about how Canadian courts may interpret our material information standard.

(b) Confidential filings

RULES 5B1 The Draft Legislation also allows an issuer to file a confidential material information report where disclosure of material information would be unduly detrimental to the issuer.

ACT 15B8 The Draft Legislation rules for confidential filings do not keep the requirement to file a new report every 10 days if the issuer believes the material information should remain confidential. This requirement is unnecessary because the Commission's Corporate Finance Division monitors all outstanding confidential material change reports. The Draft Legislation includes a safe harbour for inadvertent selective disclosure, as long as disclosure is made within 24 hours.

As described in the Issuers Guide, the Draft Legislation does not contemplate that the Commission will order the issuer to make disclosure if in staff's opinion the public interest in disclosure outweighs the issuer's interest in keeping it confidential. Instead, the Commission would cease trade the issuer until it disclosed the information. This allows the issuer to determine whether it is in its best interest to disclose, or allow the cease trade order to remain in place.

3. Insider Reporting

ACT 1A1 5C1-5C3 Insider reporting obligations are largely unchanged under the Draft Legislation — the prescribed insider report form and the existing filing deadlines remain the same. What has changed is who must file a report. The Draft Legislation definition **RULES** 5C2 (1)-(2) of *insider* is significantly streamlined by excluding many of the people caught by today's definition. We have also included in the Draft Legislation provisions to require reporting of equity monetization transactions.

(a) New definition of insider

ACT 1A1

The Draft Legislation definition of *insider:*

- imports a new definition of *senior officer* that focuses on function and access to inside information, rather than title or salary,
- eliminates major securityholders, and
- eliminates the issuer itself.

The intent of insider reporting requirements is to disclose the trading activity of those who have routine access to *inside information*. These changes achieve that without imposing reporting requirements where they are unnecessary.

Senior officers

ACT 1A1

RULES 5C2(3), (5)

The principles-based definition of *senior officer* in the Draft Legislation means that those with officer titles but no routine access to inside information are not required to file insider reports. As a result, it eliminates many of the complicated insider reporting exemptions that exist today under local and national instruments such as BC Instrument 55-504 *Exemption from Insider Reporting Requirement for Certain Officers* and National Instrument 55-101 *Exemption from Certain Insider Reporting Requirements*. (We have retained in Part 5 of the Draft Legislation the automatic purchase plan and issuer event exemptions currently found in Parts 5 and 7 of NI 55-101.)

Securityholders

The Draft Legislation does not include major securityholders in the insider definition, because there is no demonstrated correlation between significant share ownership, in and of itself, and access to inside information. (There are other reasons for significant securityholders to report their trading activity however — see ''Significant Securityholders'' below.)

One consequence of these changes is that the Draft Legislation definition of insider includes only individuals, so there is no longer any reference to directors and officers of insiders.

Issuer itself

As for requiring insider reports from issuers, as USL points out, an issuer that acquires its own securities typically does so with the intention of cancelling, rather than holding, them. The goals of insider reporting are not served by requiring issuers to disclose this information. Adequate disclosure about an issuer's acquisition of its own securities will occur through the issuer bid provisions that will ultimately be included in Part 6 of British Columbia's legislation.

Harmonized interface

The Draft Legislation insider reporting regime does not raise any interface issues. Our definition of insider focuses on function and catches only those with routine access to inside information about the issuer. USL has proposed a similar approach

to insiders, however, the USL Concept Paper does not go as far as the Draft Legislation. Under USL, major securityholders and their directors and senior officers will continue to file insider reports.

Furthermore, while the Draft Legislation requires reports from directors and senior officers of an issuer's affiliates (so long as they have access to inside information about the issuer), USL intends to limit the requirement to directors and senior officers of ''major subsidiaries'' — ''sister'' companies would not be caught. We think the Draft Legislation targets the appropriate group and we will recommend to USL that they follow our approach.

When the System for Electronic Disclosure by Insiders (SEDI) becomes operational, British Columbia insiders will use that filing system on the same basis as issuers throughout Canada. We will retain the provisions necessary to implement the SEDI system.

(b) Equity monetization

ACT 5C1 10B4(1)

The wording in the current legislation is not broad enough to require insiders to report all ''equity monetization'' transactions — derivative-based transactions that allow insiders to achieve the economic effect of a trade in the issuer's securities without actually trading the underlying securities. Amendments to the current legislation have been passed in British Columbia (but are not yet in force) to ensure that these arrangements are covered by the insider reporting requirement. This outcome is achieved in the Draft Legislation by including these arrangements in the definition of *security of a public issuer* in Part 5 and *security of an issuer* in Part 10.

(c) List of insiders

RULES 5C3

The Draft Legislation requires an issuer to file and keep current a list of its insiders so that there is a record of those that the issuer considers to be its insiders. (This requirement is the mirror image of the requirement in certain local and national instruments to file a list of insiders who are relying on an exemption from the insider reporting requirements.) The list will tell staff from whom to expect insider reports and staff can use it in continuous disclosure reviews to ensure that it includes all those who fall within the terms of the definition.

The Draft Legislation filing obligation does not exist elsewhere in Canada and is not contemplated in USL. There is no exemption in the Draft Legislation from this requirement for public issuers that report elsewhere in Canada under different rules. However, the trade-off is that these issuers will not have to apply for reporting exemptions in British Columbia for individuals without regular access to inside information who are caught by broader definitions elsewhere.

(d) Deemed insiders

The Draft Legislation eliminates the provisions that deem certain directors and officers of one issuer to be insiders of another following a merger or similar

transaction and require them to file reports for trades they made during the previous 6 months. These provisions exist today to deter these individuals from trading on inside information about the impending transaction before the deal closes.

ACT 10B4

We believe that the prohibition against trading on inside information in the Draft Legislation is sufficient (see Part 10). It seems to us unlikely that anyone who intends to contravene that prohibition would file truthful reports in any event. (We are currently working with CSA and Market Regulation Services Inc. on a project designed to strengthen deterrents to insider trading.)

4. Significant Securityholders

(a) Reporting system

ACT 5D1-5D2

RULES 5D2 (1),(2)

Part 5 of the Draft Legislation requires that *significant securityholders* (control persons and those holding 10% or more of an issuer's voting securities) report all of their trading activity. The new disclosure regime for significant securityholders mirrors that for insiders under the Draft Legislation:

- A person must file a first report within 10 days of becoming a significant securityholder and file subsequent reports within 10 days of any trade.
- Significant securityholders must file using the insider report form.

The new reporting system for significant securityholders replaces the following provisions in the current legislation:

- the insider reporting requirements as they apply to securityholders,
- the early warning system as it applies outside the take over bid context, and
- the control person advance notice requirements.

These changes mean that major securityholders have significantly fewer reporting obligations under the Draft Legislation than they do today.

Industry survey

Although we do not think major securityholders should report on the basis that they have routine access to inside information, we recognize that the investment community wants information about these persons' holdings and trading activity for other reasons.

To ensure the Draft Legislation includes disclosure rules that meet investors' needs, we sent a survey to 96 portfolio managers, analysts and other investment professionals across Canada to find out what information they want about significant securityholders, when and why they want it, and how they get it today. We received 38 responses by our survey deadline, for a response rate of 40%. The significant securityholder reporting system in Part 5 reflects the responses we received.

These are the principal reasons our survey respondents gave for wanting to know about significant securityholders' holdings and trading activity:

- This information helps investors assess the liquidity and volatility of an issuer's securities.
- Knowledge of who an issuer's significant securityholders are provides some insight into the issuer's management.
- The existence of significant securityholders may affect the success of a take over bid.
- Trading by a significant securityholder can indicate the holder's intentions and confidence in the issuer. It can also signal the potential for large blocks of stock to come to market.
- Investors will be able to consider a significant securityholder's investing track record to see how the holder treated fellow securityholders in the past.

There was strong support in the survey for knowing this information ''as soon as practicable''. However, the vast majority of survey respondents indicated that their major source of this information is insider reports — which today are available no sooner than within 10 days of the trade (and, in most jurisdictions, much later than that).

In our February Concepts Paper, we asked whether we should reduce the insider report filing periods. The responses were mixed.

We think it is appropriate to maintain the existing 10-day deadlines for both insider and significant securityholder filings. Perhaps a ''real time'' reporting system would add real value to the reporting system, but we do not think the same can be said for shortening the filing period by a few days. In the meantime, it appears that even though our survey respondents would like to get this information sooner, they are getting some value out of the current system.

Exemptions

The Draft Legislation includes these exemptions from the significant securityholder reporting regime:

ACT 1A1
- delayed reporting is permitted where a change in holdings results from an issuer event or from the operation of an automatic purchase plan (Part 5 contains a parallel exemption from the insider reporting provisions), and

RULES 5D2 (3),(5)
- no disclosure is required where shares are held by an underwriter during an underwriting (this ''exemption'' is found in the significant securityholder definition itself and is consistent with the definition of ''insider'' found in the current legislation).

Prescribed form

RULES 5D2 (1)-(2) As discussed above, survey respondents told us that they are using insider reports today to get the information they need about large securityholders. Therefore, the Draft Legislation requires that significant securityholders disclose their trading using the same form that insiders do. We do not see any reason to require different

disclosure from significant securityholders and insiders, even if we are requiring that disclosure for different reasons. Significant securityholders will continue to use a form that is familiar to them, and the investment community will have access to the same type of disclosure it is using today.

When SEDI becomes operational, significant securityholders will file using that system on the same basis as insiders.

No duplicate filings

RULES 5D3 (1)(a) A significant securityholder who is also a director or senior officer will be subject to both insider and significant securityholder reporting requirements under the Draft Legislation. However, Part 5 exempts these persons from the significant securityholder regime. Since both reporting systems require the same information disclosed within the same period, no information is lost by providing this exemption and the securityholder is not forced to disclose the same information twice.

(b) Early warning reporting

Today, anyone (other than an offeror under a bid) holding 10% or more of an issuer's voting or equity securities must disclose that fact immediately by press release, then two days later in an early warning report. With some exceptions, the same disclosure is required each time the securityholder acquires an additional cumulative 20% of the issuer. These ''early warning'' reporting requirements are designed to give notice to the market that a shareholder might be making a creeping take over bid. However, they currently apply to all those who meet the specified percentage thresholds, whether or not they intend to make a take over bid.

Given their purpose, we believe the early warning requirements should be limited to the take over bid context. We will recommend that CSA make this change when the new national take over bid rules are developed (see Part 6). We do not think restricting early warning disclosure in this way will impact the adequacy of disclosure made by significant securityholders under the Draft Legislation. The timeliness of disclosure of only a limited number of trades will be affected. Furthermore, generally only half our survey respondents indicated that they currently use early warning reports to get the information they need — and most of these also use insider reports.

(c) Eligible institutional investors

Today, we exempt passive institutional investors from the insider reporting and early warning requirements so long as they make alternate month end filings under National Instrument 62-103 *The Early Warning System And Related Take Over Bid And Insider Reporting Issues.*

ACT 1A1 Because the Draft Legislation insider definition does not include these investors, the corresponding exemption in NI 62-103 is no longer necessary. Similarly, if we

limit early warning to the take over bid context, some of the other exemptions in NI 62-103 are also unnecessary.

RULES 5D1 5D3 However, the Draft Legislation does include an exemption for these investors from the significant securityholder reporting system on terms similar to those under NI 62-103. *Eligible institutional investors* will be exempt if they file a report within 10 days of the end of the month if their month end balance was 10% or more and different than the balance at the previous month's end. These investors will have to provide similar disclosure under a streamlined version of Appendix G to NI 62-103. The Draft Legislation also continues the aggregation relief in NI 62-103 for eligible institutional investors with multiple business units. (While the Draft Legislation includes a revised version of the current ''eligible institutional investor'' definition, we think it continues to catch all those covered by NI 62-103.)

In this way, the significant securityholder reporting system replaces the early warning and NI 62-103 provisions as they apply outside the take over bid context. (We will recommend that CSA review not only the early warning requirements, but also NI 62-103 as part of its national take over bid project.)

RULES 5D3(1) Eligible institutional investors may have to report more frequently under the Draft Legislation than they do today, since we have changed (and simplified) the disclosure trigger found in Part 4 of NI 62-103. (Under NI 62-103 these investors need report only in months in which their holdings change by 2.5% or more; under the Draft Legislation, they must report in any month in which their holdings change at all.) However, we think this is appropriate because the reasons given by the survey respondents for requiring the disclosure would be relevant to any change in holdings, not just those of 2.5% or more. This should impose little additional burden because institutional investors have to check their month end holdings anyway to see if they have breached the 2.5% thresholds. Filing through SEDI should be straightforward and simple.

(d) Advance notice by control persons

The Draft Legislation does not include any provisions specifically directed at those we currently define as ''control persons''. Rather, those able to materially affect the control of an issuer are treated like any other significant securityholder. This is a significant change from today and is supported by the survey results — nearly two-thirds of respondents said there was no reason to treat control persons differently for reporting purposes than other significant securityholders.

Advance notice

The current legislation imposes special disclosure obligations on control persons. Today, a control person must file a notice of intention to sell securities at least 7 days before the person's first sale; the initial notice can be renewed indefinitely.

Notices are filed in paper, not on SEDAR. In British Columbia, investors can review these notices by searching the Commission website. The notices are also filed with the exchange; the exchange then issues a bulletin to advise the market of the notice.

We have identified these problems with the existing control person notice requirement:

- The initial notice and subsequent renewal periods are too long. They allow control persons to keep their notices evergreen so that they are free to sell securities whenever they wish. This makes the notice meaningless.
- Other than through exchange bulletins, the notices are not easily accessible to the public, so filing the notice with the Commission does not result in meaningful advance notice to the market (although CSA intends to improve accessibility by moving to electronic filings).
- The requirement is limited to sales, although information about purchases is likely of equal interest to the market.

ACT 1A1 For these reasons, the Draft Legislation does not keep the existing notice requirement and instead includes control persons in the definition of *significant securityholder*, so their trading is reported under that regime.

Accelerated insider report

The Draft Legislation also eliminates the special three-day insider reporting requirement found in the current legislation for control persons.

5. Advertising

RULES 5G1 Like today, under the Draft Legislation, advertising is an act in furtherance of a trade, which triggers the registration requirement. Under Part 5 of the Draft Legislation, an issuer can advertise without being registered so long as the advertisement:

- is identified as an advertisement,
- states whether the issuer is unlisted or trading in its securities is restricted, and
- directs the public to the issuer's continuous disclosure record, if applicable, and any current offering document.

The Draft Legislation prohibits misrepresentations and unfair practices and provides civil remedies (see Parts 10 and 15). Commission staff will also conduct compliance reviews of issuers. The Issuers Guide, along with these provisions and practices, provides appropriate investor protection against advertising abuses.

6. Surrender of Public Issuer Status

ACT 1A1 5F1 The Draft Legislation keeps the substance of BC Instrument 11-502 *Voluntary Surrender of Reporting Issuer Status*. The only change we have made relates to the calculation of an issuer's securityholders. When calculating whether it is ''closely held'' — an issuer that wishes to surrender its public status must have no more than 50 equity securityholders — a public issuer may exclude employees. This is consistent with the *private issuer* definition.

Part 6 Take Over Bids and Issuer Bids

Overview

This publication does not include any legislative text for take over bids and issuer bids because CSA will be developing, in conjunction with USL, a stand-alone national instrument to regulate bids. We will be bringing the following proposals to that process for consideration:

- Move most of the requirements to the Rules, streamline them, and re-draft them in plain language.
- Limit the application of the early warning reporting provisions to the take over bid context.
- Allow bid communications to be made through the media, as an alternative to physical delivery.
- Eliminate valuation requirements for insider and issuer bids.
- Allow issuers to make ''pure'' and modified dutch auction take over and issuer bids.

We also agree with USL that a national policy to deal with poison pill situations is not necessary.

1. Streamlining

Much of the regulation of bids consists of technical requirements for conduct before and during a bid. These requirements should be imposed by rule, so that they can more easily be amended from time to time to reflect new practices in the market. This is the USL approach, and we will be proposing that the requirements be streamlined and drafted in plain language.

2. Early Warning

Today, anyone (other than an offeror under a bid) who holds 10% or more of an issuer's voting or equity securities must disclose that fact immediately by press release, then two days later in an early warning report. With some exceptions, the same disclosure is required each time the securityholder acquires an additional cumulative 2% of the issuer. These ''early warning'' requirements are designed to give notice to the market that a major securityholder might be making a creeping take over bid.

We have identified these problems with the early warning system:

- It extends to all major securityholders, not just those with take over bid intentions.
- It requires duplicate disclosure — the early warning report is essentially identical to the press release filed two days earlier.

- It also duplicates disclosure required under the insider reporting system, since major, non-institutional securityholders must report under both sets of requirements.

We believe that this system should be limited to the context for which it was intended — the take over bid arena. Adequate disclosure of trading activity for all investors without take over intentions will occur through the insider reporting system or, under the Draft Legislation, through the significant securityholder reporting regime (see Part 5).

If the early warning regime is restricted in this way, a number of the exemptions found in National Instrument 62-103 *The Early Warning System And Related Take-Over Bid And Insider Reporting Issues* should be unnecessary.

3. Communication of Bid

Today, although an offeror can commence a bid by advertisement, the offeror and the target's management still must ''deliver'' bid documents to offerees.

We propose that bidders and target management be allowed to disseminate bid documents through the media (by news release or advertisement) as an alternative to the delivery requirement. The news release or advertisement would briefly summarize the bid documents and inform investors how they may obtain copies of these documents — electronically or by mail.

The delivery requirement likely made sense in the 1960s when bid regulation was first introduced. At that time, it was much more common for investors to be registered as holders on the books of public issuers, business moved at a slower pace, and mailing was an effective means of communicating with securityholders in the context of a bid. However, this is no longer the case. Under today's book-based system, the target's beneficial holders — the actual investors — do not always receive bid materials directly, or in time to make decisions about the bid within the time frames available. It is not uncommon for investors to find out about take over bids through the media or from their representative.

In fact, the current rules on securityholder communication found in National Instrument 54-101 *Communication with Beneficial Owners of Securities of a Reporting Issuer* do not apply to bid documents. When CSA adopted the predecessor to NI 54-101 — National Policy 41 — they excluded bids from the shareholder communication rules.

Even if NI 54-101 did apply, it would not always be effective. Highly competitive take over bid situations often produce a flurry of amended and extended offers, many with short deadlines. The system under NI 54-101 is ill-suited as a communications vehicle in these circumstances.

4. Valuations

The current legislation requires formal valuations for insider take over bids and issuer bids. A qualified and independent valuator must provide offeree securityholders with a valuation of their securities. The idea is to ensure that their

interests are protected in circumstances where the bidder is not independent. Even more stringent rules apply to all Ontario and Québec reporting issuers, and all issuers listed on the TSX Venture Exchange (see OSC Rule 61-501 *Insider Bids, Issuer Bids, Going Private Transactions and Related Party Transactions*, QSC Policy Statement Q-27 *Protection of Minor Securityholders in the Course of Certain Transactions*, and TSX Venture Exchange Policy 5.9 *Insider Bids, Issuer Bids, Going Private Transactions and Related Party Transactions*).

