

2005 BCSECCOM 643

October 18, 2005

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - National Instrument 51-102 *Continuous Disclosure Obligations*, s. 13.1 – all continuous disclosure requirements - An issuer that is a wholly-owned subsidiary wants relief from filing some continuous disclosure documents - The issuer is an indirect, wholly owned subsidiary of a reporting issuer parent company; the parent's interest in the issuer is held through a holding company; the parent's only operations are carried on through the holding company; as a result, the parent and the holding company are functionally equivalent to each other; the parent's continuous disclosure record will be filed and delivered in place of the issuer's disclosure record; the issuer will file material change reports for any change that is material to it but not the parent

Multilateral Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings*, s. 4.5 – certification requirements - An issuer wants relief from the requirements in Parts 2 and 3 of MI 52-109 to file annual and interim certificates - The issuer has applied for and received an exemption from filing interim and annual financial statements

Applicable British Columbia Provisions

National Instrument 51-102, s. 13.1

Multilateral Instrument 52-109, Parts 2 & 3, s. 4.5

In the Matter of
the Securities Legislation
of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, Nova
Scotia, New Brunswick, Newfoundland and Labrador, Northwest Territories,
Nunavut and Yukon Territory (the Jurisdictions)

and

In the Matter of
the Mutual Reliance Review System for Exemptive Relief Applications

and

In the Matter of
New Flyer Industries Inc. and
New Flyer Industries Canada ULC

MRRS Decision Document

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Background

The local securities regulatory authority or regulator (the Decision Maker) in each of the Jurisdictions has received an application from New Flyer Industries Inc. (NFI) and New Flyer Industries Canada ULC (NFI ULC, and together with NFI, the Filers) for a decision under the securities legislation of the Jurisdictions (the Legislation) that NFI ULC be exempt from

1. except in the Northwest Territories, the requirements under the Legislation to:
 - (a) issue press releases and file reports regarding material changes (the Material Change Reporting Requirement);
 - (b) file annual financial statements together with an auditor's report and annual MD&A, as well as interim financial statements together with a notice regarding auditor review of a written review report, if required, and interim MD&A;
 - (c) send annually a request form to the registered holders and beneficial owners of NFI ULC's securities, other than debt instruments, that the registered holders and beneficial owners may use to request a copy of NFI ULC's annual financial statements and annual MD&A, interim financial statements and interim MD&A, or both, and to send a copy of financial statements and MD&A to registered holders and beneficial owners;
 - (d) send a form of proxy and information circular with a notice of meeting to registered holders of voting securities and to file the information circular, form of proxy and all other material required to be sent in connection with the meeting to which the information circular or form of proxy relates;
 - (e) where applicable, file a business acquisition report including any required financial statement disclosure, if NFI ULC completes a significant acquisition (the BAR Requirement);
 - (f) file a copy of any disclosure material that it sends to its security holders;
 - (g) file an annual information form; and

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- (h) where applicable, file a copy of any contract that it or any of its subsidiaries is a party to, other than a contract entered into in the ordinary course of business, that is material to NFI ULC and was entered into in the last year, or before the last financial year but is still in effect (the Material Contracts Requirement),

(collectively, the Continuous Disclosure Obligations); and

2. the requirements under the Legislation to:

- (a) file annual certificates (Annual Certificates) in accordance with section 2.1 of Multilateral Instrument 52-109 *Certification of Disclosure in Issuer's Annual and Interim Filings* (MI 52-109); and
- (b) file interim certificates (Interim Certificates) in accordance with section 3.1 of MI 52-109,

(collectively, the Certification Requirements)

Under the Mutual Reliance Review System for Exemptive Relief Applications (the System):

- (a) the Ontario Securities Commission is the principal regulator for this Application; and
- (b) this MRRS decision document evidences the decision of each Decision Maker.

Interpretation

Defined terms contained in National Instrument 14-101 *Definitions* have the same meaning in this Decision unless they are defined in this Decision.

Representations

This decision is based on the following facts represented by the Filers:

1. NFI is a corporation formed under the laws of Ontario, with its head office located at Suite 3000, 79 Wellington Street West, TD Centre, Toronto, Ontario, M5K 1N2.
2. NFI owns all of the Class A common shares of New Flyer Holdings, Inc. (NFL Holdings), representing an approximately 36.9% economic interest and a 51% voting interest in NFL Holdings.

