NOTES:

1. This is an open book examination.

2. This examination consists of 2 parts. Answer both parts of the examination. Each question is weighted, and given an approximate time, as set out below. Students are cautioned to allocate their time accordingly.

<table>
<thead>
<tr>
<th>EXAM PART</th>
<th>MARKS</th>
<th>SUGGESTED TIME</th>
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</thead>
<tbody>
<tr>
<td>1: Fact Pattern</td>
<td>17 + 15 + 7 marks</td>
<td>44 + 38 + 18 minutes</td>
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<tr>
<td></td>
<td>= 39 marks total</td>
<td>= 100 minutes total</td>
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<tr>
<td>2: Short Answer</td>
<td>9 + 6 + 6 marks</td>
<td>22 + 14 + 14 minutes</td>
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<tr>
<td></td>
<td>= 21 marks total</td>
<td>= 50 minutes total</td>
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<tr>
<td>TOTAL</td>
<td>60 marks</td>
<td>150 minutes (2.5 hours)</td>
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3. Assume that the law in effect as of December 1, 2014 applies.

4. If you are hand-writing, please double-space your written answers.

5. Good luck.
PART 1: FACT PATTERN (100 minutes)

Steampunk Brew & Board Inc. ("Steampunk" or "the brewpub") is incorporated under the Canada Business Corporations Act, and based in Vancouver. It runs a very popular brewpub that serves its own range of beer and offers vintage board games for patrons to play. Its founders are good friends Arthur Arthur and Celeste Celery, both of whom live in Vancouver. Arthur is Steampunk’s brewmaster and Celeste is its Chief Executive Officer (CEO). Vintage board games are a central part of Steampunk’s business model, and a major draw for its clientele. The availability of a large selection of fascinating old games (along with the pub’s trendy location, décor and clientele) distinguishes Steampunk within the competitive microbrew market.

Steampunk is a reporting issuer, with one class of publicly-traded shares (the "shares" or "public shares") that trade on the TSX-V at $5.00 per share. Each of Celeste and Arthur separately hold 15% of the company’s outstanding public shares. As of September 1, 2014, no other shareholder holds more than 5%. Steampunk’s fiscal year end is December 31.

Steampunk wants to expand into bottling its beer for sale at liquor stores, in order to expand the brewpub’s "brand" and reach. Steampunk cannot obtain further bank financing without raising more money. In September 2014, Steampunk starts to investigate the idea of doing a private placement of securities, to fund the new bottling and marketing operations associated with expansion.

In early October 2014, it becomes clear that supplies of everything, especially foodstuffs high quality vintage board games, have become pricier than anticipated. Food and foodstuff prices have been rising across North America over the last 12 months. Steampunk’s bookkeeper sends Celeste some internal financial numbers, which demonstrate higher-than-expected expenses and lower-than-expected cash flows. Celeste is alarmed. It seems clear to her that Steampunk will have to increase beer prices to cover higher costs. The brewpub’s prices are already quite high. Celeste worries that if they are set much higher, the brewpub’s clientele could decide to move onto other competitor venues.

Celeste talks to Steampunk’s credit supplier, Minnow Financial Solutions. Minnow is a local financial institution that provides Steampunk, along with many other small businesses, with a revolving credit line that helps it smooth out revenue and expenses. Celeste asks the brewpub’s account manager at Minnow, Gilligan, for a slightly larger credit line. Gilligan asks Celeste if there is anything to be worried about. Celeste assures him there is not. Smiling, she jokes, "life would be easier if vintage board games weren’t so popular, but we’ll be fine."

Gilligan looks at Steampunk’s financial situation and declines Celeste’s request. After their meeting ends, Gilligan shorts Steampunk shares (meaning he will profit if the shares lose value).

At the next meeting of Steampunk’s Board of Directors, on October 15, Celeste addresses the Board and discusses the high prices of foodstuffs and vintage board games and her concern about raising beer prices. Nevertheless, Celeste insists that Steampunk will be fine.
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Though the Board remains somewhat skeptical, Celeste’s conviction attracts the support of several Board members, including Flora (Celeste’s niece, a lawyer), Alexander (operator of a local farming cooperative that supplies hops and barley to Steampunk), and Isabelle (a former consultant to Steampunk). Ultimately, the Board votes against issuing a press release or material change report with regard to anything discussed at the meeting.

