

# 2006 BCSECCOM 582

October 12, 2006

## **Headnote**

Mutual Reliance Review System for Exemptive Relief Applications and  
Multilateral Instrument 11-101 Principal Regulator System

National Instrument 51-102, s. 13.1 - Continuous Disclosure Obligations - BAR – An issuer requires relief from the requirement to include certain financial statements in a business acquisition report - the issuer is required to include in a BAR interim financial statements for the most recently completed interim period of the business that ended before the date of the acquisition; the issuer is instead including audited financial statements for a period of at least nine months commencing the day after the most recently completed financial year for which financial statements are required under item 8.5(1)(2) of NI 51-102; because of this, the issuer is exempt from filing certain annual financial statements under section 8.7(1) of NI 51-102, but the issuer cannot rely on section 8.7(2) to exclude the interim financial statements

National Instrument 52-107, s. 9.1 - Acceptable Accounting Principles, Auditing Standards and Reporting Currency - An issuer wants relief from the requirement to audit acquisition statements in accordance with Canadian or U.S. GAAS - the issuer acquired or will acquire a business whose historical financial statements have not been audited in accordance with Canadian or U.S. GAAS; the acquired business' financial statements have been audited in accordance with U.K. GAAS; for various reasons, it would be impractical to re-audit the business' financial statements in accordance with Canadian or U.S. GAAS; the audit report will be accompanied by a statement by the auditor that describes any material differences in the form of report as compared to a Canadian GAAS audit report, and indicates that its report would not contain a reservation if it were prepared in accordance with Canadian GAAS

## **Applicable British Columbia Provisions**

National Instrument 51-102, part 8 and s. 13.1

National Instrument 52-107, part 6 and s. 9.1

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

and

In the Matter of

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the Mutual Reliance Review System for Exemptive Relief Applications

and

In the Matter of  
Extreme CCTV Inc. (the Filer)

## MRRS Decision Document

### **Background**

¶ 1 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) for an exemption from:

- (a) the requirement in section 8.4(2) of National Instrument 51-102 *Continuous Disclosure Obligations* (NI 51-102) to include interim financial statements of Forward Vision CCTV Ltd. (FVCCTV) and Forward Vision Systems Limited (FVS and collectively with FVCCTV, Forward) in the business acquisition report (BAR) required to be filed by the Filer in respect of its acquisition of Forward; and
- (b) the requirement in section 6.2 of National Instrument 52-107 *Acceptable Accounting Principles, Auditing Standards and Reporting Currency* (NI 52-107) that financial statements for each of FVCCTV and FVS that are required to be included in a BAR be audited in accordance with Canadian or U.S. generally accepted auditing standards (Canadian GAAS or U.S. GAAS)

(collectively, the Requested Relief).

### **Application of Principal Regulator System**

¶ 2 Under Multilateral Instrument 11-101 *Principal Regulator System* (MI 11-101) and the MRRS:

- (a) the British Columbia Securities Commission is the principal regulator for this application;
- (b) the Filer is relying on the exemption in Part 3 of MI 11-101 in Alberta; and
- (c) this MRRS decision document evidences the decision of each Decision Maker.

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### **Interpretation**

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

### **Representations**

- ¶ 4 This decision is based on the following facts represented by the Filer:
1. the Filer specializes in the design, development, manufacture and marketing of advanced infrared illuminators and precision engineered surveillance solutions;
  2. the Filer is governed by the *Canada Business Corporations Act* and its head office is located in Burnaby, British Columbia;
  3. the Filer is a reporting issuer in each Jurisdiction and in Alberta and, to its knowledge, is not in default of its obligations as a reporting issuer under the Legislation and the securities legislation of Alberta;
  4. the Filer is authorized to issue an unlimited number of its common shares (the Common Shares), of which as of September 12, 2006, 16,315,177 Common Shares are issued and outstanding;
  5. the Common Shares are listed and posted for trading on the Toronto Stock Exchange;
  6. the Filer's fiscal year end is September 30;
  7. on July 31, 2006, the Filer completed acquisitions of FVCCTV and FVS (collectively the Acquisition), which constituted an "acquisition of related businesses" as outlined in Part 8 of NI 51-102;
  8. FVCCTV and FVS are companies incorporated or organized under the laws of the United Kingdom (U.K.);
  9. before the Acquisition, less than 50% of the votes for election of directors of each of FVCCTV and FVS were owned, directly or indirectly, by residents of Canada; the majority of executive officers and directors of each of FVCCTV and FVS were not resident in Canada; less than 50% of the consolidated assets of each of FVCCTV and FVS were located in Canada; and the business of each of FVCCTV and FVS was not administered principally in Canada and is not seasonal;
  10. the fiscal year end for each of FVCCTV and FVS is August 31;

