

2011 BCSECCOM 577

December 23, 2011

Headnote

National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* – Securities Act s. 88 - Cease to be a reporting issuer in BC - The issuer's securities are traded only on a market or exchange outside of Canada - The issuer is an SEC foreign issuer, the issuer has a de minimus number of Canadian security holders; the issuer has no present intention of conducting a public offering of its securities to Canadian residents; the issuer is subject to the reporting requirements of the securities laws of an acceptable foreign jurisdiction and all shareholders receive the same disclosure

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, s. 88

In the Matter of
the Securities Legislation of
British Columbia, Alberta and Ontario
(the Jurisdictions)

and

In the Matter of
the Process for Exemptive Relief Applications in Multiple Jurisdictions

and

In the Matter of
Jones Soda Co.
(the Filer)

Decision

Background

- ¶ 1 The securities regulatory authority or regulator in each of the Jurisdictions (Decision Maker) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) that the Filer is not a reporting issuer (the Exemption Sought).

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions (for a coordinated review application):

2011 BCSECCOM 577

- (a) the British Columbia Securities Commission is the principal regulator for this application;
- (b) the decision is the decision of the principal regulator and evidences the decision of each other Decision Maker.

Interpretation

- ¶ 2 Terms defined in National Instrument 14-101 *Definitions* and MI 11-102 have the same meaning if used in this decision, unless otherwise defined.

Representations

- ¶ 3 This decision is based on the following facts represented by the Filer:
1. the Filer was incorporated under the laws of British Columbia on January 23, 1986; the Filer is a reporting issuer in the Jurisdictions;
 2. the head office of the Filer is located at 1000 1st Avenue South, Suite 100, Seattle, Washington, 98134;
 3. the Filer's principal operations are located in the United States and all members of the Filer's management are based in Seattle;
 4. the Filer is in the business of developing, producing, marketing and distributing premium beverages with its central focus is the United States domestic market;
 5. In 1997, the Filer became listed on the Canadian Venture Exchange (previously the Vancouver Stock Exchange) under the symbol "UJS";
 6. on December 31, 1999, the Filer continued its corporate existence to Wyoming;
 7. on August 1, 2000, the Filer merged with Jones Soda Co. to form a new company existing under the laws of the State of Washington;
 8. in 2002, the Canadian Venture Exchange became the TSX Venture Exchange (TSXV);
 9. on November 28, 2005 the Filer qualified for trading the NASDAQ Capital Market (the NASDAQ);

2011 BCSECCOM 577

10. effective February 20, 2009, the common shares of the Filer were delisted from the TSXV;
11. the Filer is currently a “SEC foreign issuer” as that term is defined in National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers* and except for the Canadian Default (discussed below), the Filer has complied with the requirements of the Legislation applicable to SEC foreign issuers;
12. all of the outstanding securities of the Filer are currently listed on the NASDAQ and the Filer is subject to the reporting obligations of the United States Securities and Exchange Commission; no securities of the Filer are traded on a marketplace in Canada as defined in National Instrument 21-101 *Marketplace Operation* and the Filer does not currently intend to have its securities listed, traded or quoted on a marketplace in Canada;
13. the Filer has not taken any steps to indicate that there is a market for its securities in Canada since its common shares were delisted from the TSXV on February 20, 2009;
14. the Filer has one operating subsidiary located in Canada and six employees located in Canada;
15. based upon a review of its corporate records and the British Columbia Securities Commission’s website, to the best of the Filer’s knowledge, since December 30, 1998, the only distributions of the Filer’s common shares in Canada have been to employees of the Filer and its affiliates under the employee prospectus exemption under section 2.24 of National Instrument 45-106 *Prospectus and Registration Exemptions* as part of the Filer’s 1996 Stock Option Plan, its 2002 Stock Option and Restricted Stock Plan (as amended in 2006) and its 2011 Equity Incentive Plan (the Plans);
16. for the six months ended June 30, 2011, there were no compensation awards made to Canadian employees under the Plans; the Filer does not anticipate any material changes in the number of compensation awards granted to Canadian employees for the remainder of 2011; consequently, the impact of the Plans is not expected to result in a more significant shareholder base in Canada;
17. except as set out below, the Filer is not in default of any filing requirements of the NASDAQ or applicable requirements of United States federal or state securities regulatory authorities; on September 16, 2011, the Filer received a deficiency letter from The NASDAQ Stock Market indicating that, for the thirty consecutive business days ending September 15, 2011, the bid price for

