

All Things Fintech: Key Takeaways from the BCSC's Notice and Request for Comment

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On February 14, 2018 the British Columbia Securities Commission (the “BCSC” or the “Commission”) published a notice and request for comment on all things fintech.

Background

In the summer of 2017, the BCSC consulted various stakeholders in the province in the hopes of better understanding the nature and growth of the financial technology industry, particularly in light of recognized potential-impediments that may be caused by the current regulatory framework.

In the notice, the Commission sets out the results of its prior consultations and requests further comments on potential regulatory action to clarify or modernize securities laws in the hopes of creating a competitive regulatory environment.

The notice addresses the following topics:

- The BCSC's fintech activities in 2017
- Crowdfunding and online lending business models
- Online adviser business model
- Cryptocurrency funds
- Initial coin offerings (“**ICO**”) and cryptocurrencies
- The future of fintech regulation

Key Takeaways

Regulatory requirements are a barrier

In January 2017 the BCSC sent out a tech survey to engage fintech stakeholders and learn about the challenges and opportunities they face. Responses indicated that regulatory requirements and, in particular, compliance costs, are viewed as a significant impediment to developing a successful business. Survey participants also expressed concerns about the ability of the current regulatory regime to properly address technological advents. Additional “challenge areas” noted include: regulatory clarity, the lack of harmonization across the provinces, and the low risk appetite of BC investors as well as limited pool of

available capital.

There's a new team in town

Also in January 2017, the Commission established its Tech Team, focused on and dedicated to supporting the fintech sector. The Tech Team is the key point of contact for fintech companies and also considers eligibility for admission to the Canadian Securities Administrators' Regulatory Sandbox.

A desire for more crowdfunding

During consultations, stakeholders expressed a desire for an expansion of crowdfunding, indicating that small businesses and early-stage issuers could especially benefit from some changes to this area of regulation, such as:

- increasing investor limits;
- allowing the issuance of a broader range of securities (such as convertible preference shares) more commonly used by small businesses and early stage issuers;
- harmonizing crowdfunding regimes across Canada; and
- streamlining KYC requirements for funding portals.

Online advice regulation is fine....for now

Online advisers are generally content with the current regulation, but anticipate that future developments will require the BCSC to consider accommodating a certain degree of automation in this area. This will become especially necessary as the public becomes more comfortable with this business model and the number of individuals relying on online advisers continues to grow.

Cryptocurrencies are not always a security, but sometimes they are

The BCSC intends to embrace a flexible approach to cryptocurrencies, so long as investor protection concerns are adequately addressed. The Commission is interested in exemptive relief as an effective tool to enable efficient capital raising while providing sufficient investor protection and flexibility to allow the coin or token to function as it was intended to, and is actively seeking comments to this point. Stakeholders have expressed confusion regarding whether a token will be considered a security and have requested additional guidance, while also proposing potential factors for the Commission to consider in this analysis:

- whether a secondary market exists and is available for a coin or token;
- whether a buyer is intending to use a coin or token for a utility function or speculation;
- functional differences to forms of non-securities crowdfunding;
- whether the utility function is available at the time the tokens are sold; and

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- whether the business conducting the ICO has created an impression that the token is an investment contract or profit opportunity.

The BCSC has explicitly stated that this is a non-exhaustive list of variables it may consider.

Conclusion

The BCSC recognizes that fintech is a novel area and one that is rapidly evolving. As innovation progresses, regulation must similarly progress and the Commission views this as part of its role:

“we consider this general objective in the specific context of our mandate, which is to promote the public interest by fostering fair and efficient capital markets in British Columbia that warrant investor confidence.”

Interested parties are invited to make written submissions to the BCSC on or before Tuesday, April 3, 2018.

The full notice, along with comment submission information, can be viewed [here](#).

We Can Help

For more information about how Cassels Brock can assist with putting together a submission, please contact Brigeeta Richdale, Jessica Lewis or another member of our firm’s cross-disciplinary Emerging Companies Group.

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