Exam Code: ___________
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ALLARD SCHOOL OF LAW
UNIVERSITY OF BRITISH COLUMBIA

FINAL EXAMINATION — APRIL 15, 2016

LAW 463.002
SECURITIES REGULATION
Gary Sollis and Michael Waters

TOTAL MARKS: 100

TIME ALLOWED: 2 HOURS
and 15 minutes reading time

NOTES: 1. This is an open book examination. Students are permitted to bring a copy of British Columbia Securities Act and Rules Annotated, the Condon, Anand and Sarra, Securities Law in Canada textbook, Selected Securities Materials prepared for Law 463.002 Securities Regulation, and any personal notes. No other texts are permitted.

2. THIS EXAMINATION CONSISTS OF 4 PARTS. ANSWER ALL PARTS.

3. Each question is given an approximate time. STUDENTS ARE CAUTIONED TO ALLOCATE THEIR TIME ACCORDINGLY.

4. All references to the Securities Act means the Securities Act (British Columbia).
TRUE OR FALSE QUESTIONS: Please answer the following questions TRUE or FALSE. Please only indicate an answer of TRUE or FALSE for each question in this Part 1.

1. The Supreme Court of Canada has ruled that the federal government has no constitutional authority to regulate the capital markets in Canada.

   TRUE or FALSE?

2. The British Columbia Securities Commission is empowered to make a cease trade order, if it considers it to be in the "public interest", irrespective of whether or not there has been a contravention of securities legislation.

   TRUE or FALSE?

3. An individual who purchases 100 common shares of a reporting issuer for $200 on the Toronto Stock Exchange has engaged in a trade under the Securities Act.

   TRUE or FALSE?

4. The secondary market disclosure civil liability provisions contained in the Securities Act are available to purchasers of securities distributed under each of the prospectus exemptions.

   TRUE or FALSE?
PART 1 - Continued

5. The requirement for a mandatory merit based review of all securities offerings under the first "blue sky laws" adopted in the United States in the early 1900's was ultimately adopted as a fundamental feature of both the United States Securities Act of 1933 and the Ontario Securities Act of 1945.

TRUE or FALSE?

6. An individual who engages in marketing activities in connection with the securities of a reporting issuer, but who at no point sells or purchases securities of the reporting issuer, will not need to be registered under the Securities Act.

TRUE or FALSE?

7. A change of a material fact in respect of a reporting issuer has the same legal consequences as a material change relating to that issuer.

TRUE or FALSE?

8. Common shares issued by a company that is not a reporting issuer are securities for purposes of the Securities Act.

TRUE or FALSE?

9. An offer to acquire 20% of the issued and outstanding common shares of a company which is not a reporting issuer, if made to at least one shareholder in British Columbia, is a take-over bid.

TRUE or FALSE?
PART 1 - Continued

10. One of the key criteria in each of the Howey, Hawaii and Pacific Coast in determining whether an investment contract is a security for the purposes of securities laws is the degree of managerial control exercised by the issuer.

TRUE or FALSE?

11. A private company cannot issue new securities from treasury to an accredited investor in British Columbia unless the company has prepared and filed a preliminary and final prospectus with the British Columbia Securities Commission, and the British Columbia Securities Commission has issued receipts for the preliminary and final prospectus.

TRUE or FALSE?

12. A company that has filed a final prospectus and been issued a final receipt under the Securities Act is subject to the continuous disclosure obligations set out in National Instrument 51-102.

TRUE or FALSE?

13. A reporting issuer is not required to have an audit committee unless its securities are listed on the TSX.

TRUE or FALSE?
PART 1 - Continued

14. An investor who purchases common shares qualified for sale under a prospectus has a right of action for damages against the issuer if the prospectus contains a misrepresentation, but only if the investor is able to prove that he or she relied on the misrepresentation in purchasing the securities.

TRUE or FALSE?

15. Management of a reporting issuer is required to solicit proxies and prepare and file an information circular in respect of each meeting of voting securityholders called by it.

TRUE or FALSE?

16. The requirement to prepare and file an annual information form, in Form 51-102 F2, applies to all reporting issuers.

TRUE or FALSE?

17. A reporting issuer completes a private placement of common shares exactly one month after it becomes a reporting issuer using the accredited investor exemption. Three months and a day after the private placement the first trade in these common shares will be a distribution.

TRUE or FALSE?

18. The British Columbia Securities Commission has the power, if it considers it to be in the public interest, to make an order prohibiting a person from acting as a director or officer of a private company.

TRUE or FALSE?
PART 1 - Continued

19. The secondary market disclosure civil liability provisions contained in the Securities Act apply only to reporting issuers.

TRUE or FALSE?

20. Insider trading is not illegal under British Columbia securities laws unless the insider makes use of undisclosed material information.

TRUE or FALSE?
SHORT ANSWER QUESTIONS: Please provide responses to each of the following questions. Please explain your responses and provide regulatory citations where relevant.

1. Is a shareholder that holds 22% of the issued and outstanding voting shares of an issuer by definition a “control person” as defined in the Securities Act?