We propose that the valuation requirements be eliminated, for these reasons:

ACT 10A1 12D1 15A1
- Valuation requirements assume that, in the absence of these requirements, directors will act contrary to their fiduciary duties. Under Part 10 of the Draft Legislation, directors of all issuers must act honestly and in good faith and in the best interests of the issuer and, under Parts 12 and 15, directors who fail to act in the best interests of the issuer are exposed to regulatory sanctions and statutory civil liability. In the circumstances of a bid, acting in the best interests of the issuer includes taking all reasonable steps to maximize securityholder value — to obtain the best available transaction for the securityholders in the circumstances. To ensure that happens, it may indeed be appropriate to get an independent valuation; however, it is the directors who are ultimately responsible, so it should be left to them to decide whether to get a valuation and, if so, on what terms.

- Directors do not need to be forced to get an independent valuation when appropriate. Today, directors routinely obtain independent valuations in situations when it is not required by any legislation. For example, when an issuer goes public for the first time, the issuer's directors cannot look to the market to determine the share price and often obtain an independent valuation to help them price the issue. Similarly, while we do not require this in our current rules, the directors of a public bidder in a take over situation will often get an independent valuation.

ACT 5B1
- Like all public issuers, the target issuer must disclose all material information to the market at all times. Furthermore, when a bid is made, the target's directors must prepare a directors' circular disclosing any other information relevant to the bid, based on the reasonable investor test. Therefore, offerees and the market have access to all material information relating to the target.

5. Dutch Auction Bids

In a ''pure'' dutch auction bid, the bidder offers to buy a specific number of shares up to a maximum price or to purchase shares up to an aggregate amount. Each securityholder specifies the minimum price per share the holder will accept. The bidder then chooses the price at which it will complete the bid. Each holder who specified a price at or lower than this completion price is taken out at the price that holder specified.

Therefore, under a dutch auction bid, all holders do not get identical consideration for their shares, as is required under the current law. Also, in a pure

dutch auction, it is possible that the bidder will have to pro rate the holders at the highest price, but not the other holders, which is not permitted under existing *pro rata* rules.

We propose that dutch auction take over and issuer bids be permitted. In such bid situations, the bidder would not be bound by the identical consideration and *pro rata* rules. All other existing rules would apply.

We think it is worth reconsidering whether it is necessary to require that all holders receive the same consideration in a bid, at least in circumstances where any instances of unequal consideration are transparent and part of a bid structure in which all securityholders can participate. Even under today's rules, many holders sell into the market at various prices and do not tender into the bid. If the concern is that retail investors cannot make an informed decision, they have access to registrants for advice, just as they do for secondary market trades.

6. Modified Dutch Auction Bids

A modified dutch auction bid is one in which the bidder pays the completion price to all holders who specified a price at or lower than the completion price, so that all holders who are taken out receive the same price. The bidder may pro rate among those holders. Those who specified a price higher than the completion price are not taken out at all.

The current legislation requires that a bidder take up shares from all of the target's shareholders *pro rata*. In other words, bidders are currently prohibited from making a modified dutch auction take over or issuer bid. According to the USL Concept Paper, CSA intends to change the current rules to allow modified dutch auction issuer bids, but not take over bids.

We propose that modified dutch auctions also be permitted for take over bids. In these situations, the existing *pro rata* requirement would only apply for shares that meet the conditions of the bid. All other bid rules would apply unchanged.

Both ''pure'' and modified dutch auction take over bids would likely only occur where the bid is not hostile and there is no likelihood of a competing bid, or where the bidder already has control of the target. These circumstances are similar to those present in the issuer bid environment.

7. Poison Pills

In the 1996 *Report of the Committee to Review Take Over Bid Time Limits*, the Zimmerman committee observed that shareholder rights plans (also known as ''poison pills'') are private contracts and the market will deal with them, under regulators' oversight. As the committee predicted, the market has affected the terms and uses of poison pills and regulators have played their oversight role. Through the hearing process, commissions have issued a series of decisions about when poison pills must go.

The Ontario Five Year Review Committee recommended in its 2002 draft report that regulators adopt a policy based on these decisions — eliminating the need for further hearings.

We agree with the response in the USL Concept Paper that a policy in this area is not necessary. Market participants are getting the guidance they need from Commission decisions, although that is not really the issue. A policy will quickly become outdated and will only hamper the flexibility offered by the current system, which does not appear to present any major problems.

Part 7 Foreign Market Participants

Overview

This Part exempts foreign market participants from various requirements of the Draft Legislation.

The exemptions in Part 7 fall into these categories:

- Exemptions for foreign dealers and advisers from the requirement to register to trade in securities
- Exemptions for foreign issuers from our offering, continuous disclosure, and take over and issuer bid rules
- Exemptions for foreign mutual funds from our public mutual fund rules

1. Foreign Dealers and Advisers

ACT 7A1

The Draft Legislation contains registration exemptions for *foreign dealers* and *foreign advisers*.

RULES 7B1 7B2

Similar to today (see National Instrument 35-101 *Conditional Exemption from Registration for US Broker-dealers and Their Agents*), foreign clients who are temporarily resident in British Columbia will be able to use a foreign registrant; however, we have expanded the current exemption to allow the client to continue the relationship with the foreign dealer or adviser even if the client becomes a permanent resident here. The risk to the client, if any, seems low in these circumstances, and certainly does not seem to justify forcing the foreign dealer or adviser to register or, as would more likely be the case, to terminate the relationship with the client. Where there has been a pre-existing relationship that the client wishes to preserve, that relationship should be allowed to continue if the client so wishes.

RULES 7B1 7B2 1A1 **FORM** 7B1

The foreign registrant exemptions in Part 7 of the Draft Legislation also implement the proposal described in the June Proposals Paper by allowing foreign dealers and advisers to provide services to British Columbia clients so long as they do not *solicit business from residents of British Columbia*, and give the required form of disclosure to the client (see Dealers and Advisers Guide for the required form). A dealer or adviser *solicits business from residents of British Columbia* if it targets them in its marketing, or if it pays consideration to anyone in British Columbia, other than a client or investor. The consideration could take the form of commissions or referral fees. The prescribed disclosure describes the risks of dealing with a foreign registrant and identifies the jurisdiction in which the foreign registrant is regulated.

If a foreign dealer or adviser wishes to begin active business operations in British Columbia, it should be subject to the same requirements as anyone else. However, if they have no such plans, but British Columbia investors want to deal with them in the foreign jurisdiction, the current registration requirement prevents that. The result is that British Columbians' access to the expertise of foreign registrants

when they wish to invest in foreign securities is limited. We believe that British Columbia investors who wish to deal with foreign dealers and advisers on an unsolicited basis should be permitted to do so.

The Draft Legislation does not keep the current requirement that foreign dealers submit to our jurisdiction. Requiring attornment to our jurisdiction is at odds with the rationale that pre-existing relationships, or relationships formed by informed investors who have not been solicited, are relationships that we have chosen not to regulate. We do not think that our responsibility to protect investors in our markets extends to protecting them when they voluntarily and without solicitation choose to do business in foreign markets.

2. Foreign Issuers

The Draft Legislation allows two classes of foreign public issuer to use the documents they prepare under foreign law (to at least some degree) to satisfy British Columbia requirements.

Exemptions provided

Part 7 of the Draft Legislation contains the following exemptions for certain foreign issuers:

ACT 7A1 **RULES** 7C1
- *Exempt foreign issuers.* An *exempt foreign issuer* is a public issuer whose *principal market* is outside Canada and who is subject to a *designated jurisdiction.* It is our intention that the designated jurisdictions will initially include the US (SEC), UK and Australia, although other jurisdictions may be added. These issuers can use the documents they prepare under those laws to comply with all Part 4 and 5 requirements and related rules. Their securityholders and management, and any person making a take over bid for their securities, are also exempt from our significant securityholder, insider reporting and take over bid requirements, on the conditions described below.

ACT 7A1 **RULES** 7C3
- *Limited connection foreign issuers.* A *limited connection foreign issuer* is an issuer whose principal market is outside Canada and that has less than 10% of its equity securities held by Canadian residents. These issuers can use the documents they prepare under the laws of the jurisdiction of their principal market to satisfy all Part 5 requirements and related rules. Again, these issuers' securityholders and management, and any person making a take over bid for their securities, are exempt from our significant securityholder, insider reporting and take over bid requirements on a similar basis. However, these issuers cannot trade securities of their own issue with residents of British Columbia except under the exempt purchaser, accredited investor, offering memorandum and existing securityholder exemptions in Part 3, or in connection with a reorganization, take over bid or business combination. Rights offerings are covered by the exemption for existing securityholders.

RULES 7C1 (1)(2) 7C3 (1)(2)
Both these classes of foreign issuers are also exempt from the Draft Legislation accounting and auditing rules if they comply with corresponding requirements, if any, under the applicable foreign laws. They are also exempt from National

Instrument 43-101 *Standards of Disclosure for Mineral Projects* and any rule relating to oil and gas disclosure as that is one of rules relating to the requirements in Parts 4 and 5.

RULES 7C1 7C3 7E2 Foreign issuers who use these exemptions must comply with various requirements, including the following:

- They must file the documents required by the laws in the jurisdiction of their principal market or file a notice of where the documents are available electronically.
- They must apply those laws for the benefit of British Columbia securityholders as if those securityholders were residents of the foreign jurisdiction.
- If they are *exempt foreign issuers* doing offerings to purchasers in British Columbia, they must file any offering documents used for those purchasers.
- They must send a continuous disclosure document to any resident of British Columbia who requests it.
- They must include with any offering or continuous disclosure document a notice in the required form of the risks of investing in foreign issuers.

ACT 7A1 Under the Draft Legislation, a Canadian-based public issuer may use these exemptions if its *principal market* is outside Canada. (For these issuers, the principal market is foreign only if the foreign marketplace had more than 60% of the issuer's annual trading volume over each of its past three financial years.)

All foreign public issuers and their directors and officers are subject to civil liability in British Columbia based on British Columbia rules, like any other public issuer.

There are no exemptions for any foreign issuers that are not described above. These issuers must comply with the Draft Legislation or apply for discretionary relief.

Rationale

The approach in the Draft Legislation is intended to:

- encourage foreign issuers to include British Columbia securityholders in offerings (including rights offerings), reorganizations, business combinations and bids,
- encourage foreign markets to extend reciprocal access to British Columbia issuers, and
- relieve foreign issuers from the costs of duplicative regulation when it is not necessary to protect investors.

This approach is based on the principle that we grant full access to our system to issuers who are subject to regulatory regimes that we are confident are equivalent to ours, and we grant restricted access to other issuers with a limited connection to Canada on the basis that it will benefit their British Columbia resident shareholders.

In developing the Draft Legislation, we considered CSA's proposed National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to*

Foreign Issuers, which will provide some foreign issuers relief from some continuous disclosure requirements, but no relief from prospectus requirements. The approach in the Draft Legislation differs from the CSA approach in three principal ways:

- The Draft Legislation is simpler and more flexible. Under NI 71-102, foreign issuers are divided into four groups (rather than two under the Draft Legislation) and the exemptions available depend on the type of issuer and each requirement of the current legislation, and varying conditions apply to each type of exemption.
- The Draft Legislation gives broader relief for US prospectus offerings. Under the Multijurisdictional Disclosure System (MJDS), only large US companies issuing equity and investment grade debt can use their home documents to offer securities in Canada. All other relief is given on a case-by-case basis. Under the Draft Legislation, any US company that files continuous disclosure under the 1934 Act can do offerings in British Columbia using its US prospectus documents.
- The Draft Legislation gives narrower relief for some issuers than NI 71-102. NI 71-102 allows issuers in a category corresponding to the limited connection foreign issuer category under the Draft Legislation more access to Canadian markets for raising capital if the issuer is from one of 15 foreign countries. We have not followed this approach for the time being, but will consider it once we have had the opportunity to determine if the scope of this relief is appropriate.

MJDS

The Draft Legislation replaces National Instrument 71-101 *The Multijurisdictional Disclosure System* (the Canadian MJDS rule that benefits US issuers). Because US issuers' access to British Columbia markets is much improved under the Draft Legislation, there is no need to retain this instrument in British Columbia.

To ensure that the SEC does not misinterpret the elimination of NI 71-101 as an end to reciprocity for US issuers under MJDS, we will contact the SEC to make sure it understands that access to British Columbia markets by US issuers under Part 7 is much improved compared to NI 71-101. The access to Canadian markets afforded by Part 7 to US issuers should therefore ensure that the use of MJDS by Canadian issuers to access US markets will continue.

3. Foreign Mutual Funds

ACT 7A1
RULES 7D1
FORM 7D1

The Draft Legislation implements the proposals for foreign funds set forth in our November Proposals Paper*:* trades in a *foreign mutual fund* are exempt from the registration requirements and our mutual fund rules if the fund does not solicit British Columbia investors and provides investors with prescribed disclosure (see Appendix for the required form).

In the mutual fund context, solicitation would include paying any consideration to a Canadian dealer, including incentives or trailer fees.

This is a departure from the current legislation. Today, a foreign mutual fund cannot sell to residents of British Columbia unless it complies with our rules, which include registration, prospectus, and continuous disclosure requirements, along with various other requirements regulating the structure, management, and business and sales practices of mutual funds. Although this makes sense for foreign funds that wish to actively market their funds in British Columbia, we do not think it is appropriate to impose these requirements on funds in cases where British Columbia residents initiate the contact with the foreign fund. Otherwise, the result is that the fund cannot sell to residents of British Columbia who have voluntarily chosen to invest outside the country.

This approach is consistent with our approach to foreign registrants. As in that context, our responsibility to protect investors in our markets does not extend to protecting them when they voluntarily and without solicitation choose to buy a foreign fund.

Part 8 Mutual Funds

Overview

In November 2002, we published a paper containing our proposals for mutual fund regulation (the November Proposals Paper). Subsequent consultations with industry and the public about our ideas elicited generally positive feedback.

We are currently working on several different mutual fund projects through our participation in the CSA and the Joint Forum of Financial Market Regulators. The committees working on these projects, which cover issues such as mutual fund governance and point of sale and continuous disclosure, are considering, among other things, our November proposals. Therefore, Part 8 of the Draft Legislation includes only a few basic structural provisions relating to public mutual funds. We will develop legislation in this area after CSA publishes its proposals for comment and we have the benefit of seeing the comments on those proposals, as well as the comments on the Joint Forum.

However, we have included in the Draft Legislation mutual fund proposals that are not covered by these or any other national projects because the comments we received on them were positive and, if necessary, they could be implemented and used in British Columbia alone.

The Draft Legislation includes these provisions for non-public mutual funds:

- A new exemption for registered portfolio managers to invest client money in restricted mutual funds as described in our November Proposals Paper.
- A replacement for the existing exemption for private mutual funds.

We have also included provisions relating to foreign mutual funds in the Draft Legislation. These provisions are found in Part 7 of the Draft Legislation and are discussed in Part 7 of this Commentary.

1. Restricted Mutual Funds

RULES 8A1 8A3

Under the Draft Legislation, a restricted mutual fund is exempt from the regulatory regime that applies to public mutual funds (currently National Instruments 81-101 *Mutual Fund Prospectus Disclosure*, 81-102 *Mutual Funds*, 81-104 *Commodity Pools*, 81-105 *Mutual Fund Sales Practices* and proposed National Instrument 81-106 *Investment Fund Continuous Disclosure*).

RULES 8A1 8A2

A *restricted mutual fund* is a mutual fund that is not a public mutual fund and that trades its securities only to:

- accredited investors,
- existing securityholders of the fund,
- employees, consultants, directors and officers of the fund company and related parties, or

- clients of portfolio managers who invest their funds in in-house pooled funds to carry out discretionary money management services.

Pooled funds are the means by which portfolio managers choose to provide discretionary money management services to clients on a cost effective basis and can be considered an extension of the portfolio manager. By including trades of pooled funds to clients of a portfolio manager in the restricted mutual fund exemption, we focus on the relationship between the parties as the area that needs to be regulated, not on the sale of securities of the pooled fund.

RULES 1A1 Anyone administering money on a discretionary basis or marketing that service will need to be registered as a portfolio manager. Even if the clients whose money is being managed are all *accredited investors*, portfolio manager registration would still be required.

2. Replacement of Private Mutual Fund Exemption

The current legislation contains an exemption from the public mutual fund requirements for ''private mutual funds'': investment clubs, pooled funds administered by a trust company, and trust funds relating to wills, estates or other traditional trust business.

Investment clubs

The Draft Legislation does not continue the exemption for investment clubs because in the typical investment club situation no securities are being issued. An investment club membership would only be a security if it were an investment contract — an investment in a common enterprise with the expectation of profit from the efforts of others. In an investment club, members profit through their own efforts.

If an investment club is in fact issuing securities, it can rely on another exemption if one is available under Part 3 of the Draft Legislation, or apply for an exemption order.

Pooled funds administered by a trust company; traditional trust business

The Draft Legislation does not continue the exemption for pooled funds administered by a trust company. There is no policy basis to provide an exemption to a pooled fund solely on the basis that it is administered by a trust company. However, the inclusion of pooled funds in the restricted mutual fund exemption provides an exemption to allow any trust company currently relying on the private mutual fund exemption to continue on an exempt basis so long as it registers as an adviser (see Part 3).

RULES 3F20 The exemption for a trust company acting as a fiduciary relating to wills, estates and other traditional trust businesses is continued in Part 3 of the Draft Legislation.

Part 9 Derivative Contracts

Overview

Part 9 of the Draft Legislation contains our rules relating to exchange contracts and over-the-counter (OTC) derivatives. The only change in this area from today is that we will no longer regulate the form of exchange contracts through the legislation (this is a matter more appropriately dealt with through authorization orders granted under Part 2). Otherwise, we have simply made some housekeeping and other drafting changes to the existing provisions.

As part of the USL project, CSA is reviewing the existing rules for derivative contracts. We will be participating in this review and the final version of the legislation we submit to government will contain either the provisions set forth in Part 9 of the Draft Legislation or those developed for inclusion in USL.

Discussion

(a) Exchange contracts

ACT 2A2 The provisions in Part 9 relating to exchange contracts are similar to those found in the current Act. However, we have eliminated the sections relating to the Commission's acceptance of a form of exchange contract. While a market authorization that the Commission grants under Part 2 might require an exchange to provide proposed forms of contract to the Commission, it is not necessary to include anything in the legislation for this purpose.

ACT 1A1 9A1 We have also included a new provision that exempts a person trading in these derivatives from the provisions of the legislation that apply to offerings, continuous disclosure and take over and issuer bids. This was necessary because of the change to the definition of *security* to include exchange contracts.

(b) OTC derivatives

RULES 1A1 9B1-9B6 Part 9 contains rules relating to OTC derivative contracts that are substantially similar to the provisions currently found in various local instruments (BC Instrument 91-501 *Over-the-Counter Derivatives*, BC Instrument 91-502 *Short Term Foreign Exchange Transactions* and BC Instrument 91-503 *Contracts Providing For Physical Delivery of Commodities*). We have simplified the definition of ''Qualified Party'' in BCI 91-501 by referring to the definition of *accredited investor* in the Draft Legislation.

