

2010 BCSECCOM 367

June 14, 2010

Headnote

Multilateral Instrument 11-102 *Passport System* and National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* – National Instrument 52-107, s. 9.1 *Acceptable Accounting Principles, Auditing Standards and Reporting Currency* - An issuer wants relief from the requirement to prepare its financial statement in accordance with Canadian GAAP in order to use IFRS before the January 1, 2011 changeover date - The issuer has assessed the readiness of its staff, board, audit committee, auditors and investors; the issuer will provide detailed disclosure regarding its early adoption of IFRS in its MD&A as set out in CSA Staff Notice 52-320; the issuer will restate any financial statements prepared in accordance with Canadian GAAP for interim periods for the fiscal year in which they intend to adopt IFRS together with related interim MD&A and certificates required by NI 52-109

Applicable British Columbia Provisions

National Instrument 52-107, s. 9.1 *Acceptable Accounting Principles, Auditing Standards and Reporting Currency*

In the Matter of
the Securities Legislation of
British Columbia
(the Jurisdiction)

and

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

and

In the Matter of
Everclear Capital Ltd.
(the Filer)

Decision

Background

- ¶ 1 The principal regulator in the Jurisdiction has received an application from the Filer for a decision under the securities legislation of the Jurisdiction of the principal regulator (the Legislation) exempting the Filer from the requirement in

2010 BCSECCOM 367

section 3.1 of National Instrument 52-107 *Acceptable Accounting Principles, Auditing Standards and Reporting Currency* (NI 52-107) that financial statements be prepared in accordance with Canadian GAAP (the Exemption Sought), in order that the Filer may prepare its financial statements for financial periods beginning on or after May 1, 2009 in accordance with Part I of the Handbook, that is International Financial Reporting Standards (IFRS) as issued by the International Accounting Standards Board (IFRS-IASB).

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

- (a) the British Columbia Securities Commission is the principal regulator for this application, and
- (b) the Filer has provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (MI 11-102) is intended to be relied upon in Alberta.

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 is a corporation under the *Business Corporations Act* (British Columbia) with head office of the Filer located at Suite 410 – 325 Howe Street, Vancouver, BC V6C 1Z7;
 - 2. the Filer is a reporting issuer in British Columbia and Alberta;
 - 3. the Filer is not in default of its reporting issuer obligations under the the securities legislation in any jurisdiction;
 - 4. the Filer’s common shares are listed on the TSX Venture Exchange (TSXV) under the symbol “EVA.P”;
 - 5. the Filer is a capital pool company listed on the TSXV and is in the process of completing its qualifying transaction under TSXV Policy 2.4 *Capital Pool Companies* (Qualifying Transaction) by acquiring 90% of MAEPA Empreendimentos Mineiros E Participacoes Lda (MAEPA) in Portugal and 92.5% Innomatik Exploration Kosovo LLC (Innomatik) in Kosovo;

2010 BCSECCOM 367

6. MAEPA and Innomatik prepare their financial statements in accordance with IFRS-IASB and have provided the Filer audited financial statements for years ended December 31, 2009, 2008 and 2007 prepared in accordance with IFRS-IASB;
7. MAEPA's financial statements were audited by Ernst & Young Portugal and Innomatik's financial statements were audited by Grant Thornton Kosovo; both Ernst & Young Portugal and Grant Thornton Kosovo conducted their audits in accordance with International Standards on Auditing;
8. the Filer currently prepares its financial statements in accordance with Canadian GAAP;
9. upon completion of the Qualifying Transaction, the Filer will account for its investments in MAEPA and Innomatik by using the consolidated method of accounting;
10. the Filer has not previously prepared financial statements that contain an explicit and unreserved statement of compliance with IFRS-IASB;
11. the Canadian Accounting Standards Board confirmed that publicly accountable enterprises will be required to prepare their financial statements in accordance with IFRS-IASB for fiscal years beginning on or after January 1, 2011;
12. NI 52-107 sets out acceptable accounting principles for financial reporting under the Legislation by domestic issuers, foreign issuers, registrants and other market participants; under NI 52-107, a domestic issuer must use Canadian GAAP with the exception that an SEC registrant may use US GAAP; under 52-107, only foreign issuers may use IFRS-IASB;
13. in CSA Staff Notice 52-321 *Early Adoption of International Financial Reporting Standards, Use of US GAAP and Reference to IFRS-IASB*, staff of the Canadian Securities Administrators recognized that some issuers may wish to prepare their financial statements in accordance with IFRS-IASB for periods beginning prior to January 1, 2011 and indicated that staff were prepared to recommend exemptive relief on a case by case basis to permit a domestic issuer to do so, despite section 3.1 of NI 52-107;
14. subject to obtaining the Exemption Sought, the Filer will adopt IFRS-IASB for its financial statements beginning on or after May 1, 2009 with a transition date of May 1, 2008;