2. What are the defences to liability for illegal insider trading and tipping under British Columbia securities law?

3. Where securities are being sold under a prospectus, when must a prospectus be delivered to a purchaser in connection with the distribution?

4. What steps can a reporting issuer take to minimize the potential for illegal insider trading of its securities?

5. An issuer has been a reporting issuer for five months when it completes a private placement of $200,000 worth of common shares to a corporate investor under the minimum amount investment exemption. When can these shares be sold by the purchaser on the Toronto Stock Exchange?

6. What is the primary defence available to an underwriter in the event of a misrepresentation in a prospectus, and what is required to rely on this defence?

7. What is the probability-magnitude test and when is it applied under Canadian securities law?

8. Why would a preliminary short form prospectus prepared in accordance with National Instrument 44-101 contain information relating to the price of the securities offered, while a preliminary prospectus prepared in accordance with National Instrument 41-101 would not?
Part 2 - Continued

9. What is the difference between a material change and a material fact, and what is the significance of that difference?

10. What action can a shareholder take to replace the management of a reporting issuer?
PART THREE

(30 Marks Total) (approximately 36 minutes)

You have been asked by a senior partner in your firm to prepare a memo providing an overview of the take-over bid regime currently in effect in British Columbia. This memo is required for an offshore client ("BidCo") which proposes to acquire ownership of 100% of the shares of a British Columbia reporting issuer ("TargetCo").

In particular, the partner has requested that your memo address the following:

1. the principal legal requirements and restrictions that will apply to the take-over bid;

2. the actions required to initiate, implement and complete the take-over bid;

3. the defenses that are most likely to be employed by TargetCo to defeat or delay the take-over bid; and

4. strategies and measures that can be adopted by BidCo to increase the likelihood of success of the take-over bid.
PART FOUR

(30 Marks Total) (approximately 36 minutes)

Your client Jill Holmes ("Jill") is a Director, Chairman of the board of directors and founder of a successful Vancouver based social media company called Birdhouse Inc. ("Birdhouse" or the "Company"). Jill currently owns approximately 56% of the outstanding common shares of the Company, with the remaining shares held by other investors and certain employees. Birdhouse is currently a private company, however, the Birdhouse board of directors has decided that in order to provide liquidity to their existing investors, and to raise additional capital, Birdhouse will pursue an initial public offering ("IPO") on the Toronto Stock Exchange. Birdhouse has engaged the services of an underwriting company to market the offering, and they expect to raise $100 million dollars in connection with the IPO. The Birdhouse board of directors have a number of questions for you in connection with the IPO process.

Please respond to each of the questions below. A reminder, please allocate the time spent on each response in accordance with the number of marks allocated to each question.

1. The board of directors has asked for a high level summary of the key milestones in the IPO process, up to closing of the IPO. (2 points)

2. The underwriters would like to get started in the marketing efforts as soon as possible and before the preliminary prospectus is filed. What restrictions should they be aware of? Please explain why these restrictions apply. (3 points)

3. Jill has her entire fortune tied up in shares of Birdhouse, which are now worth a considerable amount of money. It is expected that Jill will hold common shares representing approximately 38% of the outstanding common shares of Birdhouse after completion of the IPO. Jill does not want to sell any shares prior to the closing of the IPO, but she would like to sell some portion of her shares (but no more than half of her shares) at the same time as closing or within a year after closing. Please explain the three most likely approaches that will help Jill achieve her objective. (7 points)

4. Jill has been informed that she will be asked to sign a certificate at the back of the prospectus in her capacity as a director of Birdhouse. She has asked you what this certificate will say. (2 points)
PART 4 - Continued

5. Jill has been provided with a first draft of the preliminary prospectus. Jill has confidence in the Birdhouse management team, as well as their legal and financial advisors. Jill has had a quick look at the preliminary prospectus, and did not see any false statements, however she believes the prospectus has left out some information that would be required by an investor to understand some of the material financial information set out in the prospectus. Jill does not want to “micro manage” the process and would prefer not to get involved, but she has asked you if there are any concerns that she should be aware of for either Birdhouse or herself. (8 points)

6. The Company’s existing investors would like to know when they will be permitted to sell their shares on the Toronto Stock Exchange. All of the shares to date have been issued under the accredited investor exemption or the private issuer exemption. Please explain your response. (2 points)

7. Birdhouse is located in British Columbia, but intends to offer securities under the IPO in each of the provinces and territories in Canada. The board of directors understands that the British Columbia Securities Commission will review their draft preliminary prospectus. Will the prospectus be subject to review by any other jurisdictions in Canada, and if so, which ones, and why? (2 points)

8. Looking at the draft IPO timetable, the board of directors is expecting to receive interim financial results after filing of the preliminary prospectus, but before filing of the final prospectus. If there is an adverse change in a material fact, that is not a “material change”, will this fact need to be disclosed (i) prior to filing of the final prospectus, or (ii) in the final prospectus. Please explain your response to both items (i) and (ii). (4 points)

— END OF EXAMINATION —