Also in Fall 2014, Bombastic Brews Ltd. ("Bombastic"), a takeover firm, focuses its sights on Steampunk. As of September 1, 2014, Bombastic is a 5% shareholder in Steampunk. It begins buying more Steampunk shares. By October 20, it has acquired a total of 9% of Steampunk’s public shares. By Thursday October 30, Bombastic has acquired an additional 6% of Steampunk shares on the open market. On that day, Bombastic’s CEO, Ginger, gets a call from Celeste, who wants to know her intentions toward Steampunk. Ginger tells Celeste that Bombastic is “considering a number of options” and that it does not intend to say more while its plans are still speculative. Ginger says that as a financial firm that has not committed to seeking control of Steampunk, Bombastic has no mandatory disclosure obligations at this stage.

At 2:00 pm on Friday October 31, Bombastic sends identical email messages to thirty of Steampunk’s largest shareholders (not including Arthur and Celeste), asking them to sell their shares privately to Bombastic at $6.00 per share. This is a 20% premium over market price. Bombastic explains to each shareholder that it is making the same offer to other large shareholders and must receive an answer by 5:00 pm.

There is not much take-up of Bombastic’s offer, though Bombastic does manage to enter into an arrangement with three of the thirty shareholders it contacts. It acquires an additional 2% of Steampunk shares through private agreements with those shareholders, based on the terms offered in its October 31 email. It now holds 17% of Steampunk’s outstanding public shares and is Steampunk’s largest shareholder.

Steampunk’s Board convenes for an emergency meeting on November 3. At the meeting, the Board passes a resolution to enact a shareholders’ rights plan (SRP). The SRP establishes that, effective November 13 or thereafter, in the event that any shareholder acquires 20% of Steampunk shares, then every shareholder possessing less than 17% of its shares is automatically entitled to four new shares for each existing share held. The Board sends notice of the details of the SRP to the BC Securities Commission. It decides that shareholders will be able to vote on the SRP at Steampunk’s Annual General Meeting on December 31. Steampunk issues a press release and files a material change report describing the SRP.

At the same meeting, the Board votes to initiate its private placement. The private placement is for one new class of preferred shares. Among the purchasers are:

(a) Anna, a recent winner of the provincial lottery’s $20 million jackpot.

(b) Elsa, a Steampunk sales and marketing employee, who has been with the company for six months and invests her life’s savings ($80,000).
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(c) Mindi and Seth, a married professional couple who each have had an annual income of $160,000 for the past two years (though Seth just lost his job).

(d) Claude, a professional investment counselor and regular Steampunk patron.

On November 10, Bombastic offers to buy 45% of Steampunk’s outstanding public shares, which would bring its total holdings to 62%. It offers $5.75 per share (a 15% premium over market price). Bombastic will not buy any shares pursuant to the takeover bid unless Steampunk’s Board cancels its SRP, and Bombastic obtains a commitment to sell junk bonds to finance the deal.

With the Steampunk AGM in mind, Bombastic announces that it is considering proposing its own slate of directors. (As a 5% shareholder, it can do so under corporate law.) Bombastic tries to garner media and social media attention for its plan to vote against Steampunk management’s slate of directors at the upcoming AGM. It alleges that Steampunk’s directors and officers are receiving a benefit, in being able to use the brewpub for their own private events without paying, which has not been disclosed as part of their executive compensation. This turns out to be true. Bombastic requests a list of shareholders from Steampunk.

It is December 8, 2014. Steampunk’s AGM is around the corner. Steampunk’s annual disclosure documents have been prepared and are ready to be filed. The documents discuss the private placement and the brewpub's expansion plans. They also discuss a long list of risk factors, including the risk of increased supply costs. Steampunk plans to email its annual filings to its shareholders, along with links to a form of proxy and to management’s proxy information circular (which comply with regulatory requirements in all matters related to form). The email to shareholders would also link to a video. The video shows artist’s renderings of the company’s proposed new bottling facilities, and features interviews with Arthur, Celeste, and company employees. At the end of the video, Arthur is surrounded by smiling Steampunk employees (and one smiling CEO, Celeste). Arthur enthuses, “Our customers love our beers. I want ten times as many people to join the Steampunk movement, and this expansion is going to let us do that.”

Please answer these three questions:

1. You are legal counsel to Steampunk. Assume you know everything above. Identify any securities regulatory issues, and associated regulatory consequences, that may arise from the conduct of Steampunk’s Board of Directors.