2011 BCSECCOM 577

the Filer's common shares had closed below the minimum US\$1.00 per share requirement for continued listing on the NASDAQ; the Filer has been provided an initial period of 180 calendar days, or until March 14, 2012, to regain compliance; if the Filer is unable to regain compliance by March 14, 2012, the Filer may be eligible for an additional 180 calendar day compliance period, or until September 10, 2012, to demonstrate compliance with the bid price requirement; to qualify, the Filer will be required to meet the continued listing requirement for market value of publicly held shares set forth in the applicable NASDAQ rules and will need to provide written notice to NASDAQ of its intention to cure the deficiency during the second compliance period, including by effecting a reverse stock split, if necessary; if the Filer does not qualify for the second compliance period or fails to regain compliance during the second 180 day period, then NASDAQ is expected to notify the Filer of its determination to delist the Filer's common shares, at which point the Filer would have an opportunity to appeal the delisting determination before a hearings panel;

18. the Filer is not in default of its obligations as a reporting issuer under the securities legislation of the Jurisdictions, except as follows; on March 22, 2011, the Filer received a notice from the British Columbia Securities Commission advising the Filer that its annual financial statements had not been filed in accordance with the securities legislation of the Jurisdictions because the audit report accompanying the financial statements had not been prepared by a public accounting firm registered with the Canadian Public Accountability Board (the Canadian Default) which default remains outstanding;
19. the issued and outstanding share capital of the Filer as of August 5, 2011 is 31,992,675 common shares which represent the only issued and outstanding class of securities of the Filer;
20. in support of the representations set forth in paragraphs below concerning the percentage of outstanding securities and the total number of securityholders in Canada, the Filer has made inquiries with Broadridge Financial Solutions Inc. and has inspected its list of registered shareholders; based upon these searches, the aggregate beneficial ownership of the Filer's common shares in Canada (broken down by province) is as follows:
 - (a) Alberta – 83 shareholders holding 111,945 common shares;
 - (b) British Columbia – 214 shareholders holding 321966 common shares;
 - (c) Manitoba – 14 shareholders holding 24,670 common shares;

2011 BCSECCOM 577

- (d) New Brunswick – 5 shareholders holding 8,661 common shares;
 - (e) Newfoundland – 1 shareholder holding 800 common shares;
 - (f) Nova Scotia – 12 shareholders holding 21,189 common shares;
 - (g) Ontario – 195 shareholders holding 420,361 common shares;
 - (h) Prince Edward Island – 5 shareholders holding 7,695 common shares;
 - (i) Quebec – 48 shareholders holding 115,757 common shares; and
 - (j) Saskatchewan – 16 shareholders holding 34,621 common shares;
- for a total of 593 shareholders beneficially owning an aggregate of 1,067,665 common shares;

- 21. on an aggregate basis, the Canadian shareholding represents 2.52% of the Filer's shareholders and 3.34% of its issued and outstanding securities worldwide;
- 22. of the Canadian shareholders, 11 positions hold 10,000 shares or greater, representing 280,725 shares; the remaining Canadian holders hold 2.46% of the Filer's issued and outstanding securities;
- 23. in the event that the Filer ceases reporting in Canada, Canadian securityholders will receive adequate disclosure under United States corporate/securities laws; the continuous disclosure requirements in the United States are very similar to the continuous disclosure requirements under Canadian securities laws, including the requirement to file quarterly and year end annual financial statements, annual information forms, press releases and material fact notices, as well as to publish certain shareholder meeting materials (such as notices and voting results); all continuous disclosure requirements for United States public companies are by way of public filings through EDGAR, the filings section of the SEC website (www.sec.gov);
- 24. the Filer provided advance notice to Canadian resident securityholders in a press release that it applied to the securities regulatory authorities for a decision that it is not a reporting issuer in Canada and, if that decision is made, the Filer will no longer be a reporting issuer in any jurisdiction in Canada; and

2011 BCSECCOM 577

25. the Filer undertakes to concurrently deliver to its Canadian security holders, all disclosure the Filer would be required under U.S. securities law or exchange requirements to be delivered to U.S. resident security holders.

Decision

¶ 4 Each of the Decision Makers is satisfied that the decision meets the test set out in the Legislation for the Decision Maker to make the decision.

The decision of the Decision Makers under the Legislation is that the Exemption Sought is granted.

Martin Eady, CA
Director, Corporate Finance
British Columbia Securities Commission