

Further Changes to British Columbia Disclosure Requirements for Private Placements of Securities

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New Exemptions Remove Onerous British Columbia Reporting Requirements for Most “Wrapper” Sales

On October 3, 2011, the British Columbia Securities Commission (BCSC) adopted new private placement trade reporting requirements, which applied only in the Province of British Columbia, through amendments to National Instrument 45-106 of the Canadian Securities Administrators. The BCSC also concurrently adopted some limited exemptions from those new requirements, which were set out in local BC Instrument 45-533.

The resulting changes to the B.C. trade reporting requirements were discussed in this [Osler Update](#).

On December 9, 2011, the BCSC revoked and replaced original BC Instrument 45-533, creating a new series of exemptions from the B.C. trade reporting requirements. In some cases the exemptions allow the issuer or the underwriter filing a trade report to use the same trade report form in B.C. as is used in all other provinces of Canada (Form 45-106F1, or the “National Form”), with only minor modifications. In other cases, the exemptions still require the use of the specific form adopted in British Columbia (Form 45-106F6, or the “B.C. Form”), but provide relief from some of the more onerous information requirements of the B.C. Form.

The Wrapper Exemption

If the issuer of the securities is not a reporting issuer in British Columbia, and if sales of the securities in the Province of British Columbia are limited only to purchasers that are permitted clients (as defined under National Instrument 31-103), then the trade report may be filed in British Columbia using the National Form rather than the B.C. Form.

The only condition to this exemption is that when completing the National Form, in Item 2 of that form the filer must, in addition to providing the information usually required by that item, also add this statement: “The filer of this form is relying on the exemption in paragraph 6 of BCI 45-533.”

We are referring to this as the wrapper exemption because we expect that typically sales into British Columbia by a non-Canadian issuer using a Canadian private placement supplement or wrapper will be eligible for this exemption.

However, in cases where this exemption is not available, one of the other exemptions discussed below may be available instead.

The Investment Funds Exemption

If the issuer is an investment fund, then the National Form may be filed in British Columbia instead of the B.C. Form. This exemption was also available under the original BC Instrument 45-533, and is continued under the new instrument.

The Foreign Public Issuer Exemption

If the wrapper exemption is not available because sales in British Columbia are being made to a group of purchasers that includes persons other than permitted clients, this exemption may provide relief from the requirement to complete Item 4 of the B.C. Form, which is the section of the B.C. Form requiring the most onerous additional disclosure.

This exemption will be available if the issuer is a foreign public issuer or a subsidiary of a foreign public issuer. A foreign public issuer is an issuer that has a class of securities registered under section 12 of the U.S. Securities Exchange Act of 1934, as amended, or is required to file reports under section 15(d) of that Act. An issuer will also qualify as a foreign public issuer if is required to provide disclosure to the public, to securityholders or to a regulatory authority, and that disclosure is publicly available in a designated foreign jurisdiction.¹

In order to rely on the foreign public issuer exemption, the trade report filer must:

- file the B.C. Form (rather than the National Form), omitting only the disclosure called for by Item 4 of the B.C. Form;
- state in Item 2(b) of the B.C. Form, in addition to the information usually required by that item, that: “The filer of this form is relying on the exemption in paragraph 7 of BCI 45-533”; and
- if the issuer is a subsidiary of a foreign public issuer (and not itself a foreign public issuer), then the name of the parent foreign public issuer must also be stated in Item 2(b) of the B.C. Form.

It should be noted that if the issuer is a reporting issuer in British Columbia, it will automatically be exempt from the requirement to complete Item 4 of the B.C. Form under the instructions to the B.C. Form, and need not make any additional statement in Item 2(b).

Also note that because all of the other requirements of the B.C. Form still apply, it will still be necessary to disclose whether each purchaser of securities reported on the B.C. Form, and whether each recipient of compensation, is either an insider of the issuer or a registrant in Canada (that is, registered under Canadian securities laws as a dealer, adviser or otherwise).

The Subsidiary of a B.C. Reporting Issuer Exemption

Subsidiaries of a B.C. reporting issuer are now also exempt from Item 4 of the B.C. Form, even if the issuer itself is not a B.C. reporting issuer.

To utilize this exemption, all of the issuer's outstanding voting securities must be beneficially owned by a B.C. reporting issuer, except any securities required by law to be owned by directors of the subsidiary. The filer of the B.C. Form must state in Item 2(b) that it is relying on the exemption of paragraph 8 of BCI 45-533, and provide the name of the reporting issuer that owns the issuer's securities.

Again, the other requirements of the B.C. Form still apply, so it is still necessary to disclose whether each purchaser of securities reported on the B.C. Form, and whether each recipient of compensation, is either an insider of the issuer or a registrant in Canada.

The General Insider Information Exemption

Although the insider and promoter information requirements of Item 4 of the B.C. Form now only apply in a rather limited set of circumstances in light of the other exemptions discussed above, this new general insider information exemption somewhat reduces the scope of the information required to be provided by Item 4. However, the information required is still fairly onerous, including disclosure of the securities of the issuer held by each director, executive officer, control person and promoter of the issuer, and the purchase prices paid by them for those securities.

Please note that our firm practices in the Provinces of Ontario, Alberta and Québec and we also advise on the federal laws of Canada applicable therein. The information contained in this memorandum does not constitute a legal opinion and should not be construed as legal advice.

¹ Australia, France, Germany, Hong Kong, Italy, Japan, Mexico, the Netherlands, New Zealand, Singapore, South Africa, Spain, Sweden, Switzerland or the United Kingdom of Great Britain and Northern Ireland.