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3. NFI ULC is an unlimited liability corporation organized under the laws of Alberta, with its head office at Suite 3000, 79 Wellington Street West, TD Centre, Toronto, Ontario, M5K 1N2.
4. NFI ULC is a wholly-owned indirect subsidiary of NFL Holdings.
5. NFL Holdings is a Delaware corporation, with its registered office located at 1209 Orange Street, Wilmington, Delaware, 19801. NFL Holdings, through its subsidiaries, is the leading manufacturer of heavy-duty transit buses in the United States and Canada and a leading provider of aftermarket parts and service.
6. The Filers filed a preliminary prospectus dated June 30, 2005 and a (final) prospectus dated August 12, 2005 in connection with an initial public offering (the Offering) of income deposit securities (IDSs).
7. NFI issued the common shares that form part of the IDSs and will satisfy dividends declared on these common shares with the dividends it receives on the Class A common shares that it owns in NFL Holdings.
8. NFI ULC issued the subordinated notes (the Subordinated Notes) that form part of the IDSs and will satisfy its obligations under the Subordinated Notes through cash flows from continuing operations.
9. Mutual Reliance Review System decision documents were issued for the Filers' (a) preliminary prospectus on July 4, 2005; and (b) (final) prospectus on August 15, 2005 and, by the Yukon Territory, on August 16, 2005.
10. NFI and NFI ULC became reporting issuers or the equivalent in each of the Jurisdictions where such status exists on August 15, 2005, and the Offering closed on August 19, 2005.
11. In connection with the Offering, the Filers filed an undertaking (the Undertaking) with the Ontario Securities Commission to provide investors with separate financial statements for their material subsidiaries (the Material Subsidiaries) where GAAP prohibits the consolidation of financial information of such entities and the Filers.
12. NFI ULC's obligations under the Subordinated Notes represent its primary liability.
13. NFI ULC's obligations under the Subordinated Notes are fully and unconditionally guaranteed by New Flyer of America Inc (NFAI).

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14. NFI ULC and NFAI are currently the only operating entities in the New Flyer group.
15. In order to understand and assess the ability of NFI ULC (and the guarantor) to satisfy the obligations under the Subordinated Notes, a holder of the Subordinated Notes will need to determine (a) the financial position and results of operations of NFI ULC and (b) NFAI's ability to satisfy the guarantee obligations of the Subordinated Notes.
16. Because NFI is the ultimate parent of the New Flyer group of companies (including NFI ULC and NFAI) and is required to:
 - (a) include in its public disclosure (*e.g.*, annual information form and material change reports) information concerning all of its Material Subsidiaries, including NFL Holdings, NFI, ULC and NFAI), and
 - (b) include in its financial disclosure the consolidated financial statements of NFL Holdings, which include the financial position and results of operations of all of the other members of New Flyer group, including NFI ULC and NFAI,

it is the public disclosure of NFI, including the consolidated financial statements of NFL Holdings, that is most relevant from the perspective of an investor. Specifically, that information sufficiently permits an investor to determine (a) the financial position and results of operations of NFI ULC and (b) NFAI's ability to satisfy its guarantee obligations of the Subordinated Notes.
17. NFI has no operations other than minimal operations that are independent of NFL Holdings, no material assets other than its holdings of the Class A shares of NFL Holdings and no material liabilities.
18. NFI controls all of its Material Subsidiaries, including NFL Holdings, NFI ULC and NFAI.
19. NFI will send a form of proxy and information circular to holders of the Subordinated Notes resident in Canada in connection with any meeting of holders of Subordinated Notes, in the manner and at the time that such materials are required by the Legislation to be sent to the holders of the Subordinated Notes.

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Decision

Each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Maker with the jurisdiction to make the Decision has been met.

The Decision of the Decision Makers (except for the Decision Makers in the Northwest Territories, with respect to the Continuous Disclosure Obligations) pursuant to the Legislation is that the Continuous Disclosure Obligations and the Certification Requirements shall not apply to NFI ULC, provided that:

1. NFL Holdings continues to, directly or indirectly, own all of the issued and outstanding voting securities of NFI ULC;
2. NFI continues to control NFL Holdings and continues to provide to its shareholders the consolidated financial statements of NFL Holdings;
3. NFL Holdings continues to control the other Material Subsidiaries and continues to consolidate the financial information of the other Material Subsidiaries in its financial information (or NFI consolidates the financial information of the Material Subsidiaries);
4. NFI has and will continue to have no operations other than minimal operations that are independent of NFL Holdings, no material assets other than its holding of the Class A common shares of NFL Holdings and no material liabilities;
5. NFI remains a reporting issuer in each of the Jurisdictions that provides for such a regime and complies with all of its reporting issuer obligations under such regime;
6. NFAI continues to provide a full and unconditional guarantee of NFI ULC's obligations under the Subordinated Notes;
7. NFI files, in electronic format under NFI ULC's SEDAR profile, copies of any and all documents that NFI is required to file pursuant to the Continuous Disclosure Obligations at the same time that such documents are required under the Legislation to be filed by NFI under its own SEDAR profile;
8. NFI ULC complies with the Material Change Reporting Requirement in respect of material changes in the affairs of NFI ULC that are not also material changes in the affairs of NFI;

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9. NFI ULC complies with the Material Contracts Requirement in respect of contracts of NFI ULC that would be material to NFI ULC but would not be material to NFI;
10. NFI ULC complies with the BAR Requirement in respect of business acquisitions that would be significant acquisitions to NFI ULC but not NFI;
11. NFI ULC has not issued any securities to the public other than Subordinated Notes;
12. NFI files copies of its own Annual Certificates and Interim Certificates under NFI ULC's SEDAR profile at the same time that such documents are required to be filed by NFI under its own SEDAR profile;
13. NFI remains an electronic filer under National Instrument 13-101 *System for Electronic Data Analysis and Retrieval (SEDAR)*;
14. with the exception of NFI ULC, NFI shall not have any material operating subsidiaries that are not guarantors of the Subordinated Notes; and
15. NFI concurrently sends to all holders of Subordinated Notes all disclosure materials that NFI is required to send to holders of its securities, in the manner and at the time that such materials are required by the Legislation to be sent to the securityholders of NFI.

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