[17 marks]

2. You have been retained as new counsel for Bombastic. The company’s prior counsel has just been fired. Help Ginger and Bombastic identify whether they face any potential exposure arising from any aspect of their conduct vis-à-vis Steampunk and/or its shareholders over the past several months, and advise them on how to get rid of Steampunk’s SRP.

[15 marks]
MARKS

3. It is now March 1, 2015. Things have unraveled for Steampunk. Customers have fled, board games are in short supply, and the brewpub’s share price is dropping. There is no sign of Steampunk expanding into a bottling operation. You have been retained as counsel for a group of investors who purchased Steampunk public shares over the last 6 months. Describe and discuss any potential causes of action and remedies in civil liability that the shareholders may have against Celeste based on her conduct. (You plan to consider other potential parties later.)

[7 marks]

In preparing your answers, do not discuss TSX-V listing requirements. Be as complete, detailed and specific as you can in your answers, but there is no need to duplicate information from one answer to another. (Be sure to refer back to other sections of your exam paper where appropriate.) If you are missing facts that you consider necessary to your analysis, identify the facts you are missing and state how those facts would affect your answer.

PART 2: SHORT ANSWER QUESTIONS (50 minutes)

1. Lucas runs a popular fishing blog and associated email list. One day, he posts and emails a promotional newsletter in which he solicits people to raise earthworms for him, with the goal of selling the earthworms to fishers in the Lower Mainland. In the newsletter, buyers are promised that Lucas’s growing instructions will allow them to have a profitable farm, that the time involved would be similar to raising a garden, that the earthworms double in quantity every sixty days, and that Lucas would buy back all bait-size worms that buyers produced, at $2.25 per pound.

Lily responds to Lucas’s newsletter by email. Lucas assures her via return email that success is guaranteed because he will repurchase Lily’s earthworm production, and he will handle the product marketing. Lily agrees to the arrangement and buys earthworms from Lucas, but she fails as an earthworm farmer.

Does securities regulation apply to this scenario? Why or why not? Assuming that securities regulation does apply, discuss the regulatory (not civil liability) obligations that Lucas ought to have complied with.

[9 marks]

2. Genius Capital is a privately-owned financial institution. It sets up a subsidiary, IPO-Trak, which operates a web page. The IPO-Trak webpage is accessible through a monthly subscription. It evaluates the prospects of new web-based IPOs, rating them according to risk, potential for growth, and value. Some of IPO-Trak’s customers have complained that buying and selling securities online is cumbersome. IPO-Trak therefore offers to do the administrative work of buying and selling for them, for an additional fee. Genius Capital acquires a significant holding in Bucolic Broccoli, a mail-order vegetable grower that recently went public. IPO-Trak posts a “must buy” recommendation for Bucolic. Walter, an investor, subscribes to IPO-Trak’s monthly
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newsletter and buys shares in Bucolic. When broader interest in Bucolic grows and its stock price rises, Genius Capital dumps its holdings.

a. Should IPO-Trak be a registrant? Why or why not?

b. Assuming for purposes of this question only that IPO-Trak should be a registrant,

   i. What category of registrant would be most appropriate? Why?

   ii. Should IPO-Trak belong to a self-regulatory organization? Which one?

   iii. Does IPO-Trak have any obligation to tell Walter about its relationship to Genius Capital? Explain.

   iv. Does IPO-Trak have any information gathering obligations vis-à-vis Walter in particular? Describe.

[6 marks]

3. Each of the six words immediately below (identified by roman numerals) can be matched with two of the descriptors in the list below that (identified by capital letters). Identify the two matching phrases that best go with each of these six terms:

I. Revolving line of credit through bank
II. Asset backed commercial paper
III. Fiduciary duty of corporate directors
IV. Sequestered insurance investment funds
V. Systemic risk
VI. Insider trading

Regulated by / within the jurisdiction of:

A. federal banking regulation
B. provincial banking regulation
C. federal securities regulation
D. provincial securities regulation
E. provincial corporate law
F. federal corporate law
G. provincial insurance regulation
H. federal insurance regulation
I. Prudentially (safety and soundness) oriented methods
J. Risk-oriented and disclosure-based regime
K. Relatively minimal regulatory obligations (either disclosure-based or prudential)

[6 marks]

END OF EXAMINATION