Part 10 Market Participant Conduct

Overview

This Part imposes duties and requirements on market participants and prohibits certain conduct. The Draft Legislation keeps several conduct provisions from the current legislation, and makes these significant changes:

Duties and requirements

The Draft Legislation:

- incorporates the duties of directors and officers found under corporate legislation so that they apply to management of all issuers,
- extends to all market participants the requirement in the current legislation that self-regulatory organizations (SROs) and registrants keep books and records,
- requires persons who file documents with the Commission to prepare them in plain language, and
- requires a person to comply with a written undertaking the person gives to the Commission.

Prohibitions

The Draft Legislation:

- eliminates some current specific prohibitions (i.e. the prohibitions against representing reselling, repurchasing and refunding, future value, listing, registration and Commission approval) in favour of a general prohibition against making a misrepresentation,
- expands the prohibitions against
    - misrepresentations,
    - market manipulation and fraud,
    - unfair practices,
    - insider trading,
    - front running,
    - false or misleading statements, and
    - obstruction of justice, and
- amends the provisions under which the directors, officers, employees and agents of a non-individual person who engaged in misconduct are also responsible for the misconduct.

1. Duties and Requirements

(a) Duties of directors and officers

ACT 10A1

The Draft Legislation incorporates the duties of directors and officers imposed by corporate legislation so that they apply to management of all issuers, not just corporations. These duties require the directors and officers of an issuer to:

- act honestly and in good faith with a view to the best interests of the issuer, and
- exercise the care, diligence and skill that a reasonably prudent individual would exercise in comparable circumstances.

The duty for directors and management to act honestly and competently is fundamental to investor protection and the management of all public issuers should be expected to meet that duty. All investors should have the protection afforded by imposing these duties expressly on those acting as directors and officers of any issuer in which they invest.

(b) Duty to keep records

RULES 10A1 3D3

The Draft Legislation replaces the current detailed provisions for record keeping and reporting by registrants and SROs with a general record keeping obligation that applies to all market participants, and with some more specific outcomes-based requirements for registrants (see Part 3). Expanding the general requirements to all market participants recognizes that, in today's rapidly evolving securities industry, investors need the protection afforded by adequate record keeping from all actors in the regulated markets.

(c) Duty to use plain language

RULES 10A2

The Draft Legislation imposes a new obligation on market participants to prepare all required documents in plain language. Over the years, the emphasis in the preparation of regulatory filings has been far more focused on ''full'' and ''true'' than ''plain''. This is based on a practice of focusing on disclosure documents as liability limitation devices rather than instruments intended to communicate material information to investors in a form they can use. Over-disclosure expressed in excruciatingly accurate, but impenetrable, language defeats the purpose of disclosure requirements — to give investors and clients the information they need to know to make investment decisions and form appropriate relationships with dealers, advisers and other market participants.

This requirement is consistent with the Commission's own commitment to express the Act, Rules and all other regulatory instruments in plain language so that market participants can understand what is expected of them.

(d) Duty to comply with undertakings

ACT 10A2

The Draft Legislation imposes a new duty to comply with a written undertaking to the Commission. Although this may appear to be simply a statement of the

obvious, by making the failure to comply a contravention of the Act, it triggers the full enforcement machinery under the Act if the undertaking is not complied with.

(e) Short selling

ACT 10A3 The Draft Legislation retains the requirement in the current legislation to declare short sales with no substantive changes.

2. Prohibitions

The Draft Legislation eliminates several specific prohibitions found in the current Act — i.e. the prohibitions against representing reselling, repurchasing and refunding, future value, listing, registration and Commission approval — in favour of the principles-based prohibitions discussed below.

(a) Misrepresentations

ACT 1A1 10B1 The Draft Legislation prohibits misrepresentations. Currently, the prohibition does not apply unless the person makes the misrepresentation while engaging in investor relations activities or with the intention of effecting a trade in a security or an exchange contract. While these limitations are removed in the prohibition itself in the Draft Legislation, the definition of *misrepresentation* directly refers to misrepresentations in the context of trading in securities or entering into relationships with those in the securities industry. There appears to be no policy basis for restricting the scope of the prohibition based on the intentions of the person making the misrepresentation or on whether the misrepresentation occurred in the context of investor relations activities.

As noted in Part 1, the definition of misrepresentation is tailored to the different circumstances under the Draft Legislation where it will apply. The Draft Legislation retains the current ''market impact'' test for issuer-related disclosure, but adds a ''reasonable investor'' test for mutual fund disclosure, and for misrepresentations in other contexts, such as advising relationships, that were previously not properly addressed by the prohibition.

(b) Manipulation and fraud

ACT 10B2 The Draft Legislation continues the existing prohibition on manipulation and fraud, but changes it to refer to fraudulent conduct, rather than transactions. It is important that fraudulent conduct be prohibited, whether or not it can be tied to a particular transaction.

(c) Unfair practices

ACT 10B3 The Draft Legislation continues the recently enacted prohibition against unfair practices, but eliminates the restriction that the unfair practice must occur ''while engaging in investor relations activities or with the intention of effecting a trade''. It is the conduct of engaging in unfair practices relating to trading in securities that is contrary to the public interest; there appears to be no policy basis for restricting

the scope of the prohibition based on the context (engaging in investor relations activities) or intentions (effecting a trade) of the person acting unfairly.

(d) Insider trading

ACT 1A1 10B4 The Draft Legislation includes prohibitions on insider trading and tipping — as well as exclusions from those prohibitions — that are substantially similar to those found in the current Act. We have also included in Part 1 of the Draft Legislation a definition of *connected person*, which is consistent with the existing provisions that describe ''persons in a special relationship''. Before we submit our final version of the legislation to government, we will be reviewing this definition to see whether we can further streamline and simplify it.

ACT 10B4 We have also added a new definition for *security of an issuer* in this section. This definition is intended to ensure that equity monetization transactions are covered by the insider trading prohibition, and is consistent with changes we are making in the insider reporting context (see Part 5).

(e) Front running

ACT 10B5 The front running prohibition in the Draft Legislation is very similar to that found in the current legislation, however, we have expanded the provision to pick up trades that benefit affiliates, associates and family members of the person who was aware of the investment program or portfolio.

(f) False or misleading statements to Commission

ACT 10C1 The Draft Legislation continues the current prohibition against making false or misleading statements to the Commission, but expands it to cover all statements made and all documents filed, not just those that must be filed under the legislation, as is currently the case. This expansion is appropriate because we rely on market participants to be truthful in statements or documents provided to us, and because these statements or documents may be available to the public.

(g) Obstruction of justice

ACT 10C2 The Draft Legislation combines the existing prohibitions against the obstruction of justice in the context of compliance reviews, examinations and investigations into one prohibition that is extended to cover hearings and seizures of property or securities. It also includes actions by a person before a hearing, compliance review, investigation or seizure where the person knew, or ought reasonably to have expected, that there would be a hearing, compliance review, investigation or seizure. It is in the public interest that all of these behaviours be prohibited. This conduct can prevent the Commission from taking appropriate compliance and enforcement action when a market participant contravenes the legislation or acts contrary to the public interest.

(h) Individuals deemed to have contravened the legislation

ACT 16C2

Under the current legislation, where a person who is not an individual commits an offence or contravenes the legislation, the offence or contravention can be ''attributed'' to the person's directors, officers, employees and agents. In other words, these individuals are deemed to have engaged in the misconduct that the company or other entity they work for is charged with.

We have revised (and combined) the existing provisions in this area so that under the Draft Legislation, enforcement action or criminal prosecutions can be brought against any employee, officer, director, agent or significant securityholder that authorizes, permits or acquiesces in the misconduct in question.

Part 11 The Commission

Overview

This Part of the Draft Legislation deals with Commission governance and financial administration, and sets forth the Commission's powers to exempt, designate and vary.

Many of the provisions in Part 11 are similar to those found in the current Act. However, we have made a few changes in this area:

Governance

- The Draft Legislation eliminates a number of unnecessary provisions relating to special purpose appointments, hearing panels and advisory committees.
- The Draft Legislation confers all powers directly on the Commission, rather than assigning some to the Commission and some directly to the Executive Director.
- The Commission is authorized to delegate its powers to the Executive Director (who may subdelegate to staff), other Canadian securities regulators, and authorized marketplaces and market services providers.

Financial administration

- The current requirement that money the Commission receives from administrative penalties be used for investor and industry education purposes is extended to cover money received from settlements and unclaimed disgorgement amounts.
- The Draft Legislation includes streamlined financial disclosure provisions.
- We are developing a new fee structure to reflect the Draft Legislation.

Public interest test

- The Draft Legislation replaces the various public interest tests in the current legislation with two discrete tests.

Commission powers

- The Commission's powers in the current legislation to exempt, designate and vary are consolidated into one section.
- The Commission is authorized to grant exemption orders with retroactive effect.

1. Commission Governance

Commission structure

ACT 11A1(1) The Draft Legislation continues the Commission as a corporation consisting of its commissioners (formerly called members). The current provisions allowing

special purpose appointments have been eliminated; we do not foresee circumstances in which they would be useful.

Hearing panels

The current legislation bars a commissioner from sitting on a hearing if the commissioner exercised various powers in connection with the same matter (freeze orders, investigation orders, and so forth). This restriction is eliminated in the Draft Legislation, for two reasons. First, the common law rules of natural justice, which apply to the Commission's proceedings, deal effectively with these and any other situations where there might be a reasonable apprehension of bias. Second, removing the statutory prohibition will permit a respondent to waive the bias issue and agree to have the commissioner sit on a hearing. In some cases, respondents have been willing to grant such a waiver to permit a case to proceed more efficiently but could not do so because of the statutory prohibition.

Advisory committees

Under the current legislation, the government appoints the Securities Policy Advisory Committee (SPAC). SPAC is one of two advisory committees that the Commission consults with on a regular basis on matters of legislation and policy. The other, the Securities Law Advisory Committee (SLAC), is not referred to in the legislation and is not appointed by government. The Commission values the advice it receives from both these committees and will continue to see that qualified people are appointed to them, but we do not believe it is necessary that the legislation specifically authorize the appointment of SPAC members.

Delegation of powers

ACT 11A1(2) 11D1 11D2 The Draft Legislation eliminates the concurrent jurisdiction model in the current legislation, which confers powers directly on both the Commission and the Executive Director. The Draft Legislation confers all powers and duties on the Commission, and authorizes the Commission to delegate its powers to the Executive Director. The Executive Director is also authorized to sub-delegate those powers to Commission staff. This is not intended to result in any functional changes from the *status quo*. Under the Draft Legislation, the Executive Director and Commission staff will continue to exercise the powers they exercise today.

ACT 11D3 The Draft Legislation also authorizes the Commission to delegate some of its powers and duties to other Canadian securities regulators. This is intended to facilitate ''one stop shopping'' for market participants and to make enforcement more effective. The USL Concept Paper contemplates a similar provision.

ACT 2C1 The Commission may also delegate powers to marketplaces and market services providers to which it has granted a market authorization under Part 2.

2. Financial Administration

Money received through enforcement processes

ACT 11B3 The Draft Legislation extends the current requirement that money the Commission receives from administrative penalties be used for investor and industry education purposes to cover money it receives from settlements (net of cost recoveries) and disgorgement orders.

ACT 11B4 The Draft Legislation contains a procedure the Commission must follow in handling money from disgorgement orders. Before the Commission can use this money, it must advertise for those having a claim arising out of the conduct that resulted in the disgorgement order and, if such a claimant begins an action, pay the money into court. If after three years no claimant comes forward, the Commission can use the money as described for education.

Financial statements

ACT 11B8 The Draft Legislation replaces the detailed accounting requirements contained in the current legislation with a requirement that the Commission's financial statements be prepared in accordance with generally accepted accounting principles.

Fees

Under the Draft Legislation, the Commission imposes fees by rule. The current legislation was amended in 2002 to give the Commission this authority. We are developing a new fee structure to reflect the new regime.

3. Public Interest Test

ACT 11C1 Under the current legislation, each section that authorizes the Commission to exercise its discretion contains a test for the exercise of discretion under that section. Most, but not all, of these tests are formulated around some reference to the public interest, such as ''not prejudicial to the public interest'', ''not contrary to the public interest'', ''in the public interest'', and so forth. The Draft Legislation replaces all of these tests with two:

- When the Commission makes a decision on an application to exempt, designate or vary, or to accept the surrender of a registration or market authorization, it must consider that the decision would not be prejudicial to the public interest.
- When the Commission makes a decision on its own motion to exempt, designate or vary, or makes any other decision not referred to above, it must consider that the decision would be in the public interest.

ACT 12D1 (2) (3) When the Commission decides whether to make or extend a temporary enforcement order, it must also consider it necessary to do so.

4. Commission Powers

ACT 11C2 11C3 11C5 11C7 The Draft Legislation combines the Commission's various exempting powers into one section authorizing it to grant exemptions from Parts 2 to 9 and keeps the power to issue blanket orders. The Draft Legislation also keeps the Commission's power to make designations and its general power to vary the rules and its decisions.

ACT 11C4 The Draft Legislation includes a new provision that authorizes the Commission to issue retroactive exempting and designation orders. These orders are not effective to the extent they adversely affect any rights acquired before the issue of the order.

The current legislation specifically states that ''interested persons'' may apply under the exempting and designating provisions. The Draft Legislation simply states that the Commission has the power to exempt, designate or vary, meaning it can act on the application of anyone. The application process will be dealt with through guidance that the Commission will develop.

Part 12 Compliance and Enforcement

Overview

This Part includes the Commission's powers to conduct compliance reviews, carry out investigations and make enforcement orders.

These are the significant changes from the current legislation:

Compliance

The Draft Legislation:

- extends the Commission's power to do compliance reviews of self-regulatory organizations (SROs) and registrants to cover many of the persons caught by our new *market participant* definition, and
- combines the Commission's existing power to issue a cease trade order without a hearing if a person fails to comply with filing requirements with a new right to require additional information before revoking the order.

Investigations

The Draft Legislation:

- expands the list of persons subject to production orders to cover any market participant,
- removes the limitations on what may be examined under an investigation order, and
- conforms the tests for issuing an investigation order and a freeze order.

Commission powers

The Draft Legislation:

- authorizes the Commission to make new enforcement orders,
- conforms the tests for making and extending a temporary order,
- increases the administrative penalty to $1 million per contravention,
- makes a number of changes to the provisions for hearing fees and charges,
- formalizes the Commission's authority to settle enforcement proceedings on any terms and conditions, and
- authorizes an interested party to apply to the Commission for a compliance order after obtaining leave from a commissioner to do so.

1. Compliance

(a) Compliance reviews

ACT 1A1 12A1 (1)(2) Under a compliance review, the Commission has the right to review documents and conduct to determine if there has been a contravention of the Act, the Rules, or a decision of the Commission. The person conducting the review can enter business premises for this purpose. Currently, the Commission's power to conduct these formal compliance reviews is limited to registrants and SROs. So that the Commission has the powers it needs to ensure compliance by all actors in the ever-evolving regulatory system, the Draft Legislation extends this power to cover additional persons caught by the new definition of *market participant* — namely, public issuers, due diligence providers, fund companies and custodians of assets of a fund.

(b) Failure to comply with filing requirements

ACT 12A2 (1)(2) The Draft Legislation keeps the power in the current legislation for the Commission to issue a cease trade order without a hearing if a person fails to make a filing when required, or if the filing does not meet our requirements. The new provision combines this power with a new right to require additional information before revoking the order. This power has been added so that Commission staff can require the filer's continuous disclosure record to be accurate and complete before lifting the cease trade order. Accurate and complete disclosure of all material information is a cornerstone of our new system of regulation.

2. Investigations

The Draft Legislation keeps the Commission's current investigation powers and, where appropriate, enhances them. As noted below, some provisions related to the investigation powers have been eliminated.

(a) Production orders

ACT 1A1 12B1 The Draft Legislation retains the provision that permits Commission staff to order production of information from certain classes of person. Under the Draft Legislation, Commission staff can make a production order against any market participant. Staff will also be able to make a production order against any person who was a market participant at the time of the alleged misconduct, even if that person is not a market participant when staff begins its inquiries. The definition of *market participant* is similar, but not identical to, the list of persons specified under the current legislation. For example, it has been expanded to include all issuers, not just public issuers.

Production orders help Commission staff to gather information about a complaint to determine whether it is necessary to proceed to a formal investigation. Limiting production orders to public issuers hampers preliminary investigative efforts involving, for example, potential illegal distributions and frauds, because many of these are conducted through issuers that are not public issuers.

(b) Investigation orders

ACT 12C1 The Draft Legislation keeps the Commission's power to issue investigation orders and the requirement that the Commission specify the scope of the investigation when it makes these orders. The provision that lists the routine powers of the investigator has been eliminated, because these can be covered by the terms of the investigation order itself. The Draft Legislation retains the ''search and seizure'' provisions relating to business premises of a registrant, representative, authorized marketplace or market services provider.

(c) Order to freeze property

ACT 12C6 The Draft Legislation keeps the Commission's power to freeze property, but conforms the conditions for making freeze orders with the conditions required for an investigation order. There appears to be no policy basis for the distinction between the two that exists in the current legislation.

(d) Provisions eliminated

The Draft Legislation eliminates a number of provisions:

- It is not necessary to mandate in the Act that an investigator must provide a report on an investigation to the Commission on request — staff reports to the Commission and through that relationship is required to provide the Commission any information that the Commission requires.
- The Draft Legislation eliminates the provision in the current legislation that authorizes the Minister to order an investigation or request a report of an investigation requested by the Commission. This provision has never been used. The Draft Legislation eliminates it because the Commission's investigative and adjudicative processes should be independent from government.
- **ACT** 11A2(2) The Draft Legislation eliminates the express authority for the Commission to appoint experts. The Commission has the authority to hire an expert through its powers as a natural person. Where the Act's compulsion powers are involved through an investigation order, the experts can, and should, be appointed through the investigation order process.
- It is not necessary to keep the current provision authorizing the Commission to appoint a person to examine the financial affairs of certain persons as it is superseded by the Commission's power to order compliance reviews and make production and investigation orders.

3. Commission Powers

(a) Enforcement orders

The Draft Legislation authorizes the Commission to make new enforcement orders as follows:

ACT 12D1 (1)(d) (ii)-(vi)
- *Power to prohibit a person from being a fund company, a marketplace, a market services provider, a registrant or a representative of a registrant, a due diligence provider, or from working for a market participant in a management or consultative role.* The Draft Legislation imposes new requirements on marketplaces, market services providers and due diligence providers (see Parts 2 and 4), and we expect the final version of the legislation will also impose new requirements on fund companies, so a corresponding enforcement power is appropriate. Although under the current legislation the Commission can revoke a registration, the Commission does not have the power to order that a person cannot be a registrant. This power is appropriate in some cases of registrant misconduct. The new powers relating to representatives of a registrant are necessary under the firm-only registration system (see Part 3) in order to replace the existing powers to revoke or suspend registration of an individual, or to attach conditions to an individual's registration. The prohibition against working for a market participant in a management or consultative role broadens the current prohibition against engaging in investor relations activities. As discussed in Part 1, the Draft Legislation eliminates this specific ''investor relations activities'' concept, but the new prohibition is broad enough to cover those situations, as well as market abuses that occur through other forms of involvement with an issuer.

