

# 2011 BCSECCOM 175

April 6, 2011

## Headnote

National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* - Securities Act, s. 88 - Cease to be a reporting issuer - The securities of the issuer are beneficially owned by not more than 50 persons and are not traded through any exchange or market - The issuer falls within the definition of “closely held reporting issuer” contained in BC Instrument 11-502 *Voluntary Surrender of Reporting Issuer Status* as the securities of the issuer are beneficially owned by not more than 50 persons and are not traded through any exchange or market

## 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, Saskatchewan, Manitoba, Ontario, Québec, New  
Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador,  
Yukon, Northwest Territories and Nunavut  
(the Jurisdictions)

and

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

and

In the Matter of  
Daimler Canada Finance Inc.  
(the Filer)

## Decision

## Background

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 Exemptive Relief Sought).

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

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- (a) the Autorité des marchés financiers is the principal regulator for this application, and
- (b) the decision is the decision of the principal regulator and evidences the decision of each other Decision Maker.

### **Interpretation**

Terms defined in *Regulation 14-101 respecting Definitions* (elsewhere in Canada, National Instrument 14-101 *Definitions*) have the same meaning if used in this decision, unless otherwise defined.

### **Representations**

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

1. The Filer is a corporation incorporated under the laws of Québec whose head office is located at Montréal, Québec.
2. The Filer was formed to access Canadian and foreign capital markets to raise funds, which it lends to Daimler AG subsidiaries in Canada. The Filer obtains financing through the issuance in Canada and elsewhere of term debt, including medium-term notes and commercial paper.
3. The Filer has minimal assets, operations, revenues and cash flows other than those related to the issuance, administration and repayment of securities that it distributes.
4. The authorized capital of the Filer consists of 1,000 common shares without par value. On March 29, 2011, the Filer has 100 common shares issued and outstanding.
5. All of the common shares of the Filer are beneficially owned by Daimler North America Corporation, a wholly-owned subsidiary of Daimler AG.
6. Daimler AG is a stock corporation organized under the Federal laws of Germany and is subject to the reporting requirements of the laws of the Federal Republic of Germany.
7. Daimler AG's ordinary shares are listed on the Frankfurt Stock Exchange (the FWB) and, as such, Daimler AG is subject to the rules and reporting requirements of the FWB.
8. The Filer is a reporting issuer in each of the Jurisdictions.

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9. The Filer became a reporting issuer in each of the Jurisdictions by virtue of filing a short form prospectus dated March 14, 2000 (the Initial Prospectus) under the Legislation, in respect of a distribution of medium-term notes (MT Notes) using the shelf procedures, and obtaining a mutual reliance review system decision document dated March 14, 2000 for the Initial Prospectus, which decision document evidenced the final receipt of the regulators in each of the Jurisdictions. The Initial Prospectus was renewed from time to time and lapsed on July 9, 2008 (the Prospectus).
10. All of the MT Notes issued by the Filer under the Prospectus have matured and were repaid by the Filer and all of the commercial paper issued by the Filer has matured and was repaid by the Filer.
11. On March 29, 2011, the Filer has GBP 300,000,000 principal amount of bearer medium term notes (the GBP MT Notes) outstanding, which mature on August 10, 2011.
12. All of the GBP MT Notes were issued pursuant to the prospectus dated October 21, 2005 and supplemental prospectuses dated November 7, 2005, March 6, 2006, April 27, 2006 and July 27, 2006, approved by the *Commission de Surveillance du Secteur Financier* of the Grand Duchy of Luxembourg (the Euro Prospectus), under the Euro Medium Term Note Programme of Daimler AG, the Filer and certain other subsidiaries of Daimler AG, and are unconditionally and irrevocably guaranteed by Daimler AG. There are no other series of medium term notes issued by the Filer under the Euro Prospectus.
13. The GBP MT Notes were only offered and sold to institutional investors by the Filer under the Euro Prospectus and none of the GBP MT Notes were offered or sold to retail investors or to any residents of Canada.
14. The GBP MT Notes were sold by the Filer on August 9, 2006 to 39 institutional investors geographically located in Europe, the Netherlands and Asia as to 98% or GBP 294,000,000 principal amount of the GBP MT Notes.
15. The GBP MT Notes were issued in bearer form and the global certificate representing the GBP MT Notes contains a legend restricting the offering and sale of the GBP MT Notes, directly or indirectly, in Canada, or to, or for the benefit of, any resident of Canada, in contravention of the Legislation.
16. The GBP MT Notes were offered and sold by through Barclays Bank PLC and BNP Paribas, as lead managers (the Lead Managers), pursuant to the terms of

a dealer agreement that contained restrictions on the sale of GBP MT Notes, including an acknowledgement and agreement from each dealer that it did not offer or sell, and that it would not offer or sell, any GBP MT Notes, directly or indirectly, in Canada, or to, or for the benefit of, any resident thereof in contravention of the Legislation. The final terms of the GBP MT Notes contained a restriction against the GBP MT Notes being sold to retail investors by way of a public offering within the meaning of the Prospectus Directive 2003/71/EC of the European Parliament and of the Council of November 4, 2003.