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11. as the Acquisition constituted a “significant acquisition” for the purposes of NI 51-102, the Filer is required to file a BAR by October 16, 2006 (the first business day after October 14, 2006, which is 75 days after July 31, 2006, the date of the Acquisition), under section 8.2 of NI 51-102; the Acquisition satisfies the significance tests in Part 8 of NI 51-102 at a level greater than 40%;
12. under sections 8.4 and 8.5 of NI 51-102, the BAR must be accompanied by certain financial statements of each of FVCCTV and FVS, including audited financial statements for the two most recently completed financial years ended more than 45 days before the date of the Acquisition, and certain pro forma statements and information of the Filer; the Filer intends to rely on section 8.7 of NI 51-102 to use the eleven month period ended July 31, 2006 for each of FVCCTV and FVS in lieu of the audited financial statements for the oldest financial year required by section 8.5 (being the financial year ended August 31, 2004);
13. absent an exemption, to meet the requirements to prepare and file a BAR in accordance with the requirements of Part 8 of NI 51-102 in respect of the Acquisition, the Filer may include the following financial statements or information in respect of each of FVCCTV and FVS under sections 8.4, 8.5 and 8.7 of NI 51-102:
  - (a) balance sheets as at August 31, 2005 and July 31, 2006 and the statements of income, retained earnings and cash flows for:
    - (i) the financial year ending August 31, 2005; and
    - (ii) the eleven month financial period ending on July 31, 2006;together with the notes thereon and accompanied by an auditor’s report (the Annual Financial Statements); and
  - (b) unaudited balance sheets as at July 31, 2006 and 2005 and the unaudited statements of income, retained earnings and cash flows commencing September 1, 2005 and ending July 31, 2006 and the comparable period in the preceding financial year together with the notes thereon;and the following additional pro forma information in respect of the Filer:
  - (c) a pro forma balance sheet as at June 30, 2006 that gives effect to the Acquisition as if it had taken place as at that date;

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(d) a pro forma income statement to give effect to the Acquisition for each of:

- (i) the most recently completed financial year of the Filer, being the year ended September 30, 2005 (using the income statements of FVCCTV and FVS for the financial year ended August 31, 2005); and
- (ii) the most recently completed interim period of the Filer, being the interim period ended June 30, 2006 (using the income statements of FVCCTV and FVS for the eleven month period ended July 31, 2006 adjusted to reflect a nine month period ended May 30, 2006);

in each case, as if the Acquisition had taken place at the beginning of that financial period;

(e) pro forma earnings per share based on the pro forma financial statements; and

(f) a compilation report accompanying the pro forma financial statements signed by the Filer's auditor;

14. the Annual Financial Statements of FVCCTV and FVS are being prepared in accordance with UK GAAP and audited in accordance with UK GAAS and will include a reconciliation note prepared in accordance with the requirements of section 6.1 of NI 52-107;

15. under NI 52-107, acquisition statements that are required by securities legislation to be audited must be audited in accordance with Canadian GAAS or US GAAS unless the reporting issuer that is making the acquisition is a foreign issuer; and

16. NI 52-107 does not permit the filer to file acquisition statements for each of FVCCTV and FVS audited in accordance with U.K. GAAS.

### **Decision**

- ¶ 5 The Decision Makers being satisfied that each has jurisdiction to make this decision and that the relevant test contained in the Legislation has been met, the Requested Relief is granted, provided that the Annual Financial Statements for each of FVCCTV and FVS are accompanied by an auditor's report from the auditor of FVCCTV and FVS, which contains or is accompanied by a statement by the auditor that:

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- (a) describes the material differences in the form and content of the auditor's report prepared in accordance with UK GAAS as compared to an auditor's report prepared in accordance with Canadian GAAS; and
- (b) indicates that an auditor's report prepared in accordance with Canadian GAAS would not contain a reservation.

Martin Eady, CA  
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British Columbia Securities Commission