ACT 12D1 (1)(e)
- *Power to order that any person disseminate, not disseminate, or change information*. The current legislation confers this power only in connection with a registrant, issuer or person engaged in investor relations activities; however, it is appropriate that the Commission have the power to intervene in any case where any person is distributing misleading information.

ACT 12D1 (1)(f)(ii)
- *Power to discipline persons with a market authorization or make them subject to conditions*. The Draft Legislation includes the power to suspend or impose conditions on a person who has obtained an authorization order under Part 2.

ACT 12D1 (1)(i)
- *Power to reprimand any market participant.* This extends the existing reprimand power to any market participant, which includes essentially anyone under the jurisdiction of the Act.

ACT 12D1 (1)(h)
- *Power to order disgorgement.* This allows the Commission to order disgorgement. (Distribution of the proceeds is handled by the courts; see Part 11.)

(b) Temporary orders

ACT 11C1 12D1 (2)(3)
Today, the test for making a temporary order is whether ''the length of time required to hold a hearing... could be prejudicial to the public interest'', and for

extending a temporary order is whether the extension is ''necessary and in the public interest''. Temporary orders are extraordinary powers and we think it is appropriate that the test for both be ''necessary and in the public interest'', and that is reflected in the Draft Legislation.

(c) Administrative penalty orders

ACT 12D2

Like the current legislation, the Draft Legislation allows the Commission to impose an administrative penalty. The amount of the penalty is increased to $1 million per contravention, the maximum under new legislation in Ontario. (Québec securities legislation also specifies a maximum $1 million administrative penalty; however, that penalty does not apply per contravention.) There does not seem to be any policy basis for having enforcement powers in British Columbia weaker than in other Canadian jurisdictions. To the contrary, it is in the public interest that British Columbia not be seen as a safer jurisdiction for those who choose to engage in market misconduct.

(d) Hearing fees and charges

ACT 12D3(1)

The Draft Legislation keeps the power for the Commission to order a person to pay costs after a hearing, but eliminates the power of the Commission to order costs of an investigation if it does not result in a hearing. This provision is rarely used, and we do not think it is appropriate to order costs when the investigation results in no allegations of wrongdoing.

ACT 12D3(2)

The Draft Legislation also authorizes the Commission to order a person to pay costs of an investigation that leads to a finding by a court that the person is guilty of an offence under the Act.

The Draft Legislation eliminates the right to bring a Commission costs order before a Master for review. This right does not exist under the securities legislation of any other jurisdiction in Canada and we see no policy reason to preserve the distinction in British Columbia.

(e) Settlements

ACT 12D4

Today, the Commission has the legal authority to settle enforcement proceedings. However, we think it is appropriate to expressly set out all the powers the Commission exercises in regulating trading in securities. Consequently, the Draft Legislation includes a new provision expressly authorizing the Commission to enter into settlements on whatever terms and conditions it considers to be in the public interest.

(f) Compliance orders

ACT 12E1 12E2

Today, an interested person or the Commission may apply for an order requiring a person to comply with the take over and issuer bid provisions. The Draft Legislation expands this right to cover any provision of the Act and Rules. The interested party must obtain leave from a Commissioner who must decide if the

application is in the public interest. The decision whether to grant leave cannot be reviewed.

This expanded power has been added to give market participants and investors access to the Commission for compliance orders where serious public interest issues are at stake without having to proceed through the formal enforcement process.

(g) Powers eliminated

The Draft Legislation eliminates a number of powers:

- It is not necessary to keep the Commission's current power to halt trading for three days without a hearing in circumstances relevant to trading on an exchange or a quotation and trade reporting system. This power has been used only once, many years ago, and we have other more appropriate enforcement powers to stop abusive trading on a market.

ACT 12A2

- It is not necessary to kept the Commission's specific powers to deal with dormant issuers and exchange contracts because the power to issue cease trade orders is sufficient to deal with these situations.

Part 13 Hearings and Reviews

Overview

This Part of the Draft Legislation deals with hearings and reviews by the Commission.

These are the significant changes from the current legislation:

- The Draft Legislation eliminates various provisions relating to notice and other procedural requirements that must be met under the rules of natural justice; they will be covered under the Commission's hearings policy.
- If a person is represented by counsel in connection with a hearing, documents may be served on the person by delivering them to counsel.
- The Commission can order parties to a hearing to make any disclosures, including disclosures to other parties of documents and witness statements.
- The Draft Legislation eliminates the prohibition against a person acting under delegated authority sitting on a review of that person's decision.

1. Notice and Procedural Requirements

There are a number of provisions in the current legislation that deal with procedural matters and other requirements relating to hearings. The Draft Legislation eliminates them, although to provide guidance to industry, we will deal with them in the Commission's hearings policy. This policy will be redrafted later in the year after we have received comment on the Draft Legislation.

ACT 11C1 The removal of these provisions from the legislation does not dilute the Commission's responsibilities of fairness to persons who come before it in hearings. The Commission is subject to the rules of natural justice and must consider the public interest. Under this body of common law, the Commission has clear obligations to give notice and conduct fair hearings. The common law also says that the Commission is the master of its own procedures, subject to the restraints of natural justice.

The Commission is best able to fulfill its statutory mandate by avoiding undue formality in its hearing process; this means having specified procedures only where necessary. It is also in the public interest that the Commission's procedures be transparent, but this can be achieved by publishing the procedures in a policy. Transparency does not require that procedure be enshrined in legislation.

2. Service on Counsel

ACT 13A5 The Draft Legislation provides that if a person is represented by counsel in connection with a hearing, that person can be served with a notice of hearing, subpoenas, or any other documents if they are delivered to the person's counsel.

Counsel who appear at hearings representing respondents sometimes advise that they have no instructions to accept service of documents on their clients' behalf. If the respondents appeared in person, they could be served. It is up to respondents

to choose whether they wish to appear in person or be represented by counsel at hearings, but it is not in the public interest that they can avoid service merely by sending counsel to the hearing on their behalf.

3. Disclosure of Case

ACT 13A2

The Draft Legislation requires parties to make disclosure of their case to the other parties in the hearing, and authorizes the Commission to make disclosure orders. This formalizes the disclosure currently contemplated by the Commission's hearings policy, and follows the mandatory disclosure rules in Ontario.

4. Review of Decisions by Those with Delegated Authority

ACT 13B1

The Draft Legislation also consolidates the various provisions in the current legislation dealing with reviews of decisions of the Executive Director, designated organizations, persons acting under delegated authority and self-regulatory organizations.

The Draft Legislation eliminates the provision in the current legislation that prohibits a person who acted under delegated authority from sitting on a review of the person's exercise of that authority. This restriction is eliminated for two reasons. First, the common law rules of natural justice, which apply to the Commission's proceedings, deal effectively with these and any other situations where there might be a reasonable apprehension of bias. Second, removing the statutory prohibition will permit a respondent to waive the bias issue and agree to have the person sit on a review. In some cases, respondents have been willing to grant such a waiver to permit a case to proceed more efficiently but could not do so because of the statutory prohibition.

Part 14 The Court

Overview

This Part deals with court powers concerning investigations, decisions made by the Commission, and offences.

These are the significant changes from the current legislation:

Appeals of Commission decisions

The Draft Legislation:

- permits appeals only of final decisions of the Commission,
- requires, where an appeal is allowed, that the Court of Appeal send the matter back to the Commission for disposition, unless the parties agree to the Court's revocation or variance of the Commission's decision, and
- broadens the prohibition against appeals to the Court of Appeal from certain decisions.

Compliance orders and offences

The Draft Legislation:

- extends the Commission's current power to enter Commission decisions as decisions of the Supreme Court to Commission staff decisions and settlements,
- expands the range of compliance orders that the court can make on application from the Commission,
- makes any contravention of the Act or the Rules, with limited exceptions, an offence, and
- increases the penalties for offences.

1. Appeals of Commission Decisions

(a) Appeal only final decisions

Under the existing legislation, the court has sometimes agreed to hear appeals of decisions that are not final decisions. Consequently, rulings made during the course of hearings are often appealed, which delays the hearing and erodes the Commission's effectiveness as a public interest regulator.

ACT 14B1(1) The Draft Legislation allows appeals only of final decisions. This is the practice the Court of Appeal follows with the lower courts. Once the Commission's final decision is made, parties will still have the right to appeal that decision on the grounds that interim rulings and findings of the Commission were in error.

Parties will continue to have the right to bring actions in the Supreme Court on the basis that the Commission has exceeded its jurisdiction.

(b) Matters must be sent back to the Commission

ACT 14B1(4) (5)

The current legislation authorizes the Court of Appeal to make any order the Commission may make. Under the Draft Legislation, the court, if it allows the appeal, can vary or revoke the Commission's decision only if the parties agree; otherwise, it must send the matter back to the Commission. The Commission, after considering the court's judgment and the public interest, would then make new orders. This procedure recognizes the expertise of both the court and the Commission.

(c) No appeal of exemptive relief decisions

ACT 14B1(2)

The Draft Legislation extends the prohibition in the current legislation against appeals from Commission decisions on exemptions from the registration and prospectus requirements to Commission decisions on any exemption from the Act or the Rules. The policy reason for the current legislation is that decisions to exempt persons from the registration and prospectus requirements is within the Commission's area of expertise, to which the courts defer. The same can be said of all exemption decisions.

2. Compliance Orders and Offences

(a) Enforcement of Commission decisions and settlements

ACT 14C2

Today, the Commission may file in the Supreme Court any decision the Commission makes after a hearing. Once filed, the Commission's decision has the same effect as if it were a judgment of the court. The Draft Legislation extends this power to allow the Commission to file decisions of Commission staff, as well as settlements. It is in the public interest that the Commission's decisions be fully enforceable if the Commission is to be an effective regulator. There appears to be no policy basis for distinguishing between decisions made through the hearing process and staff decisions, or orders made under settlements.

(b) Orders for compliance

The Draft Legislation eliminates the requirement that the Commission consider that a person has contravened the legislation or failed to comply with a decision before applying to the court for a compliance order. These requirements are not necessary, because it is the court that will have to be satisfied that the contravention or non-compliance has taken place before making the order. It is therefore implicit that the Commission will have to prove the contravention or non-compliance to the court.

ACT 14C3(h) (i) (j) (m)

Under the Draft Legislation, the list of compliance orders that the Commission can request is significantly expanded in order to provide the court with broad powers to make orders in the interests of protecting investors and markets. Under the Draft Legislation, the court may make any order the Commission can make as an

enforcement order under Part 12, and, in addition to its current powers, may order a person:

- to produce to the court or an interested party financial statements or an accounting
- to correct its records
- to make restitution
- to rectify any contravention of the Act or Rules to the extent that rectification is possible.

(c) Generally

ACT 14D1 **RULES** 14D1

Under the *Offence Act,* a person who contravenes any provision of the Act or Rules commits an offence. The Draft Legislation carves out the following provisions from the operation of the *Offence Act* so that a contravention of them will not constitute an offence:

- The standard of care for directors and officers (Part 10)
- The duty to comply with written undertakings (Part 10)
- The Code of Conduct (Part 3)
- The requirement that documents filed be in plain language (Part 10)

We are considering whether there are other provisions of the Draft Legislation that should be added to this list.

(d) Penalties

ACT 14D2(1)

The Draft Legislation increases the $1 million fine in the current legislation to $3 million. Imprisonment remains at three years and, like today, the court can order both fines and imprisonment at the same time.

ACT 14D2(2)

For insider trading and fraud, the Draft Legislation increases the $1 million figure in the current legislation to $3 million so that a fine for insider trading is not less than the profit, and not more than the greater of (a) $3 million and (b) an amount equal to triple the profit made or loss avoided.

Part 15 Investor Remedies

Overview

This Part establishes a statutory right of action for contraventions of the Act or the Rules, a significant expansion of civil remedies compared to the current legislation.

In our June proposals, we proposed the creation of an action for misrepresentation in continuous disclosure documents along the lines of the November 2000 CSA proposal (see CSA Notice 53-302). Since then, the Ontario government has passed legislation based on that proposal (although it is not yet in force).

In June 2002 we also proposed the creation of statutory rights of action:

- against registered firms and their directors and officers for contraventions of the Act and Rules,
- for trading on inside information,
- for market manipulation and fraud, and
- for making misrepresentations or engaging in unfair practices.

All of these specific rights of action are superseded by the regime in the Draft Legislation, which:

- creates a single right of action for damages for material contraventions of the Act or the Rules,
- provides defences tailored to the circumstances of various defendants,
- provides protections for defendants,
- sets out rules for calculating and apportioning damages,
- specifies limitation periods, and
- eliminates the rights of withdrawal and rescission available under the current legislation for purchases in a primary offering.

1. Discussion and Rationale

Simpler and more effective

ACT 15A1 The Draft Legislation approach is much simpler than both the current system and the one we described in June — one general statutory right of action replaces all of the existing and proposed rights of action. More importantly, this approach provides a more effective deterrent to market misconduct, which is our primary objective in this area.

On the face of it, creating a statutory right of action for any contravention of the legislation may seem very broad. It certainly expands statutory remedies beyond where they are today. (The statutory rights currently available to investors extend only to purchases under a prospectus, some exempt market purchases, take over bids, the failure to deliver certain documents, trading on inside information and certain actions of registrants.) However, as a practical matter, we do not think the

Draft Legislation approach extends the scope of liability beyond what was contemplated in our February Concepts Paper and June Proposals Paper.

This approach could be too broad if there were not safeguards in place to ensure that the actions will be available only for material contraventions, and that defendants who behave reasonably and responsibly will enjoy a low risk of being sued (and confidence that if sued, they will not be found liable). The Draft Legislation includes these safeguards, all of which are described below.

A significant issue is whether this system of civil liability will result in undue costs to market participants. To determine this, we will be doing a cost-benefit analysis between now and the fall. As part of that study we will be consulting with insurers and litigation experts.

Contraventions must be material

Various provisions in Part 15 are designed to discourage the filing of lawsuits for technical or trivial contraventions of the legislation:

ACT 15A1(3) (4)
- The Draft Legislation requires that the contravention be material. For disclosure matters involving issuers other than mutual funds, that means the consequences of the contravention would be likely to significantly affect the value or market price of the issuer's securities. In other situations, it means that the consequences of the contravention would likely be considered important by a reasonable investor.

ACT 15A1(5) (6) (7)
- In actions for fraud, market manipulation, insider trading, and front running, or if the action involves inappropriate disclosure by issuers or their securityholders, the plaintiff must have traded during the period when the contravention took place.
- The common law principles of causation and damages apply, so the plaintiff must still show damages and that the contravention caused those damages.

ACT 15C1 15C2
- The approval of the court is required to begin or settle an action brought under Part 15.

The Draft Legislation uses the language ''consequences of the contravention'' to indicate that, when the reasonable investor test applies, the plaintiff has an action only if the consequences of the contravention would be material to the reasonable investor. The plaintiff is not entitled to sue for conduct that does not meet this test, even if that particular plaintiff suffered damages.

Overlap with common law liability

ACT 15A10 The cause of action in Part 15 is in addition to any rights or remedies a person might have at common law. Because of its general scope, the cause of action in Part 15 may duplicate rights and remedies available at common law. We do not think this results in any adverse outcomes, and there are three reasons to include

the general cause of action in the legislation, even if it does overlap with common law remedies:

- It avoids legislators having to continually analyze and respond to ''gaps'' between the legislative rights and remedies and the common law.
- It conveniently codifies in the legislation a comprehensive regime for civil liability for contraventions of securities regulation.
- It is a key element of our investor protection focus, and presented in this form it is clearly visible to investors, clients and market participants.

Other statutory remedies eliminated

Under the Draft Legislation, investors who buy securities under an initial AIF (see Part 4) will not have the two day right of withdrawal that is currently available to those who buy under a prospectus. (This remedy is also eliminated for purchases of small amounts of mutual fund securities.) This is because these provisions are virtually never used; as well, they are to some degree inconsistent with our expectation that investors exercise reasonable care and judgment in making their investment decisions. Even without the withdrawal right, investors who change their minds have a remedy — they can sell the securities in the secondary market or back to the mutual fund.

Under the Draft Legislation, investors will not be able to sue for rescission where there is a misrepresentation in an initial AIF or take over bid circular as they would today in the prospectus or take over bid context. Because all investors in public issuers, whether in the primary or secondary market, are trading on the basis of the same information, the Draft Legislation gives them the same remedies: they have a right of action for damages in the case of a misrepresentation.

2. Right of Action

Scope of liability

ACT 15A1(1) Under the Draft Legislation, an investor or client has a right of action for damages against a person who contravenes the Act or the Rules. The plaintiff will be able to bring an action against:

- the person (for example, individual, issuer, dealer, adviser or fund company) who contravened the legislation,
- if the person is a representative of a registered firm, the firm,
- an expert, if the expert consented to the use of the opinion or report,
- any due diligence provider if the provider prepared a due diligence report in connection with an offering and there was a misrepresentation in the issuer's continuous disclosure record during the offering,
- any registered dealer that acted as an underwriter if there was a misrepresentation in the issuer's continuous disclosure record during the offering,
- directors of any of the above, and
- officers of any of the above who authorized, permitted or acquiesced in the contravention.

ACT 15A2 15A3 15A6 15A9 The Draft Legislation also includes these additional specialized remedies:

- A two-day withdrawal right for purchases under an offering memorandum of a restricted issuer.
- A right of rescission for misrepresentations in an offering memorandum of a restricted issuer or in a mutual fund's continuous disclosure record (a person who exercises this right may not also claim damages).
- A right to an accounting for insider trading or front running benefits.
- A right to obtain one of a number of court orders — for example, to rescind a transaction — following a person's failure to comply with the take over bid provisions of the legislation.

ACT 15A7 An investor who brings an action for misrepresentation or failure to disclose material or significant information is deemed to have relied on the misrepresentation or failure to disclose. This is consistent with the November 2000 CSA proposal and the new Ontario legislation.

3. Available Defences

The Draft Legislation includes the following defences:

All defendants

ACT 15B1 15B3 15B9 15B11 15B10 All defendants have a defence if:

- the investor knew of the conduct constituting the contravention at the relevant time (except in actions based on unfair practices),
- they exercised due diligence, that is, conducted a reasonable investigation and had no reasonable grounds to believe there was a contravention (unless the defendant knew of the contravention or was reckless or willfully blind about it),
- they had a reasonable expectation that the document would remain confidential and objected in writing when it was made publicly available,
- they were reasonably relying on information published by a government or disclosed by another issuer, or
- where the action is for a misrepresentation in forward looking information, the required cautions were included and there was a reasonable basis for the information.

ACT 15B6 All defendants (other than the expert) will have a defence in an action for misrepresentation based on an expert's opinion or report subject to the conditions in the Draft Legislation.

Issuers, firms and their management

ACT 15B2 A firm or issuer and its directors have a defence if the firm or issuer had a reasonable system in place to avoid contraventions and a process for monitoring compliance with that system. Like the due diligence defence, it is not available if the defendant knew of the contravention or was reckless or willfully blind about it.

