

2006 BCSECCOM 100

December 29, 2005

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - Securities Act s. 48,76 Employees & Consultants - Exemption from s. 34(1)(a) requirement to be registered as a dealer in connection with a trade and s. 61 requirement to file a prospectus in connection with a distribution involving employees, consultants, past employees and similar persons - Trades by an issuer of its securities to employees, directors, officers, consultants, or similar persons, of another business that is related, but not technically a “related entity”, of the issuer - The issuer was established by another business for purpose of providing services to the other business; the issuer does not carry on any other operations; the issuer’s operations are controlled by the other business and its related entities; the issuer will only issue securities to partners of the other business and its related entities; the issuer’s securityholders are only permitted to transfer their securities to other people that hold the same position with the business and its related entities, or to their permitted transferees, as defined in NI 45-106

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss. 34(1)(a), 48, 61, 76 and 171

In the Matter of
Securities Legislation of
British Columbia, Alberta, Manitoba, Ontario, Nova Scotia, New Brunswick,
Prince Edward Island and Newfoundland & Labrador
(the Jurisdictions)

and

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

and

In the Matter of
CapServCo Limited Partnership (the Filer)

MRRS Decision Document

Background

The local securities regulatory authority or regulator (the Decision Maker) in each of the Jurisdictions has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) to amend the decision document issued by the Decision Makers in the Matter of CapServCo

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Limited Partnership dated February 29, 2000 (the Original Decision) such that the prospectus and dealer registration requirement exemption granted in the Original Decision to permit the proposed issuance of limited partnership units and promissory notes from time to time by the Filer to certain persons be expanded to include issuance to additional persons.

Under the Mutual Reliance Review Systems for Exemptive Relief Applications

- (a) the Ontario Securities Commission is the principal regulator for this application, and
- (b) the 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 the decision unless they are defined in this decision.

Representations

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

1. All representations contained in the Original Decision remain true and complete except for Paragraphs 11 and 12 and the addition of Paragraph 6A;
2. The amendments to the Original Decision will reflect the creation of the partnership, Grant Thornton Consulting (GTC) in connection with a restructuring of the operations of Grant Thornton LLP (GT). Following completion of the restructuring, GTC will provide GT with such accounting, management consulting and other professional services as GT may require from time to time and all fundamental decisions relating to the business and operations of the combined firms will be subject to the approval of the partners of GTC;
3. The amendments to the Original Decision will also reflect that each partner of GTC will make capital contributions to the Filer by subscribing for Class A and Class B Units of the Filer; and
4. The application to exempt from the prospectus and dealer registration requirement contained in the Legislation the proposed issuance of limited partnership units and promissory notes by the Filer to the partners of GTC is analytically indistinct from the circumstances described in the Original Decision, and implies no substantive difference to the reasons provided to justify the relief granted in the Original Decision.

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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 pursuant to the Legislation is that:

1. Paragraph 6A is added to the Original Decision as follows:

“Grant Thornton Consulting (“GTC”) is a partnership formed under the laws of Ontario to provide GT with such accounting, management consulting and other professional services as GT may require from time to time.”

2. Paragraph 11 of the Original Decision is deleted and replaced with the following:

“The LP Agreement will provide that Units may be issued by the Applicant only to a person resident in Canada for purposes of the *Income Tax Act* (Canada) who is one of the following (each, a “Qualified Person”):

- (i) a GT Partner;
- (ii) where a GT Partner is a corporation where the sole shareholder, officer and director is an individual who would otherwise be a GT Partner (a “GT Individual”);
- (iii) a discretionary trust, the trustees of which will consist of one or more GT Partners or GT Individuals or corporations controlled by GT (a “Family Trust”);
- (iv) a GTC Partner;
- (v) where a GTC Partner is a corporation where the sole shareholder, officer and director is an individual who would otherwise be a GTC Partner (a “GTC Individual”); or
- (vi) a discretionary trust, the trustees of which will consist of one or more GTC Partners or GTC Individuals or corporations controlled by GTC (a “Family Trust”).”

3. Paragraph 12 of the Original Decision is deleted and replaced with the following:

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“The beneficiaries of a Family Trust consist of one or more of the following: (each an “Eligible Beneficiary”):

- (i) a GT Partner or a GTC Partner;
- (ii) a GT Individual or a GTC Individual;
- (iii) a person who is married to a GT Partner, GT Individual, GTC Partner or GTC Individual who lives with a GT Partner, GT Individual, GTC Partner or GTC Individual in a marriage-like relationship, which marriage-like relationship may be between persons of the same gender (a “Spouse”);
- (iv) the living issue, natural or adopted, of a GT Partner, of a GT Individual, of a GTC Partner, of a GTC Individual or of a Spouse;
- (v) the siblings, natural or through adoption, of a GT Partner, of a GT Individual, of a GTC Partner, of a GTC Individual or of a Spouse;
- (vi) the nieces and nephews, natural or through adoption, of a GT Partner, of a GT Individual, of a GTC Partner, of a GTC Individual or of a Spouse;
or
- (vii) any other person who is a dependent, wholly or partially, of a GT Partner, of a GT Individual, of a GTC Partner, of a GTC Individual or of a Spouse,

provided that, if a person referred to in (iii) above subsequently ceases to be a Spouse, the Family Trust may be permitted to continue to hold trust property for the benefit of such person and/or all any persons who initially became beneficiaries of the Family Trust by reason of their relationship to such person.

For greater clarification, a person under any of headings (iii) through (vii) above is not a Qualified Person.”

Paul M. Moore

Susan Wolburgh Jenah