17. As the GBP MT Notes were only issued a European International Securities Identification Number (ISIN), holders of the GBP MT Notes can only hold interests in the GBP MT Notes either directly through participants in the European clearing system, Euroclear Bank S.A./N.A (Euroclear), if they are participants in such system or indirectly through participants in such system and cannot hold interests in the GBP Notes directly or indirectly through participants in CDS Clearing and Depository Services Inc. (CDS) since the GBP Notes have not been issued a Canadian ISIN and are not eligible for entry in CDS.
18. No securities of the Filer are traded on a marketplace as defined in *Regulation 21-101 respecting Marketplace Operation* (elsewhere in Canada, National Instrument 21-101 *Marketplace Operation*), other than the GBP MT Notes which are listed on the Luxembourg Stock Exchange (the LSE).
19. The GBP MT Notes were listed on the LSE for purposes of facilitating the “eligibility for investment” requirements of certain institutional investors. The GBP MT Notes have never traded on the LSE.
20. By virtue of the Filer being a subsidiary of Daimler AG and Daimler AG providing a full and unconditional guarantee of the payments to be made by the Filer under the GBP MT Notes, it is the financial position and financial condition of Daimler AG that is most relevant to the holders of the GBP MT Notes.
21. Neither the Filer nor any other person maintains a register of holders of the GBP MT Notes.
22. By virtue of the nature of a bearer security, it is only possible to make limited enquiries in order to obtain information regarding the beneficial ownership of the GBP MT Notes held by residents in Canada.

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23. In order to obtain information regarding the beneficial ownership of the GBP MT Notes for purposes of determining if the GBP MT Notes are held by residents in Canada, the Filer has made enquiries of (a) the Lead Managers regarding the persons to whom the GBP MT Notes were offered and sold and the jurisdictions within which the GBP MT Notes were sold, (b) the paying agent for the GBP MT Notes regarding the jurisdictions within which interest on the GBP MT Notes was paid, (c) the LSE regarding the trading of the GBP MT Notes on the LSE, and (d) investment dealers in Canada with whom Daimler AG has historically had a relationship, being certain of the major investment dealers in Canada, regarding the holding of GBP MT Notes through their accounts with Euroclear on behalf of any of their clients.
24. As a result of the GBP MT Notes having been issued in bearer form, the Filer is unable to conclusively determine the beneficial ownership of the GBP MT Notes by residents of Canada.
25. Based on the enquiries described above and the information obtained, and having regard for the bearer form of the debt securities outstanding, to the best of the knowledge and belief of the Filer, the outstanding securities of the Filer, including debt securities, are beneficially owned, directly or indirectly, by fewer than 15 securityholders in each of the Jurisdictions and fewer than 51 securityholders in total in Canada.
26. The Filer has no current intention to seek financing by way of a public offering of its securities in Canada.
27. The Filer is applying for a decision that it is not a reporting issuer in all of the jurisdictions in Canada in which it is currently a reporting issuer.
28. The Filer is not in default of any requirement applicable to a reporting issuer under Legislation, except for the Filer's failure to file: (a) interim financial statements and interim MD&A (as such terms are defined in *Regulation 51-102 respecting Continuous Disclosure Obligations* (elsewhere in Canada, National Instrument 51-102 *Continuous Disclosure Obligations* (Regulation 51-102)) for the interim period ended September 30, 2010; and (b) interim certificates (as such term is defined in *Regulation 52-109 respecting Certification of Disclosure in Issuers' Annual and Interim Filings*, and elsewhere in Canada, National Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings*), for the interim period ended September 30, 2010. Alternatively, the Filer has filed the quarterly financial report of Daimler AG, including interim consolidated financial statements of Daimler AG (its credit supporter), for the quarter ended September 30, 2010,

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in satisfaction of the requirements of Regulation 51-102 for the interim period ended September 30, 2010.

29. The Filer did not voluntarily surrender its status as a reporting issuer in British Columbia under British Columbia Instrument 11-502 *Voluntary Surrender of Reporting Issuer Status* (the BC Instrument) in order to avoid the minimum 10-day waiting period under the BC Instrument.
30. The Filer is not eligible to use the simplified procedure under CSA Staff Notice 12-307 *Applications for a Decision that an Issuer is not a Reporting Issuer* because it is a reporting issuer in British Columbia and is in default of the Legislation as described in paragraph 28 above.
31. Upon the Decision Makers granting the Exemptive Relief Sought, the Filer will no longer be a reporting issuer in any of the Jurisdictions.

### **Decision**

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 Exemptive Relief Sought is granted.

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