ACT 15B7 15B8 Where the action is for misrepresentation or failure to disclose material or significant information, an issuer, its directors and officers have a defence if the

information was disclosed to the Commission on a confidential basis and other conditions were met, such as making disclosure within 24 hours if it appears the information may have leaked. The 24 hour safe harbour also applies to leak situations outside the confidential filing regime.

Experts

ACT 15B5

An expert will avoid liability for a misrepresentation deriving from the expert's opinion or report if the opinion or report was not fairly represented.

Insider trading defendants

ACT 10B6

The Draft Legislation includes defences for those sued for insider trading that are similar to those found in the current legislation.

4. Protections for Defendants

The Draft Legislation contains protections for defendants as a balance to the expanded civil remedies. The reasons to include protections for defendants in the legislation are well documented. We acknowledged in our February Concepts Paper concerns that without safeguards, broader investor rights could increase costs and discourage qualified people from serving as directors, officers and advisers for fear of potential liability. We are also aware of the concern about ''strike suits'' — cases where plaintiffs without a legitimate claim bring an action to try and coerce the defendant into settling.

Therefore, the Draft Legislation includes the following protections:

Court approval of action

ACT 15C1

A plaintiff must get the court's approval to start an action. For a case to proceed, the court will have to be satisfied that there is a reasonable possibility that the action will be resolved in favour of the plaintiff.

Court approval of settlements

ACT 15C2

Any proposed settlement requires court approval. The Draft Legislation requires that the court find the settlement terms to be appropriate.

Caps on liability

ACT 15D1(1)

Defendants' liability will be capped as follows:

RULES 15D1(2)

- for non-mutual fund issuers — at the greater of $1 million or 5% of market capitalization,
- for directors and officers of a defendant — at the greater of $25,000 or 50% of the total annual compensation, including stock or deferred compensation, they received from the issuer or firm and its respective affiliates in the previous 12 months,

- for experts — at the greater of $1 million or the amount the expert and its affiliates received from the issuer and its affiliates in the previous 12 months,
- for due diligence providers — at the value of the offering,
- for underwriters — at an amount equal to the portion of the value of the offering equal to the underwriter's participation in the offering, and
- for insider trading defendants, at an amount equal to triple the profits made or losses suffered.

ACT 15D1(2) (a) (c)

This protection is not available where the defendant acted knowingly or was reckless or willfully blind, or in the case of fraud, market manipulation or unfair practices.

ACT 15D1(2) (b)

We have also not extended this protection to registered dealers or advisers, or mutual fund companies. The caps for issuer liability exist to allow the issuer to avoid an inappropriate transfer of wealth among different groups of shareholders. This is not an issue when clients are suing registrants or fund companies.

Furthermore, these entities are in the business of trading securities and should be held liable for their conduct. Issuers, on the other hand are only in the market to raise capital — trading in securities is not their primary business and they should not be put out of business as a result of litigation by one group of investors to the detriment of another.

However, the Draft Legislation does include liability limits for directors and officers of registrants and fund companies. We recognize that imposing potentially unlimited liability on these individuals could reduce the quantity (and quality) of available directors and officers and encourage them to judgment proof themselves. Also, the cap allows insurers to accurately measure their risk.

Loser pays provision

ACT 15D5

The Draft Legislation allows the court to assess costs against the losing party under normal court rules. This is a change from the June proposals. The consensus of the comment we received on this point was that this was a critical element of defendant protection, and that the provision would not unduly discourage class actions.

5. Damages

ACT 15D2 15D3 15D4

The Draft Legislation includes several limits on damages:

- Damages must not include any changes in market price that were not due to the contravention.
- Defendants are proportionately liable.
- Punitive or exemplary damages are not available (unless the defendant acted knowingly or was reckless or willfully blind).

6. Limitation Periods

ACT 15E1 Under the Draft Legislation,

- actions for damages must be started by the earlier of three years after the date of the contravention and six months after a court has approved commencement of the action,

ACT 15E2 15E3

- actions for rescission for purchases of mutual fund securities or under an offering memorandum must be started within 180 days after the date of the transaction giving rise to the cause of action,
- actions for rescission in national prospectus offerings and in national take over and issuer bids must be started within 180 days after the date of the transaction giving rise to the cause of action, and
- actions for accounting must be started within three years after the date of the transaction giving rise to the cause of action.

7. Harmonized Interface

Under the Draft Legislation, certain statutory remedies will exist in British Columbia that will not be available elsewhere in Canada, including actions for misrepresentation generally, dealer and adviser misconduct, fraud, market manipulation and unfair practices. These additional remedies do not raise interface issues.

The Draft Legislation imposes liability for misrepresentations in continuous disclosure and for the failure to disclose. USL intends to do the same, but along the lines of the CSA November 2000 proposals. Although these liability provisions differ in language, we believe that the outcomes will be substantially the same.

ACT 15A4 15A5 The primary interface issue is the continuation of the prospectus system elsewhere in Canada and the civil remedies accompanying that system. To ensure that British Columbia investors are not treated differently in national prospectus offerings and in take over bids and issuer bids, the Draft Legislation includes rights for investors in these transactions that correspond to those rights elsewhere in Canada.

Part 16 General Provisions

Overview

This Part includes the general provisions on filings made with the Commission and information collected by the Commission as well as limitation periods and other miscellaneous matters.

These are the significant changes from the current legislation:

- The Draft Legislation permits records that must be sent to go to a person's known location or last known address including an e-mail or facsimile address.
- The list of persons with whom the Commission may collect and share information is extended.
- Certain provisions of the Draft Legislation override the *Freedom of Information and Protection of Privacy Act*.

Discussion

(a) Notices generally

ACT 16A2 The Draft Legislation broadens the ways in which records that must be sent can be sent. In addition to service at the person's latest address, address for service, or solicitor, records can be sent to the location where the sender knows the person to be or the person's last known address including e-mail or facsimile address. These new permitted means of sending documents reflect developments in information technology.

(b) Commission information sharing

ACT 16A6 Under the current legislation, the Commission can collect information from, and share information with, a self-regulatory organization (SRO), an exchange, a quotation and trade reporting system, a law enforcement agency or a government or governmental authority. The Draft Legislation extends the collecting and sharing of information to include all *market participants*. This term includes not only SROs and marketplaces but also registrants, representatives, issuers, fund companies and custodians of a mutual fund, transfer agents and a director, officer or significant securityholder of an issuer.

In a principles-based system, the Commission has to be able to share information that is obtained while performing its obligations with the market participants who are subject to the broader liability of the new more flexible system.

(c) *Freedom of Information and Protection of Privacy Act* override

ACT 16A8 The Commission is subject to the *Freedom of Information and Protection of Privacy Act* (FOIPPA). The Draft Legislation includes a provision that overrides FOIPPA for some specific sections of the Draft Legislation that deal with

compliance and enforcement, and access to information that the Commission collects under its regulatory powers. This is to ensure that the public policy objectives of the securities legislation are not defeated by these laws of general application. Other than these specified exceptions, FOIPPA continues to apply to the Commission. The provision does not override the Information and Privacy Commissioner's right to inspect our records.

Appendix A
Table of Concordance

Title	Part / Section No.	Sub-Title	Act/Rules/ Forms/Guidance	Eliminated
		Securities Act		
Act	1(1)	Definitions (adviser)	Act s. 1A1	
Act	1(1)	(associate)	Act s. 1A1	
Act	1(1)	(business day)		X
Act	1(1)	(Business Development Bank of Canada)		X
Act	1(1)	(class of exchange contracts)		X
Act	1(1)	(class of securities)		X
Act	1(1)	(clearing agency)	Act s. 1A1 *market services provider*	
Act	1(1)	(commission)		X
Act	1(1)	(commission rule)	Act s. 1A1 *rule*	
Act	1(1)	(commodity)		X
Act	1(1)	(contract)		X
Act	1(1)	(contractual plan)		X
Act	1(1)	(control person)	Act s. 1A1 *significant security holder*	
Act	1(1)	(dealer)	Act s. 1A1	
Act	1(1)	(decision)	Act s. 1A1	
Act	1(1)	(designated organization)	Act s. 1A1 *authorized market delegate*	
Act	1(1)	(designated security) — *repealed*		
Act	1(1)	(director)	Act s. 1A1	
Act	1(1)	(distribution)		X
Act	1(1)	(distribution contract)		X
Act	1(1)	(exchange contract)	Act s. 1A1	
Act	1(1)	(exchange issuer)		X
Act	1(1)	(executive director)		X
Act	1(1)	(futures contract)	Act s. 1A1 *derivative contract*	
Act	1(1)	(holder in British Columbia)		X
Act	1(1)	(individual)		X
Act	1(1)	(insider)	Act s. 1A1	

Title	Part / Section No.	Sub-Title	Act/Rules/ Forms/Guidance	Eliminated
Act	1(1)	(insurer)		X
Act	1(1)	(investor relations activities)		X
Act	1(1)	(issuer)	Act s. 1A1	
Act	1(1)	(management contract)		X
Act	1(1)	(material change)		X
Act	1(1)	(material fact)		X
Act	1(1)	(misrepresentation)	Act s. 1A1	
Act	1(1)	(mutual fund)	Act s. 1A1	
Act	1(1)	(mutual fund distributor)		X
Act	1(1)	(mutual fund in British Columbia)		X
Act	1(1)	(mutual fund manager)		X
Act	1(1)	(officer)	Act s. 1A1	
Act	1(1)	(person)	Act s. 1A1	
Act	1(1)	(portfolio manager)		X
Act	1(1)	(portfolio security)		X
Act	1(1)	(private issuer) — *repealed*		
Act	1(1)	(private mutual fund)		X
Act	1(1)	(promoter)		X
Act	1(1)	(registrant)	Act s. 1A1	
Act	1(1)	(regulation)		X
Act	1(1)	(reporting issuer)	Rules s. 1B2	
Act	1(1)	(salesperson)	Act s. 1A1 *representative* Rules s. 1B2	
Act	1(1)	(security)	Act s. 1A1	
Act	1(1)	(senior officer)	Act s. 1A1	
Act	1(1)	(spouse)	Act s. 1A1	
Act	1(1)	(subsidiary)	Act s. 1A1	
Act	1(1)	(trade)	Act s. 1A1	
Act	1(1)	(underwriter)	Code s. 1	
Act	1(1)	(voting security)		X
Act	1(2)	affiliated	Act s. 1B2	
Act	1(3)	controlled	Act s. 1B1	
Act	1(4)	beneficial ownership	Act s. 1B3	
Act	2	Insiders of mutual fund		X

Title	Part / Section No.	Sub-Title	Act/Rules/ Forms/Guidance	Eliminated
Act	3	Definition of special relationships	Act s. 1A1 *connected person*	
Act	3.1	Exemption orders	Act s. 11C2	
Act	3.2	Designated mutual funds	Act s. 11C3	
Act	4	Commission continued	Act s. 11A1, 13A4, 13A7	
Act	5	Commission is an agent of the government	Act s. 11A2	
Act	6	Panels of commission	Act s. 11A3	
Act	7	Delegation of commission powers and duties	Act s. 11D1	
Act	8	Executive director	Act s. 11A4, 11D2	
Act	9	Officers and employees	Act s. 11A5	
Act	10	Public service benefits	Act s. 11A6	
Act	11	Obligation to keep information confidential	Act s. 16A5	
Act	12	B.C. Securities Commission Securities Policy Advisory Committee		X
Act	13	Appointment of experts		X
Act	14	Minister of Finance and Corporate Relations	Act s. 11B1	
Act	15	Revenue and expenditure	Act s. 11B2, 11B3	
Act	16	Administrative services		X
Act	17	Fiscal agent	Act s. 11B5	
Act	18	Investment	Act s. 11B6	
Act	19	Borrowing powers	Act s. 11B7	
Act	20	Accounting	Act s. 11B8	
Act	21	Business plan	Act s. 11B9	
Act	22	Annual report	Act s. 11B10	
Act	23	Interpretation		X
Act	24	Recognition	Act s. 2A2	
Act	25	Exchange required to be recognized		X
Act	25.1	Designated exchange		X
Act	26	Duty of self regulatory body and exchange	Act s. 2A4	
Act	27	Regulation of self regulatory bodies and exchanges	Act s. 2A5	
Act	28	Review of action by self regulatory body or exchange	Act s. 13B1(b)	

Title	Part / Section No.	Sub-Title	Act/Rules/ Forms/Guidance	Eliminated
Act	29	Compliance review of self regulatory body or exchange	Act 10C1, 12A1	
Act	30	Records of transactions on exchanges	Rules s. 10A1	
Act	31	Auditors for exchanges and self regulatory bodies		X
Act	32	Audits of members of exchanges and self regulatory bodies		X
Act	33	Exemption order by commission	Act s. 11C2	
Act	34	Persons who must be registered	Act s. 3A1, Rules s. 3B4	
Act	35	Granting registration	Act s. 3B1, 11C1	
Act	36	Conditions imposed on registration and registrants	Act s. 3B2, 3B3	
Act	37	Subsequent application		X
Act	38	Further information may be required from applicant		X
Act	39	Compliance review of registrant	Act s. 10C1, 12A1	
Act	40	Termination or suspension of employment		X
Act	41	Surrender of registration	Act s. 3B4	
Act	42	Notice of change — *repealed*		
Act	43	Interpretation and definitions	Rules s. 3F1(2)	
Act	44	Advisers		X
Act	45(1)	Exemption of trades (interpretation)		X
Act	45(2)(1)	Exemption of trades (trade by executor, etc.)	Rules s. 3F8 (1)(k), 3F20, 3F24(1)(j)	
Act	45(2)(2)	Exemption of trades — *repealed*		
Act	45(2)(3)	Exemption of trades (isolated)	Rules s. 3F4	
Act	45(2)(4)	Exemption of trades (exempt purchaser)		X
Act	45(2)(5)	Exemption of trades (prescribed amount)		X
Act	45(2)(6)	Exemption of trades (asset acquisition)	Rules s. 3F9(1)(h)	
Act	45(2)(7)	Exemption of trades (registrant)	Rules s. 3F3	
Act	45(2)(8)	Exemption of trades (rights offering)	Rules s. 3F7	
Act	45(2)(9)	Exemption of trades (reorganization)	Act s. 1A1 *business combination*, Rules s. 3F13, 3F24(1)(i)	
Act	45(2)(10)	Exemption of trades (D, O, E)	Rules s. 3F8, 3F9, 8A2(c)	

Title	Part / Section No.	Sub-Title	Act/Rules/ Forms/Guidance	Eliminated
Act	45(2)(11)	Exemption of trades (dividend reinvestment)	Rules s. 3F9	
Act	45(2)(12)	Exemption of trades (dividends, etc.)	Rules s. 3F9	
Act	45(2)(13)	Exemption of trades (debt realization)	Rules s. 3F9(1)(i)	
Act	45(2)(14)	Exemption of trades (dividend in kind)	Rules s. 3F14	
Act	45(2)(15)	Exemption of trades (incorporation)	Rules s. 3F8	
Act	45(2)(16)	Exemption of trades (underwriter)	Rules s. 3F3	
Act	45(2)(17)	Exemption of trades (promoter)	Rules s., 3F8(1)(a), 3F9(1)(a), 3F24(1)(a)	
Act	45(2)(18)	Exemption of trades (control persons)	Rules s. 3F8(1)(b), 3F24(1)(b)	
Act	45(2)(19)	Exemption of trades (lender, etc.)	Rules s. 3F20(b)	
Act	45(2)(20)	Exemption of trades (banks & trust companies)		X
Act	45(2)(21)	Exemption of trades (mining acquisitions)	Rules s. 3F9(1)(h)	
Act	45(2)(22)	Exemption of trades (mutual fund prescribed amount)		X
Act	45(2)(23)	Exemption of trades (telecom links)		X
Act	45(2)(24)	Exemption of trades (bids)	Rules s. 3F13, 3F24(1)(i)	
Act	45(2)(25)	Exemption of trades (dividend reinvestment)	Rules s. 3F7	
Act	45(2)(26)	Exemption of trades (underwriter services)	Rules s. 3F3	
Act	45(2)(27)	Exemption of trades (banks & trust companies)		X
Act	45(2)(28)	Exemption of trades (bids)	Rules s. 3F13, 3F24(1)(i)	
Act	45(2)(29)	Exemption of trades (to issuer)	Rules s. 3F6, 8A4	
Act	45(2)(30)	Exemption of trades (by regulation)	Act s. 11C2	
Act	45(3)	Executive Director must not object		X
Act	45(4)	Opportunity to be heard		X
Act	46(a) and (b)	Exemption when trading in certain securities	Rules s. 3F16	
Act	46(c)	Exemption when trading in certain securities (private mutual fund)		X
Act	46(d)	Exemption when trading in certain securities (commercial paper)	Rules s. 3F16	
Act	46(e)	Exemption when trading in certain securities (mortgages)	Rules s. 3F18	

Title	Part / Section No.	Sub-Title	Act/Rules/ Forms/Guidance	Eliminated
Act	46(f)	Exemption when trading in certain securities (conditional sales contracts, etc.)		X
Act	46(g)	Exemption when trading in certain securities (charities, etc.)		X
Act	46(h)	Exemption when trading in certain securities (cooperative)	Act s. 1A1 *security* Rules s. 1B1	X
Act	46(i)	Exemption when trading in certain securities (credit union)	Act s. 1A1 *security* Rules s. 1B1	X
Act	46(j)	Exemption when trading in certain securities (private issuer) — *repealed*		
Act	46(k)	Exemption when trading in certain securities (real estate co-op)	Rules s. 3F19	
Act	46(l)	Exemption when trading in certain securities (IVICs)	Rules s. 3F17	
Act	46(m)	Exemption when trading in certain securities (within a class)	Act s. 11C3	
Act	47(a)	Exemption of trades in exchange contracts	Rules s. 3F3	
Act	47(b)	Exemption of trades in exchange contracts	Rules s. 3F21, 7B1	
Act	47(c)	Exemption of trades in exchange contracts	Act s. 11C3	
Act	48	Exemption order by commission or executive director	Act s. 11C2	
Act	49	Calling at or telephone residence	Code (Principle 1)	
Act	50	Representations prohibited	Act s.1A1 *misrepresentation*, 10B1, 10B3, Code (Principle 1)	
Act	51	Registered dealer acting as principal	Code (Principle 2)	
Act	52	Disclosure of investor relations activities	Rules s. 10B1, Issuers Guide	
Act	53	Use of name of another registrant	Act s.1A1 *misrepresentation*, 10B1, Code (Principle 1)	
Act	54	Representation or holding out of registration	Act s. 1A1 *misrepresentation*, 10B1	
Act	55	Approval of commission or executive director not to be represented	Act s. 1A1 *misrepresentation*, 10B1, Code (Principle 1)	