2010 BCSECCOM 367

15. the Filer believes that adoption of IFRS-IASB will eliminate complexity and cost from the Filer's financial statement preparation process;
16. the Filer has implemented a comprehensive IFRS-IASB conversion plan, including requiring its staff to attend various trainings, examining the internal control over financial reporting and disclosure controls and procedures surrounding the adoption of IFRS, and reviewing the related working papers and skeleton IFRS financial statements for the period beginning May 1, 2009;
17. the board of directors of the Filer approved early adoption of IFRS-IASB on May 18, 2010;
18. the Filer has carefully assessed the readiness of its staff, board of directors, audit committee, auditors, investors and other market participants for the adoption by the Filer of IFRS-IASB for financial periods beginning on and after May 1, 2009 and has concluded that they are adequately prepared for the Filer's adoption of IFRS-IASB for periods beginning on May 1, 2009;
19. the Filer has considered the implication of adopting IFRS-IASB for financial periods beginning on or after May 1, 2009 on its obligations under securities legislation including, but not limited to, those relating to CEO and CFO certifications, business acquisition reports, offering documents, and previously released material forward looking information;
20. immediately upon issuance of this decision, the Filer will disseminate a news release providing relevant information about its conversion to IFRS-IASB as contemplated by CSA Staff Notice 52-320 *Disclosure of Expected Changes in Accounting Policies Relating to Changeover to International Financial Reporting Standards*, including:
 - (a) the key elements and timing of the Filer's changeover plan;
 - (b) the accounting policy and implementation decisions the Filer has made or will have to make;
 - (c) the exemptions available under IFRS 1 *First-time Adoption of International Financial Reporting Standards* (IFRS 1) that the Filer expects to apply in preparing financial statements in accordance with IFRS-IASB;
 - (d) major identified differences between the Filer's current accounting policies and those the Filer is required or expects to apply in preparing financial statements in accordance with IFRS-IASB; and

2010 BCSECCOM 367

- (e) the impact of adopting IFRS-IASB on the key line items in the Filer's financial statements for the year ending April 30, 2009 and its interim financial statements for the periods ending July 31, 2009, October 31, 2009 and January 31, 2010; and
- 21. immediately upon issuance of this decision, the Filer will restate and re-file its financial statements and management's discussion and analysis for each of the interim periods in the year beginning May 1, 2009, together with the certificates required by National Instrument 52-109 *Certification of Disclosure in Issuer's Annual and Interim Filings* (NI 52-109).

Decision

- ¶ 4 The principal regulator is satisfied that the decision meets the test set out in the Legislation for the principal regulator to make the decision.

The decision of the principal regulator under the Legislation is that the Exemption Sought is granted provided that:

- (a) the Filer prepares its annual financial statements for years beginning on or after May 1, 2009 in accordance with IFRS-IASB;
- (b) the Filer prepares its interim financial statements for interim periods beginning on or after May 1, 2009 in accordance with IFRS-IASB, except that if the Filer files interim financial statements prepared in accordance with Canadian GAAP for one or more interim periods for the financial year in which it adopts IFRS-IASB, the Filer will restate those interim financial statements in accordance with IFRS-IASB and re-file those interim financial statements together with the related restated interim management's discussion and analysis and the certificates required by National Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings*;
- (c) the Filer provides the communication set out in paragraphs 20 and 21; and

2010 BCSECCOM 367

- (d) the Filer's first IFRS-IASB financial statements for an interim period include an opening statement of financial position as at the date of transition to IFRS-IASB that is presented with prominence equal to the other statements that comprise those interim financial statements.

Andrew Richardson, CA
Acting Director, Corporate Finance
British Columbia Securities Commission