Title	Part / Section No.	Sub-Title	Act/Rules/ Forms/Guidance	Eliminated
Act	56	Declaration as to short position	Act s. 10A3	
Act	57	Prohibited transactions relating to trading in British Columbia	Act s. 10B2	
Act	57.1	Prohibited transactions by persons in British Columbia	Act s. 10B2	
Act	58	Trading on an exchange in British Columbia	Act s. 9A2	
Act	59	Trading on an exchange outside British Columbia	Act s. 9A3	
Act	60	Exemption order by commission or executive director	Act s. 11C2	
Act	61	Prospectus required	Act s. 4A1, 4B1, 7C1, 8A1, 8B1 Rules s. 4B1, 4B2	
Act	62	Voluntary filing of prospectus	Act s. 4B1(1)(a), Rules s. 4B2, 4B3	
Act	63	Contents of prospectus	Rules s. 4B2	
Act	64	Executive director's discretion	Rules s. 4B3	
Act	65	Receipts for prospectus	Act s. 4B2, 8B2, 11A3	
Act	66	Amendment to preliminary prospectus		X
Act	67	Amendment to prospectus		X
Act	68	Certificate of issuer		X
Act	69	Certificate of underwriter		X
Act	70	Lapse of prospectus		X
Act	71	Distribution of securities may be continued		X
Act	72	Order to provide information regarding distribution		X
Act	73	Definitions		X
Act	74	Exemptions	Rules s. 4A1-4A4, 7C4, 8A2	
Act	75	Exemptions from prospectus requirements		X
Act	76	Exemption order by commission or executive director	Act s. 11C2	
Act	77	Certificates respecting status of reporting issuers		X
Act	78	Waiting period		X
Act	79	Distribution of preliminary prospectus		X
Act	80	Distribution list		X
Act	81	Defective preliminary prospectus		X

Title	Part / Section No.	Sub-Title	Act/Rules/ Forms/Guidance	Eliminated
Act	82	Material given on distribution		X
Act	83	Obligation to send prospectus	Rules s. 4B4	
Act	84	Exemption order by commission or executive director	Act s. 11C2	
Act	85	Publication of material change	Act s. 5B1, 8B3, 15B7, 15B8, Rules s. 5B1, 5B2, Issuers Guide	
Act	86	Trading or informing where undisclosed change	Act s. 10B4	
Act	87	Insider reports	Act s. 5C2, 5C3	
Act	88	Order relieving reporting issuer	Act s. 5F1, 11C2	
Act	89	Halt trading order		X
Act	90	Further information from directors, officers, promoters or control persons	Rules s. 5E1	
Act	91	Exemption order by commission or executive director	Act s. 11C2	
Act	92 - 113	Take over bids and issuer bids	Deferred to USL	
Act	114	Applications to the commission	Act s. 12E1	
Act	115	Applications to the Supreme Court	Act s. 15A9	
Act	116 - 118	Proxies	Deferred to proposed NI 51-102	
Act	119	Exemptions	Act s. 11C2	
Act	120 - 127	Self dealing	Deferred to CSA product regulation proposal	
Act	128	Trades by insiders	Act s. 10B5	
Act	129	Filing in other jurisdiction	Deferred to CSA product regulation proposal	
Act	130	Exemptions	Act s. 11C2	
Act	131	Liability for misrepresentation in prospectus	Act s. 15A4	
Act	132	Liability for misrepresentation in circular or notice	Act s. 10B1, 15A1, 15A5, 15A7, 15A10, 15B1, 15B3, 15B5, 15B6, 15B9, 15B11, 15D3, 15D4	

Title	Part / Section No.	Sub-Title	Act/Rules/ Forms/Guidance	Eliminated
Act	132.1	Liability for misrepresentation in prescribed disclosure document	Act s. 10B1, 15A1, 15A2, 15A3, 15B5, 15A7, 15A10, 15B1, 15B3, 15B5, 15B6, 15B9, 15B11, 15D3, 15D4, Rules s. 15A1	
Act	133	Standard of reasonableness	Act s. 15B4	
Act	134	Liability in margin contracts		X
Act	135	Right of action for failure to deliver documents	Act s. 15A1, 15A5	
Act	135.1	Right of action for failure to deliver prescribed disclosure documents	Act s. 15A1	
Act	136	Liability in special relationship where material fact or material change undisclosed	Act s. 10B4, 15A1, 15A6, 15D4	
Act	137	Action by commission on behalf of issuer		X
Act	138	Rescission of contract		X
Act	138.1	Rescission of purchase of security under prescribed disclosure document	Act s. 15A2	
Act	139	Rescission of purchase of mutual fund security		X
Act	140	Limitation period	Act s. 15E1, 15E2, 15E3	
Act	141	Provision of information to executive director	Act s. 12B1, 16A1	
Act	142	Investigation order by commission	Act s. 12C1	
Act	143	Power of investigator	Act s. 10C2, 12C2, 12C4	
Act	144	Investigator's power at hearing	Act s. 12C3, 12C5	
Act	145	Appointment of expert		X
Act	146	Report to commission		X
Act	147	Investigation order by minister		X
Act	148	Evidence not to be disclosed	Act s. 12C8	
Act	149	Report to minister		X
Act	150	Costs payable by person investigated	Act s. 12D3	
Act	151	Order to freeze property	Act s. 12C6, 12C7	
Act	152	Appointment of receiver, receiver manager or trustee	Act s. 14A1	
Act	153	Examination of financial affairs	Act s. 12A1	
Act	154	Exchange of information — *repealed*		

Title	Part / Section No.	Sub-Title	Act/Rules/ Forms/Guidance	Eliminated
Act	155	Offences generally	Act s. 14D2, 16C2, Rules s. 14D2	
Act	156	Execution of warrant issued in another province	Act s. 14D3	
Act	157	Order for compliance	Act s. 14C3	
Act	158	Section 5 of the Offence Act	Act s. 14D1, Rules s. 14D1	
Act	159	Limitation period	Act s. 16C1	
Act	160	Costs of investigation	Act s. 12D3(2)	
Act	161	Enforcement orders	Act s. 12D1	
Act	162	Administrative penalty	Act s. 12D2	
Act	162.1	Demand on third party	Act s. 12D5	
Act	163	Enforcement of commission orders	Act s. 14C2	
Act	164	Failure to comply with filing requirements	Act s. 12A2	
Act	165	Review of decision of executive director	Act s. 13B1(1)	
Act	166	Review of decision of person acting under delegated authority	Act s. 13B1(2)	
Act	167	Appeal of decision of commission	Act s. 14B1	
Act	168	Admissibility in evidence of certified statements	Act s. 16C5	
Act	168.1	False or misleading statements prohibited	Act s. 10C1	
Act	168.2	Contraventions attributable to employees, officers, directors and agents	Act s. 16C2	
Act	169	Filing and inspection of records	Act s. 1A1, *file*, 16A1, 16A5, 16A7	
Act	169.1	Exchange of information	Act s. 16A6, 16A8	
Act	170	Immunity of commission and others	Act s. 16C3, 16C4	
Act	171	Discretion to revoke or vary decision	Act s. 11C7	
Act	172	Conditions on decisions	Act s. 11C6	
Act	173	Authority of persons presiding at hearings	Act s. 13A3	
Act	174	Hearing fees and charges	Act s. 12D3	
Act	175	Extrajurisdictional evidence	Act s. 14A2	
Act	176	Extrajurisdictional request for evidence	Act s. 14A3	
Act	177	Committal for contempt	Act s. 14C1	
Act	178	Executive director may refund fee	Under review	

Title	Part / Section No.	Sub-Title	Act/Rules/ Forms/Guidance	Eliminated
Act	179	Review of fees and charges		X
Act	180	Notices generally	Act s. 16A2, 16A3	
Act	181	Reference to record includes amendment	Act s. 16A4	
Act	182	Required records	Act s. 16B4	
Act	183	Lieutenant Governor in Council regulations	Act s. 16B2	
Act	184	Commission rules	Act s. 2C1, 16B1	
Act	185	*Regulations Act* applies to commission rules	Act s. 16B1(4)	
Act	186	Regulation prevails over commission rule	Act s. 16B2(3)	
Act	187	Administrative powers respecting commission rules	Act s. 11C5	
Act	188	Policy statements	Act s. 16B3	

Title	Part / Section No.	Sub-Title	Act/Rules/ Forms/Guidance	Eliminated
		Securities Rules		
Rules	1(1)	Interpretation (Act)		X
Rules	1(1)	(branch office)		X
Rules	1(1)	(debt security)		X
Rules	1(1)	(exercise price)		X
Rules	1(1)	(finance issuer)		X
Rules	1(1)	(forward contract)	Act s. 1A1 *derivative contract*	
Rules	1(1)	(industrial issuer)		X
Rules	1(1)	(investment issuer)		X
Rules	1(1)	(Joint Regulatory Financial Questionnaire and Report)		X
Rules	1(1)	(market value)		X
Rules	1(1)	(natural resource issuer)		X
Rules	1(1)	(NI 81-101)		X
Rules	1(1)	(NI 81-102)		X
Rules	1(2)	(auditor)		X
Rules	1(2)	(auditor's report)		X
Rules	1(2)	(Canadian auditor's report)		X
Rules	1(2)	(Canadian GAAP)	Rules s. 1A1	
Rules	1(2)	(Canadian GAAS)	Rules s. 1A1	
Rules	1(2)	(Canadian public accountant's report)		X
Rules	1(2)	(foreign auditor's report)		X
Rules	1(2)	(foreign GAAP)		X
Rules	1(2)	(foreign GAAS)		X
Rules	1(2)	(foreign public accountant's report)		X
Rules	1(2)	(generally accepted accounting principles)	Rules s. 1C1	
Rules	1(2)	(generally accepted auditing standards)	Rules s. 1C2	
Rules	1(2)	(handbook)	Rules s. 1A1	
Rules	1(2)	(notice to reader)		X
Rules	1(2)	(public accountant)		X
Rules	1(2)	(public accountant's report)		X

Title	Part / Section No.	Sub-Title	Act/Rules/ Forms/Guidance	Eliminated
Rules	1(2)	(review engagement report)		X
Rules	2	Foreign financial statements and reports		X
Rules	3	Preparation of financial statements	Rules s. 1C1, 1C2, 1C3, 1C5	
Rules	4	Disclosure of securities beneficially owned	Acts s. 1B3	
Rules	5	Interpretation		X
Rules	6	Dealer categories	Rules s. 3B1, 3B2	
Rules	7	Underwriter membership in self regulatory body or exchange		X
Rules	8	Adviser categories		X
Rules	9	Categories of individuals authorized to trade		X
Rules	10	Categories of individuals authorized to advise		X
Rules	11	False representation prohibited	Act s. 1A1 *misrepresentation*, 10B1	
Rules	12	Investment dealer acting as portfolio manager	Rules s. 3F25, Code (Principle 4)	
Rules	13	Refusal to register or to renew registration		X
Rules	14	Fair dealing with clients	Code (Principle 1)	
Rules	15	Jurisdiction of organization or incorporation of registrants		X
Rules	16	Registrant's interest in other registrants	Code (Principle 6)	
Rules	17	Executive director's conditions of registration	Act s. 3B2	
Rules	18	Summons for examination under oath		X
Rules	19	Dealer's and underwriter's risk adjusted capital and working capital	Rules s. 3B5, 3D6	
Rules	20	Adviser's minimum working capital	Rules s. 3B5, 3D6, 3E3	
Rules	21	Bonding requirement	Rules s. 3E1	
Rules	22	Notice of change in or claim under bond	Code (Principle 7)	
Rules	23	Compensation or contingency trust fund		X
Rules	24	Requirements for not holding funds or securities		X

Title	Part / Section No.	Sub-Title	Act/Rules/ Forms/Guidance	Eliminated
Rules	25	Subordination agreement	Rules s. 3D7	
Rules	26	Interpretation		X
Rules	27	Record keeping by registrant	Rules s. 3D3, 10A1(1)	
Rules	28	Adequate precautions and access		X
Rules	29	Blotters	Rules s. 3D3, 10A1(1)	
Rules	30	Registrant's ledgers	Rules s. 303, 10A1(1)	
Rules	31	Client's ledger accounts	Rules s. 3D3, 10A1(1)	
Rules	32	Securities and exchange contracts position report	Rules s. 3D3, 10A1(1)	
Rules	33	Orders and instructions	Rules s. 3D3, 10A1(1)	
Rules	34	Confirmation and statements	Rules s. 3D3, 10A1(1)	
Rules	35	Statement to be provided to prospective client	Code (Principle 2)	
Rules	36	Confirmation of purchase or sale	Code (Principle 2)	
Rules	37	Confirmation of purchase or sale respecting mutual funds	Code (Principle 2)	
Rules	38	Statement of account	Code (Principle 2)	
Rules	39	Record of account	Rules s. 3D3, 10A1(1)	
Rules	40	Records of options granted or guaranteed by a registrant	Rules s. 3D3, 10A1(1)	
Rules	41	Monthly capital record	Rules s. 3E3, 3E4	
Rules	42	Time for keeping records	Rules s. 3D4, 10A1(2) and (3)	
Rules	43	Interpretation		X
Rules	44	Registrant's business procedures	Code (Principle 1 and 2)	
Rules	45	Underwriter's due diligence procedures	Code (Principle 1 and 2)	
Rules	46	Investment dealer's and mutual fund dealer's guidelines		X
Rules	47	Responsibility for opening new accounts and supervising	Code (Principle 7)	
Rules	48	Know your client and suitability rules	Code (Principle 5)	
Rules	49	Explanation of relevant terms and conditions	Code (Principle 2)	
Rules	50	Information about registrant available on client's request	Code (Principle 1)	
Rules	51	Separate supervision of accounts and pooling	Code (Principle 7)	
Rules	52	Change in ownership or sale of account	Code (Principle 2)	

Title	Part / Section No.	Sub-Title	Act/Rules/ Forms/Guidance	Eliminated
Rules	53	Disclosure of referral fees and commission splitting	Code (Principle 6)	
Rules	54	No contingent fees without client's consent	Code (Principle 6)	
Rules	55	Unencumbered securities held under safekeeping agreement	Code (Principle 7)	
Rules	56	Unencumbered securities held in segregation	Code (Principle 7)	
Rules	57	Clients' free credit balances	Code (Principle 7)	
Rules	58	Clients' subscriptions or prepayments	Code (Principle 7)	
Rules	58.1	Membership in self-regulatory organization and handling of clients' money	Rules s. 3B11(2), Code (Principle 7)	
Rules	58.2	Mutual fund money	Code (Principle 7)	
Rules	59	Purchase or sale of exchange contract on margin		X
Rules	60	Designated compliance officer and branch manager and administration officer	Code (Principle 4)	
Rules	61	Salesperson, trading partner, director or officer, advising employee or advising partner, director or officer	Rules s. 3B3, Code (Principle 4)	
Rules	62	Rewriting industry examinations	Code (Principle 4)	
Rules	63	Salesperson employed other than full time	Code (Principle 4)	
Rules	64	Application for registration	Rules s. 3B6-3B9	X
Rules	65	Designated compliance officer required	Code (Principle 7)	
Rules	66	Branch manager or administration officer required	Code (Principle 7)	
Rules	67	Duration of registration		X
Rules	68	Notice under section 42 of Act		X
Rules	69	Annual financial statements	Rules s. 3E2	
Rules	70	Other financial reports	Rules s. 3E3	
Rules	71	Audits	Code (Principle 1)	
Rules	72	Registrant's direction to auditor		X
Rules	73	Notice of ownership	Code (Principle 7)	
Rules	74	Notice of diversification	Code (Principle 7)	
Rules	75	Interpretation	Code (Principle 6)	
Rules	76	Executive director's discretion	Act s. 11C3	
Rules	77	Conflict of interest rules statement	Code (Principle 6)	

Title	Part / Section No.	Sub-Title	Act/Rules/ Forms/Guidance	Eliminated
Rules	78	Limitations on underwriting — *repealed*		X
Rules	79	Limitations on trading	Code (Principle 6)	
Rules	80	Confirmation and reporting of transactions	Code (Principle 6)	
Rules	81	Limitations on advising	Code (Principle 6)	
Rules	82	Limitations on the exercise of discretion	Code (Principle 6)	
Rules	83	Limitations on recommendations	Code (Principle 6)	
Rules	84	Limitations on networking — *repealed*		
Rules	85	Exceptions	Code (Principle 6)	
Rules	86	Investment dealer acting as portfolio manager	Rules s. 3F25	
Rules	87	Exemption from underwriter registration		X
Rules	88	Application for designation as exempt purchaser		X
Rules	89(a)	registration exemption (50 purchasers) — *repealed*		
Rules	89(b)	registration exemption (sophisticated purchaser) — *repealed*		
Rules	89(c)	registration exemption (securities for debt)	Rules s. 3F9	
Rules	89(d)	registration exemption (trade subject to escrow)	Rules s. 3F4, Issuers Guide	
Rules	89(e)	registration exemption (bonus or finder's fee)	Rules s. 3F9	
Rules	89(f)	registration exemption (management company employee)	Rules s. 3F9	
Rules	89(g)	registration exemption (friends & relatives) — *repealed*		
Rules	89(h)	registration exemption (trade by security holder) — *repealed*		
Rules	90	Prescribed amounts for exemptions		X
Rules	91	Restriction on exemption under section 45(2)(5) of the Act — *repealed*		
Rules	92	Restrictions on exemptions under section 46 of the Act — *repealed*		
Rules	93	Representations prohibited		X
Rules	94	Submission of advertising	Dealers and Advisers Guide	
Rules	95	Variation of requirements	Act s. 11C5	

Title	Part / Section No.	Sub-Title	Act/Rules/ Forms/Guidance	Eliminated
Rules	96	Preliminary prospectus		X
Rules	97	Disclosure called for by prospectus form		X
Rules	98	Presentation of content of prospectus		X
Rules	98.1	Alternative certificate of mutual fund		X
Rules	98.2	Alternative certificate of non-redeemable investment fund or mutual fund		X
Rules	98.3	Certificate of manager		X
Rules	98.4	Certificate of promoter		X
Rules	98.5	Certificate of principal distributor		X
Rules	99	Pro forma prospectus		X
Rules	100 - 105	*repealed*		
Rules	106	Written consent of professional to be named		X
Rules	107	Disclosure in prospectus if professional person has interest	Form 4B2/5A2 Annual Information Form	
Rules	108	Further consents		X
Rules	109	Property report for natural resource issuer		X
Rules	110	Property report certificate concerning natural resource issuer		X
Rules	111	Financial statements not requiring an auditor's report	Rules s. 4C1, 4C2(2), 4C3	
Rules	112	Financial statements — prospectus — issuer other than mutual fund	Rules s. 4C1	
Rules	113	Financial statements — prospectus — mutual fund	Deferred to CSA Point of sale disclosure project	
Rules	114	Additional contents of a prospectus on acquisition of a business		X
Rules	115	Future oriented financial information in a prospectus		X
Rules	116	Financial statements — subsidiary		X
Rules	117	Financial statements — unconsolidated		X
Rules	118	Financial statements — guarantor		X
Rules	119	Preliminary prospectus not containing auditor's report		X
Rules	120	Refusal to issue a receipt for prospectus		X
Rules	121	Lapse date		X

Title	Part / Section No.	Sub-Title	Act/Rules/ Forms/Guidance	Eliminated
Rules	122	Distribution after lapse date		X
Rules	123	No requirement for preliminary prospectus		X
Rules	124	Extension of time		X
Rules	125	Purchaser's cancellation rights		X
Rules	126	Time limit for cancellation of trade		X
Rules	127	Interpretation — *repealed*		
Rules	128(a)-(d)	Exemptions — *repealed*		
Rules	128(e)-(g)	Exemptions		X
Rules	128(h)-(i)	Exemptions — *repealed*		
Rules	129	Prescribed amounts for exemptions		X
Rules	130	Restriction on exemption under section 74(2)(4) of the Act — *repealed*		
Rules	131	Restriction on exemption under section 75(a) of the Act		X
Rules	132	Certificate legend — *repealed*		
Rules	133	Contractual right of action and delivery — *repealed*		
Rules	134	Distribution through advertisement — *repealed*		
Rules	135	Acknowledgment — *repealed*		
Rules	136	Notice by control person		X
Rules	137	Reports by control person of a reporting issuer	Act s. 5D1, 5D2, Rules s. 5D2	
Rules	138	Offering memorandum — *repealed*		
Rules	139	Report on distribution	Rules s. 4D1, 5A11	
Rules	140 - 143	Deemed distributions — *repealed*		
Rules	144	Interim financial statements	Rules s. 5A5-5A7	
Rules	145	Annual financial statements	Rules s. 5A3, 5A4, 5A7	
Rules	146	Change in ending date of financial year	Deferred to proposed NI 51-102 and NI 81-106	
Rules	147	Additional requirements — mutual fund	Deferred to proposed NI 81-106	
Rules	148	Omission of statement of portfolio transactions	Deferred to proposed NI 81-106	
Rules	149	Delivery of financial statement to security holders	Deferred to proposed NI 51-102 and NI 81-106	
Rules	150	Financial statements — finance issuer	Deferred to proposed NI 51-102	

Title	Part / Section No.	Sub-Title	Act/Rules/ Forms/Guidance	Eliminated
Rules	151	Publication of material change	Issuers Guide	
Rules	152	Filing — quarterly report		X
Rules	153	Filing of material sent to security holders or filed in other jurisdictions	Rules s. 5E2(1)(a)	
Rules	154	Filing of records filed in another jurisdiction	Rules s. 5E2(1)(b)	
Rules	155	Interpretation	Rules s. 5C1	
Rules	155.1	Prescribed time periods for filing insider reports	Rules s. 5C2, 5D2	
Rules	156	Report deemed filed by affiliate or controlled corporation		X
Rules	157	Report by executor and co-executor		X
Rules	158	Early report by control person		X
Rules	159	Filing in other jurisdictions	Rules s. 5D4	
Rules	160	Satisfaction of reporting requirements — *repealed*		
Rules	161	Exemptions	Act s. 10B6	
Rules	162 - 180	Take Over Bids and Issuer Bids	Deferred to USL	
Rules	181 - 184	Proxies	Deferred to proposed NI 51-102	
Rules	184.1	Document prescribed for section 132.1 of the Act	Rules s. 15A1	
Rules	184.2	Document and time period prescribed for section 135.1 of the Act	Rules s. 15A1	
Rules	184.3	Document prescribed for section 138.1 of the Act	Rules s. 15A1	
Rules	185	Amount prescribed for section 139 of the Act		X
Rules	186	Reactivation of dormant issuer		X
Rules	187	Reactivation of dormant exchange contract		X
Rules	188	Escrow agent		X
Rules	189	Execution and certification of documents		X
Rules	190	Execution and certification of SEDI documents		X

Title	Part / Section No.	Sub-Title	Act/Rules/Forms/ Guidance	Eliminated
		Securities Regulation		
Regulation	1	Definitions		X
Regulation	2	Application of this part	Act s. 16B1	
Regulation	3	General conduct		X
Regulation	4	Transactions		X
Regulation	5	Reporting to minister or to commission		X
Regulation	6	Disclosure of interest		X
Regulation	7	Publication of summaries of reports		X
Regulation	8	Application		X
Regulation	9	Personal service		X
Regulation	10	Form of summons or demand		X
Regulation	11	Affidavit		X
Regulation	12	Application to Supreme Court to enter premises and obtain information		X
Regulation	13	Offence		X
Regulation	14	Application		X
Regulation	15	Notice		X
Regulation	16	Receiving evidence		X
Regulation	17	Representation by counsel	Act s. 13A5	
Regulation	18	Decision		X
Regulation	19	When hearing public	Act s. 13A6	
Regulation	20	Sufficiency of notice		X
Regulation	21	Referral of question to commission		X
Regulation	22	Fees and filing	Under review	

Title	Part / Section No.	Sub-Title	Act/Rules/Forms/ Guidance	Eliminated
		Registration Transfer Rules		
	1	Interpretation		X
	2	Delegation of powers and duties of the superintendent		X
	3	Application	Act s. 2C1, Rules s. 3B11	
	4	Powers and duties under sections 34 to 36 of the Act	Act s. 2C1, Rules s. 3B11	
	5	Powers under section 35 (2) of the Act	Act s. 2C1, Rules s. 3B11	
	6	Subsequent application under section 37 of the Act		X
	7	Powers under section 38 of the Act		X
	8	Notices under section 42 of the Act		X
	9	Records	Rules s. 10A1	

Title	Part / Section No.	Sub-Title	Act/Rules/Forms/ Guidance	Eliminated
		Rule Making Procedure Regulation		
	1	Definitions (Act)	Under review	
		(weekly summary)	Under review	
		(written)	Under review	
	2	Approval in principle required	Under review	
	3	Publication of proposed rules	Under review	
	4	Alteration of proposed rule	Under review	
	5	Consent to rule by minister	Under review	
	6	Urgent rules	Under review	
	7	Publication of rule	Under review	
	8	Regulation applies to repeal of rule	Under review	

Title	Part / Section No.	Sub-Title	Act/Rules/ Forms/Guidance	Eliminated
		National Numbering System and other documents		
NI	11-201	Delivery of documents by electronic means (as amended)	Under review	
BCI	11-501	Waiver of file search fees for the media	Under review	
BCI and CP	11-502	Voluntary surrender of reporting issuer status	Act s. 5F1	
BCF	11-901F	Fee checklist	Under review	
BCP	12-601	Designation as a reporting issuer	Act s. 4B1, 11C3(a)	
BCP and Form	12-602	Exempt purchaser status		X
BCP	12-603	Reactivation of dormant issuers (previously Local Policy Statement 3-35)		X
BCI	13-501	Filing BC Form 45-902F (formerly Form 20) by facsmile		X
BCP	13-601	Required forms		X
NI	14-101	Definitions	Act s. 1A1 partly	
BCI	14-501	Definition of exchange issuer		X
BCI	14-502	Reporting companies under the BC *Company Act* and the definition of reporting issuer		X
BCF	15-601F	Summons to attend before Commission		X
BCF	15-901F	Summons to attend before an investigator under section 144		X
BCF	15-902F	Demand for production under section 144		X
BCF	15-903F	Affidavit of service		X
BCF	15-904F	Endorsement of warrant		X
NI, CP and Forms	21-101	Marketplace operation	Act s. 1A1	
BCI	21-501	Recognition of exchanges, self regulatory bodies and jurisdictions	Under review	
BCP	21-602	Canadian Venture Exchange listings		X
NI and CP	23-101	Trading rules	Act s. 10A2, 10A5, Rule s. 3D3, Code (Principle 1)	
MI, CF and Forms	31-102	National Registration Database		X
BCP	31-501	Registration of brokers and investment dealers		X
BCI	31-503	Exchange contracts dealers trading in commodity pool securities		X

Title	Part / Section No.	Sub-Title	Act/Rules/ Forms/Guidance	Eliminated
BCP	31-601	Registration requirements	Dealers and Advisers Guide, other guidance, and Code	
BCIN	31-701	Advising under the *Securities Act*		X
BCIN	31-702	Web-posted notice confirming registration		X
BCF	31-901F	Application for registration as dealer, adviser or underwriter	Form 3B4 Application for Registration as a Dealer or Adviser	
BCF	31-902F	Uniform application for registration/ approval (BC)	Form 3B10 Personal Information of Partners, Directors and Officers	
BCF	31-903F	Consent to a criminal records check		X
BCF	31-904F1	Uniform application for renewal of registration		X
BCF	31-904F2	Application for bulk renewal of registration (firms & individuals)		X
BCF	31-904F3	Application for bulk renewal of registrations (individuals)		X
BCF	31-905F	Application for amendments of registration as dealer, adviser or underwriter		X
BCF	31-906F	Application for transfer/change of status		X
NI	32-101	Small securityholder selling and purchase arrangements		X
BCI	32-501	Advising and related trading under an exemption		X
BCI	32-502	Exemption from suitability requirements	Code (Principle 5)	
BCI	32-503	Registration exemption for salespersons' corporations	Act s. 1A1 *representative*, Code (Principle 7)	
BCF	32-901F	Information statement required under Section 46(g) of the Act		X
NI and CP	33-102	Regulation of certain registrant activities	Code (Principle 2, 3 and 6)	
NI and CP	33-105	Underwriting conflicts	Code (Principle 6)	
MI, CP and Forms	33-109	Registration information		X
BCI	33-502	Registration requirements for members of the IDA	Rule s. 3B11(2), 3D8, Code (Principle 4 and 7)	

Title	Part / Section No.	Sub-Title	Act/Rules/ Forms/Guidance	Eliminated
BCI	33-503	Extension of application deadlines for SROs		X
BCI	33-504	Exemption from Section 80(2) of the Securities Rules		X
BCI	33-506	Exemption from cold calling restrictions for registered dealers	Code (Principle 1)	
BCIN	33-701	Trading by limited dealers under registration and prospectus exemptions	Code (Principle 1, 4 and 5-7)	
BCIN	33-702	Powers of attorney and trading authorities — registrants' duties	Code (Principle 5)	
BCIN	33-703	Dealers and their salespersons	Code (Principles 1 and 7), Dealers and Advisers Guide	
BCF	33-901F	Uniform termination notice (BC)		X
BCF	33-902F	Joint regulatory financial questionnaire and report		X
BCF	33-903F	Report of risk adjusted capital		X
BCF	33-904F	Subordination agreement		X
BCF	33-905F	Report of working capital		X
BCF	33-906F	Statement of financial condition (audited)		X
BCF	33-907F	Conflict of interest rules statement		X
BCF	33-908F	Statement and undertaking		X
NP	34-201	Breach of requirements of other jurisdictions		X
MLP	34-202	Registrants acting as corporate directors	Code (Principle 6), Dealers and Advisers Guide	
BCF	34-901F	Summons for an examination under section 38(c)		X
NI, CP and Forms	35-101	Conditional exemption from registration for United States broker-dealers and agents	Rules s. 7B1	
BCI	35-501	Remote access trades on the Canadian Venture Exchange	Rules s. 3F3	
BCF	35-901F	Additional information from out-of-Province registrants		X
NI	41-101	Prospectus disclosure requirements		X
BCI	41-501	Variation of prospectus disclosure requirements for issuers using OSC prospectus rule		X

Title	Part / Section No.	Sub-Title	Act/Rules/ Forms/Guidance	Eliminated
BCI	41-502	Waiver — firm commitment underwriting for issuers using OSC prospectus rule		X
BCP and Form	41-601	Prospectus filing requirements	Form 4B2/5A2 Annual Information Form	
NI, CP and Forms	44-101	Short form prospectus distributions		X
NI and CP	44-102	Shelf distributions		X
NI and CP	44-103	Post-receipt pricing		X
BCI	44-501	Exemption of short form prospectuses from general disclosure requirements		X
IR	44-801	Implementing National Instrument 44-101 short form prospectus distributions		X
IR	44-802	Implementing National Instrument 44-102 shelf distributions		X
IR	44-803	Implementing National Instrument 44-103 post-receipt pricing		X
NI, CP and Form	45-101	Rights offerings	Rules s. 3F7	
MI, CP and Forms	45-102	Resale of securities		X
MI and CP	45-103	Capital raising exemptions	Rules s. 1A1 *accredited investor*, 3F8-3F11, 3F24, 4A1	
Form	45-103F1	Offering memorandum for non-qualifying issuers	Form 3F110M Offering Memorandum	
Form	45-103F2	Offering memorandum for qualifying issuers	Form 3F110M Offering Memorandum	
Form	45-103F3	Risk acknowledgement	Form 3F11R (R1) Risk Acknowledgement — Restricted Issuers and Form 3F11R (PI) Risk Acknowledgment — Public Issuers	
BCI and CP	45-501	Mortgages	Rules s. 3F18	
BCI and CP	45-502	Co-operative associations		X
BCI	45-504	Trades to trust companies, insurers and portfolio managers outside BC	Rules s. 1A1 *accredited investor*, 3F1(2), 3F10	
BCI	45-505	Alternative reporting requirements for exempt distributions of securities of eligible pooled funds	Rules s. 8A2(d), 8A3	

Title	Part / Section No.	Sub-Title	Act/Rules/ Forms/Guidance	Eliminated
BCI	45-507	Trades to employees, executives and consultants	Rules s. 3F8, 3F9, 3F24	
BCI	45-508	Hold period for securities issued by exchange issuer under section 74(2)(18) of the *Securities Act*		X
BCI	45-509	Short form offerings of listed securities and units by qualified issuers		X
BCI	45-510	Trades in self-directed registered educational savings plans		X
BCI	45-511	Trades in government warrants	Rules s. 3F16	
BCI	45-512	Real estate securities	Rules s. 3F19	
BCI	45-513	Resale relief for eligible real estate securities		X
BCI	45-514	Employee Investment Act	Rules s. 3F12	
BCI	45-515	Resale of rights		X
BCI	45-516	Amendments to MI 45-102 Resale of securities		X
BCP	45-601	Statutory & discretionary exemptions	Issuers Guide, Dealers and Advisers Guide and other guidance	
BCI	45-701	Meaning of ''fully managed'' accounts	Rules s. 3F1(2)	
BCF	45-901F	Offering memorandum for syndicated mortgages (interim)	Form 3F110M Offering Memorandum	
BCF	45-902F	Report of exempt distribution	Form 4D1 Annual Report of Sales of Securities by Restricted Issuers and Form 5A11 Annual Report of Sales of Securities by Public Issuers	
BCF	45-906F	Offering Memorandum — Real Estate Securities	Form 3F11OM Offering Memorandum	
NP and Form	46-201	Escrow for initial public offerings		X
NP	47-201	Trading securities using the internet and other electronic means	Issuers Guide	
BCP	47-601	Advertising	Rules s. 5G1, Issuers Guide	
BCI	48-501	Distribution period for firm commitment underwritings		X
BCF	51-901F	Quarterly and year end report		X

Title	Part / Section No.	Sub-Title	Act/Rules/ Forms/Guidance	Eliminated
BCI	52-501	Consent — use of foreign GAAP in continuous disclosure filing by issuers using OSC prospectus rule	Deferred to proposed NI 51-102	
BCI	52-503	Continuing relief for financial statements of certain foreign issuers	Deferred to proposed NI 71-102	
BCI	52-504	Directors review of interim financial statements	Deferred to proposed NI 51-102	
BCI	52-507	Audit committee review of interim financial statements of exchange issuers	Deferred to proposed NI 51-102	
BCIN	52-701	Accounting for business combinations and corporate reorganizations	Issuers Guide	
BCIN	52-702	Use of non-US foreign accounting and non-US foreign audit standards	Deferred to proposed NI 71-102	
BCF	53-901F	Material change report under Section 85(1) of the Act		X
NI	54-102	Interim financial statement and report exemption		X
BCF	54-901F	Information circular	Deferred to proposed NI 51-102	
NI, CP and Forms	55-101	Exemption from certain insider reporting requirements	Rules s. 5C2(3)-(5)	
BCI	55-504	Exemption from insider reporting requirements for certain officers	Act s. 1A1 *insider*	
NI	62-101	Control block distribution issues		X
NI	62-102	Disclosure of outstanding share data	Deferred to proposed NI 51-102	
NI	62-103	The early warning system and related take-over bid and insider reporting issues	Rules s. 5D1 - 5D3	
NP	62-201	Bids made only in certain jurisdictions	Deferred to USL	
NP	62-202	Take-over-bids — defensive tactics	Deferred to USL	
BCI	62-501	Take-over-bids and going private transactions	Deferred to USL	
BCF	62-901F	Notice of intention to make an issuer bid	Deferred to USL	
BCF	62-902F	Take-over-bid circular	Deferred to USL	
BCF	62-903F	Issuer bid circular	Deferred to USL	
BCF	62-904F	Directors' circular	Deferred to USL	
BCF	62-905F	Director's or officer's circular	Deferred to USL	
NI, CP and Form	71-101	The multijurisdictional disclosure system	Act s. 7C1-7C4, 7E6, Form 7C1/3/4 Notice by Foreign Issuer	

Title	Part / Section No.	Sub-Title	Act/Rules/ Forms/Guidance	Eliminated
BCI	71-501	The Company Act and the multijurisdictional disclosure system		X
IR	71-801	Implementing the multijurisdictional disclosure system under National Instrument 71-101		X
IR	71-802	Distributions outside British Columbia under the United States multijurisdictional disclosure system		X
BCI	72-502	Trades in securities of US registered issuers		X
BCI	72-503	Distributions of securities outside British Columbia		X
BCI	72-504	Distribution of Eurobonds		X
BCIN	72-702	Distribution of securities to persons outside BC		X
NI, CP and Forms	81-101	Mutual fund prospectus disclosure	Deferred to CSA Point of sale disclosure project	
NI and CP	81-102	Mutual funds	Deferred to CSA proposals on NI 81-102	
NI and CP	81-104	Commodity pools	Deferred to CSA proposals on NI 81-102	
NI	81-105	Mutual fund sales practices	Deferred to CSA proposals on NI 81-102	
BCI	81-502	Confirmation of purchase and sale for units of certain mutual funds	Code (Principle 2)	
BCI	81-503	First renewal prospectus filed by mutual fund under National Instrument 81-101	Deferred to CSA Point of sale disclosure project	
BCI	81-504	Transactions between mutual funds and responsible persons relating to certain debt securities, mortgages and equity securities	Deferred to CSA proposals on NI 81-102	
BCI	81-506	Exemption for mutual funds from delivering financial statements	Deferred to CSA proposals on NI 81-102	
Form	81-901F	Information required to be included in the financial statements of a mutual fund	Deferred to proposed NI 81-106	
Form	81-902F	Information required in prospectus of a mutual fund	Deferred to CSA Point of sale disclosure project	

Title	Part / Section No.	Sub-Title	Act/Rules/ Forms/Guidance	Eliminated
Form	81-903F	Report required under section 126 of the Act	Deferred to CSA proposals on NI 81-102	
BCI	91-501	Over-the-counter Derivatives	Act s. 9B1, Rules s. 9B1-9B4	
BCI	91-502	Short term foreign exchange transactions	Act s. 9B1, Rules s. 9B5	
BCI	91-503	Contracts providing for physical delivery of commodities	Act s. 9B1, Rules s. 9B6	
BCI	91-504	Government strip bonds	Rules s. 3F16	
BCF	91-903F	Risk disclosure statement (exchange contracts)	Code (Principle 5)	
NP	2.B	Guide for engineers and geologists submitting oil and gas reports to canadian securities administrators	Deferred to proposed NI 51-101	
NP	3	Unacceptable auditors	Deferred to proposed NI 51-102	
NP	15	Conditions precedent to acceptance of scholarship or educational plan prospectuses	Under review	
NP	21	National advertising — warnings	Rules s. 5G1	
NP	22	Use of information and opinions re mining and oil properties by registrants and others	Deferred to proposed NI 51-101	
NP	25	Registrants: advertising: disclosure of interest	Code (Principle 6)	
NP	29	Mutual funds investing in mortgages	Deferred to CSA proposal on NI 81-102	
NP	31	Change of auditor of a reporting issuer	Deferred to proposed NI 51-102	
NP	42	Advertising of securities on radio or television	Rules s. 5G1	
NP	48	Future-oriented financial information	Deferred to proposed NI 51-102	
NP	49	Self-regulatory organization membership		X
NP	50	Reservations in an auditor's report	Deferred to proposed NI 51-102	
NP	51	Changes in the ending date of a financial year and in reporting	Deferred to proposed NI 51-102	

APPENDIX B

COMPARISON OF BC MODEL AND USL

This Appendix describes the major differences between the USL and the BC Model. These are the areas that we are suggesting to our CSA colleagues should be included in USL in order to realize the full opportunity presented by that project.

Marketplaces and SROs

A. Recognition, Filing and Oversight

Both USL and BC Model:	USL:	BC Model:
Change description from ''exchange'' to ''marketplace''	Maintains processes for *recognition* of marketplaces and SROs but expands to all marketplaces	Has one flexible process for *authorization* of all marketplaces and market services providers
	Regulatory regime is found in • securities legislation • recognition order • ATS rules • MOU among regulators re: oversight	*Authorized* entity operates under negotiated authorization order; order sets out all duties and powers of authorized entities
	• Requires all marketplaces to apply for recognition • Provides the regulator authority to require SRO to be registered	Provides Commission authority to require marketplace or market services provider to apply for authorization
Permits the regulator to accept voluntary surrender of recognition/authorization		
Include concept of market participant		
Authorizes the regulator to enforce rules and policies of recognized/authorized entities		

The BC Model provides an individualized approach to setting and revising the terms and conditions for operations of marketplaces and market services providers. See Part 2.

B. Enforcement Powers

Both USL and BC Model:	USL:	BC Model:
Marketplaces and market services providers have some powers including with: • Jurisdiction over former as well as current members, regulated persons and their representatives • Power to compel witnesses and documents at hearing		Commission may authorize extensive powers to *authorized regulation services providers* such as the IDA, MFDA and RS Inc.

Under the BC Model, authorized regulation services providers have access to more powers than under the USL model. See Part 2.

Registration

A. Registration requirement

Both USL and BC Model:	USL:	BC Model:
Use ''trade'' to trigger the registration requirement		Simplifies drafting throughout the Legislation by including acquisitions in the definition of *trade* (exempts acquisitions from registration requirement).
	Some jurisdictions will use SRO model for registration, some will not	Uses SRO model for registration
	Requires both individuals and firms to register to trade or advise	Requires only firms to register
	Retains requirements for an individual to apply for registration in multiple jurisdictions	An individual employed in BC by a firm is not required to register in BC
	Requires representatives to be individuals	Permits representatives to be ''employed'' through a corporation or partnership
	IDA and MFDA do not permit registration of independent owner-operator firms	Independent owner-operator firms may register as restricted dealers to be overseen directly by Commission
	Requires firms and individuals to renew their registration annually	Individuals not required to register; for firms, registration is ''permanent''
Contemplate registration passport system		

The BC Model achieves the desired investor protection outcomes as the USL without requiring individual registration or renewal of firm registration.

The BC Model accommodates a representative's freedom to organize his or her own affairs by: allowing the individual to be employed through a corporation or partnership for tax purposes, and by carrying on business through an independent owner-operator firm.

See Part 3.

B. Registration categories

Both USL and BC Model:	USL:	BC Model:
Simplify categories of registration.		
Dealer category consists of: i. investment dealer ii. mutual fund dealer iii. restricted dealer		
	Adviser category consists of: • general adviser (portfolio managers and investment counsel) • restricted adviser (securities advisers and international advisers)	• Has only one adviser category: registered adviser (portfolio managers and investment counsel) • Eliminates category of securities adviser
	Goal to introduce harmonized proficiency requirements for all registrants and to conform them to SRO requirements where possible	Does not set proficiency requirements where SRO exists; SRO does
Remove category of security issuer — issuers can use registration exemptions in appropriate circumstances		

The BC Model, does not register security advisers — those who give general investment advice directly or through publications. We are not convinced that registration of these advisers provides meaningful investor protection. Furthermore, in the age of the Internet, enforcement of a registration requirement for these advisers is unlikely to be effective. We do not currently register ''international advisers'' and do not think it is necessary to begin doing so.

The BC Model eliminates duplicative proficiency regulation; where an SRO exists, the SRO sets proficiency requirements.

See Part 3.

C. Regulation of Conduct

Both USL and BC Model:	USL:	BC Model:
Prescribe record keeping and financial reporting requirements	Maintains regulatory system in current legislation	Adopts principles-based Code of Conduct for dealers and advisers

The BC Model adopts a Code of Conduct to cover a registrant's obligations in the following areas: integrity and fairness; dealing with clients; confidentiality; proficiency; know your client and suitability; conflict of interest; and compliance systems.

We believe that a principles-based Code that describes the behaviour we expect from registrants will provide better investor protection and more flexibility for registrants than the current legislation. See Part 3.

D. Capital and Bonding

Both USL and BC Model:	USL:	BC Model:
	Will contain bonding requirements for all categories of registration	Where SRO exists, bonding requirements set by SRO
Do not set capital requirements where SRO exists; SRO does	Will prescribe capital requirements for restricted dealers and advisers	Firms must maintain capital sufficient to meet business obligations

The BC Model eliminates duplicative bonding regulation. Where an SRO exists, the SRO sets bonding requirements.

The BC Model's principles-based capital requirement is designed to ensure that required capital is tied to the size and nature of the registrant's business.

See Part 3.

E. BC investors and dealers outside BC

Both USL and BC Model:	USL:	BC Model:
	Requires dealer to register in a jurisdiction to deal with clients in that jurisdiction	• Provides registration exemption for dealers and advisers from outside BC to deal with clients who become resident in BC • Provides registration exemption for dealers and advisers from outside BC to deal with BC residents if they do not solicit them

The BC Model acknowledges an investor's interest in continuing a relationship with a dealer or adviser from outside BC that the investor dealt with before coming to BC. The BC Model also facilitates investors who wish to deal with foreign dealers and advisers.

See Parts 3 and 7.

Issuers

A. Reporting or public issuer status

Both USL and BC Model:	USL:	BC Model:
	Will harmonize triggers for *reporting issuer* status	Uses the term *public issuer*. Includes issuers that • file an initial AIF or other document in lieu that the Commission accepts • are reporting issuers in other Canadian jurisdiction that file a notice • are regulated under the securities laws of the US, the UK or Australia, and file a notice
Permit a reporting/public issuer to voluntarily surrender its status without making application to the the regulator		

The BC Model provides much easier access to the market than the USL Model. The preparation and process for filing the initial AIF or equivalent entry document is easier and faster than an initial prospectus.

The BC Model opens the BC market to issuers that are reporting issuers in other Canadian jurisdictions upon the simple filing of a notice. Issuers that are regulated under US, UK and Australian securities laws may also enter the BC system on filing a notice.

See Part 4.

B. Public Offerings

Both USL and BC Model:	USL:	BC Model:
	Retains the existing prospectus system	Eliminates prospectus system
	Will harmonize rules relating to forms and contents of prospectuses	Does not contain any prospectus forms because there are no prospectuses required
	Requires an issuer to file a long form prospectus for its initial public offering	Requires an issuer to file an initial AIF for its initial public offering
	Requires issuers, except TSE exempt issuers, to escrow securities	Does not require any issuer to escrow securities
	Maintains hold periods and resale restrictions for securities of public issuers	Eliminates hold periods and resale restrictions for securities of public issuers
	Requires an issuer to file and distribute prospectus for subsequent public offerings	Requires an issuer only to issue and file a news release announcing the public offering
	Authorizes the regulator to accept prospectus prepared in accordance with foreign laws if the regulator determines that foreign prospectus meets disclosure standard	Accepts prospectus prepared in accordance with US federal, UK and Australian laws
	Will be drafted to accommodate an integrated disclosure system for non-mutual fund issuers	Is an integrated disclosure system for non-mutual fund issuers
Will accommodate an alternate disclosure system for mutual funds developed by CSA		

For IPOs, the BC Model requires disclosure of all material information about the issuer and vets the disclosure document for public interest issues. The IPO process under the BC Model is more streamlined than the current long form prospectus process.

The BC Model eliminates the prospectus system in favour of a system that offers public issuers immediate and continuous market access on the basis of their continuous disclosure records.

The USL Model is intended to accommodate an integrated disclosure regime when CSA finalizes rules in that regard. A CSA Committee is currently working on this and is reconsidering the elements of the system proposed in the IDS Concept Paper published in 2000.

See Part 4.

C. Private Placements

Both USL and BC Model:	USL:	BC Model:
Preserve exemptions that permit private placements where they are currently available, with a few exceptions	Does this by: • Harmonizing some registration and matching prospectus exemptions that are available in most jurisdictions • Having individual jurisdictions enact other registration and prospectus exemptions by local rule	• Does this by consolidating current registration exemptions in fewer, broader categories — results in broadening the scope of some exemptions
	Preserves closed system for all issuers with resale restrictions including hold periods and anti-flowback conditions, except for different system in Manitoba	• Eliminates closed system for public issuers — there are no resale restrictions for securities of public issuers. • Mirrors a closed system concept for restricted (non-public) issuers by creating a registration exemption that limits resales of securities acquired under private placements

The BC Model streamlines and simplifies today's complex exemption regime. With the prospectus requirement gone and the ease of a public offering under the BC Model, issuers may elect to make public offerings — with or without an underwriter — when in the past they sought to avoid public offerings by making private placements instead.

However issuers will still want to make private placements in appropriate circumstances. The BC Model has re-jigged the list of available exemptions, consolidating them into broader categories and dropping complicated conditions that are not necessary under the BC Model.

See Part 4.

Continuous disclosure

A. General and Financial Disclosure

Both USL and BC Model:	USL:	BC Model:
	Will include the final version of proposed NI 51-102 *Continuous Disclosure Obligations*, proposed NI 81-106 *Investment Fund Continuous Disclosure*, and proposed NI 52-107 *Accounting Principles and Auditing Standards*	Many of the USL requirements will not apply in BC; those that do will be harmonized with USL
	Permits small business issuers an exemption from the requirement to file an AIF, but if they do not file an AIF, securities they sell by private placement will be subject to a 12 month hold period	Requires all public issuers to file an AIF — there is no mandatory hold period on any securities of a public issuer.
Require board approval of financial statements	Does not require a reporting issuer to have an audit committee, but if it does, they must review the financial statements	Requires a public issuer to have an audit committee; board may delegate approval of financial statements to committee if the issuer's governing legislation permits.
	Requires detailed and extensive disclosure of individual executive compensation, including detailed instructions on how to calculate and present various components.	Requires compensation for the executive group as a whole, individual compensation for the CEO, CFO and COO only, and requires that disclosure be put in the context of the issuer's circumstances.

See Part 5.

B. Disclosure Standards and Timely Disclosure

Both USL and BC Model:	USL:	BC Model:
	Maintains two different disclosure standards — ''material fact'' (for prospectuses) and ''material change'' (for timely disclosure obligations)	Moves to one standard — ''material information'' for all purposes
	Requires disclosure by news release and material change report.	Requires disclosure only by news release
If disclosure would be unduly detrimental, issuer may file confidentially	Requires follow up notice every 10 days where confidential report has been filed	No follow up reports required
		Incorporates business judgment rule — did management make a reasonable business decision under the circumstances
	Does not provide a safe harbour for issuers making timely disclosure decisions	Incorporates safe harbour defences

See Part 5.

C. Advertising

Both USL and BC Model:	USL:	BC Model:
	Prohibits advertising; advertising allowed during the waiting period and during the distribution under a prospectus, subject to restrictions	Allows advertising so long as the advertisement is identified as such, states whether the issuer is unlisted or trading in its securities is restricted, and refers to the issuer's continuous disclosure record (if applicable) and any current offering document.

See Part 5.

D. Insider Reporting

Both USL and BC Model:	USL:	BC Model:
Will change the definition of insider to: • focus on function and access to inside information to determine senior officers that are insiders • eliminate an issuer that holds its own securities		• Will eliminate significant securityholders as insiders. • Will require an issuer to file and keep current a list of its insiders
Will require insiders to report equity monetization transactions		

The BC Model recognizes that while we are interested in the activities of significant securityholders, they are different from insiders because they do not necessarily have — as securityholders — routine access to material information. See Part 5.

E. Trade Disclosure by Significant Securityholders

Both USL and BC Model:	USL:	BC Model:
Require trade disclosure by significant securityholders	Retains multiple, overlapping reporting regimes for: • 10% holders who report under the insider reporting regime, • 10% holders who report under the early warning system • control persons	Replaces all three regimes with one regime that applies to all significant securityholders

Under the BC Model, significant securityholders will be required to report under a single regime. Duplicative reporting requirements will be eliminated. See Part 5.

Civil Liability

Both USL and BC Model:	USL:	BC Model:

Introduce a civil liability regime for investors who purchase securities in the secondary market	Maintains separate, distinct civil liability regimes for:
	• investors who purchase securities in the primary market (from the issuer), for:
	  • misrepresentation in specified disclosure documents
	  • failure to deliver specified documents
	• investors who purchase securities in the secondary market (from someone other than the issuer) with varying levels of liability and varying defences.
		Provides one, simplified civil liability regime — investors have the right to sue for damages if
		• there is a breach of BC securities law
		• the investor suffered damages caused by the breach, and
		• the breach is material

		Contains systems defence, and safe harbours

The BC Model replaces today's fractured civil liability regime that provides different rights (and in some cases, no rights) for investors with one simple regime that treats all investors equally. Where there is a material breach of the securities legislation that has caused an investor damages, the investor can sue.

Since under the BC Model all investors make investment decisions based on the same level of information, they are treated equally. Investors who purchase from the issuer under a prospectus do not have greater rights than other investors who purchase securities in private placements or in the open market. However, where a public issuer makes a prospectus offering in other jurisdictions where there are greater rights, BC investors will have the same rights as other investors.

There will be certain statutory remedies in BC that will not be available elsewhere in Canada, including actions for misrepresentations generally, dealer and adviser misconduct, fraud, market manipulation and unfair practices. In order for an action to proceed, the breach must be material.

See Part 15.

Enforcement Powers

Both USL and BC Model:	USL:	BC Model:
Contain a similar list of types of enforcement orders the regulator can issue after an enforcement hearing, including disgorgement order		Powers are somewhat broader, reflecting responsibilities of market participants in the new regime, including: • power to prohibit a person from working for a market participant in a management or consultative role • power to order any person to deal with information and records
Permit the regulator to issue a cease trade order without a hearing where filing requirements are not satisfied		
	Permits interested persons to ask for an order that a person comply with take over bid requirements	Permits interested persons to ask for an order that a person comply with any requirement of the Act or Rules

See Part 12.

Mutual Funds

Both USL and BC Model:	USL:	BC Model:
Will be developing mutual fund regulation through the CSA and the Joint Forum of Financial Market Regulators		
		Introduces new exemption for restricted mutual funds
		Provides exemption for foreign regulated mutual funds from our rules

The BC Model provides a new exemption for restricted mutual funds that reflects current, appropriate practices, allowing portfolio managers to provide discretionary money management services to clients on a cost-effective basis.

The BC Model clears the way for BC residents to invest in foreign-regulated mutual funds if the fund does not solicit BC investors and provides them with prescribed disclosure.

See Part 8.

Foreign Issuers

Both USL and BC Model:	USL:	BC Model:
Provide relief from disclosure requirements for certain foreign issuers	• Maintains MJDS that permits US issuers relief from equivalent continuous disclosure requirements and permits large US issuers to use US offering documents with Canadian wrap-around to make public offering in Canada • Requires the regulator to grant exemption to provide similar relief for other foreign issuers to make an offering in Canada	Permits issuers regulated under US federal, UK and Australian public company regimes to use their home jurisdiction disclosure documents in satisfaction of all BC disclosure requirements, including public offerings
	Permits SEC reporting issuers to use SEC documents and issuers from IOSCO list of 15 countries with less than 10% of their securities held in Canada to use home jurisdiction documents to satisfy equivalent Canadian continuous disclosure requirements.	Permits any foreign issuer with less than 10% of its securities held in Canada to use its home jurisdiction documents to satisfy all BC continuous disclosure requirements and in connection with rights offerings, take over bids, issuer bids and business combinations
	A matrix approach to what principles and standards are acceptable and when reconciliation is required to Canadian GAAP and GAAS	Permits issuers described above to use the GAAP and GAAS acceptable in home jurisdiction or IAS, without reconciliation to Canadian GAAP and GAAS
	Holds foreign issuers in Canadian market to same standard of disclosure as domestic issuers — varies depending on type of offering and primary vs. secondary market	Holds foreign issuers in BC market to same standard of disclosure as domestic issuers — all material information
	Requires risk disclosure in offering documents	Requires risk warning on SEDAR
	Requires separate filing on SEDAR	Permits foreign issuers to satisfy BC filing requirements by filing on SEDAR a notice referring to other publicly accessible website (e.g., EDGAR for SEC issuers)
	Does not permit Canadian issuers to file foreign documents, except they can use US GAAP for their financial statements	Permits a Canadian issuer same relief as foreign issuer if more than 60% of its trading volume is outside Canada

The BC model eliminates complex and overlapping rules in favour of a simple system that:

- Permits US, UK and Australian public issuers access to our markets on the basis of their home jurisdiction documents because their regimes are sufficiently similar to ours.
- Permits all other foreign public issuers who only have a small percentage of their securities in Canada to file their home jurisdiction documents for continuous disclosure so that their Canadian securityholders have access to information about the issuer, and to use home jurisdiction documents in connection with rights offerings, take over and issuer bids and business combinations to encourage foreign issuers to include Canadian shareholders in those transactions.
- Permits a Canadian issuer relief if its primary market is outside Canada.

All other foreign issuers must comply with Canadian requirements.

See Part 7.

APPENDIX C

FORM 7D1
Risk Warning — Foreign Mutual Funds

_____ is a foreign mutual fund company that is not subject to, or
(Name of fund company)
is exempt from, British Columbia securities laws. Our fund company and its foreign mutual funds are regulated by _____ in _____.
(Name of regulator) (Name of jurisdiction)

We may sell you securities of our foreign mutual funds but you should be aware that:

- You will **not be protected** by British Columbia securities laws when dealing with the foreign fund company, its representatives, or its foreign mutual funds.
- You may **not be able to redeem** securities of the foreign mutual fund in the same way you can redeem securities of Canadian mutual funds.
- If there is a problem, it **may be more difficult** for you to take legal action against the foreign fund company or its foreign mutual funds than it would be for you to take action against a Canadian fund company or its mutual funds.
- The person selling you the foreign fund may be **under no obligation** to tell you whether the investment is suitable for you.
- You should **seek advice** about the tax consequences of investing in foreign mutual funds because of possible adverse tax consequences (for example, they may not be eligible as RRSP investments, even for foreign content purposes).