

## 2008 BCSECCOM 593

### Headnote

*Securities Act* s. 48, 76 Other - Exemption from registration and prospectus requirements for situations other than a corporate acquisition or reorganization; trades to business associates; debt settlements; or trades involving employee investment plans and consultants - Issuer wants to distribute securities on an on-going basis to an administrator of a facility that is not purchasing the securities as principal - The sole donors to the facility are the facility's administrator and certain countries that are members of the World Bank Group; these donors are accredited investors; the facility's administrator will make the investment decision

*Securities Act* s. 171 Revoke or Vary Decision - A person wants to revoke and replace a prior decision it received in order to distribute additional classes of securities to the same investor - The applicant previously obtained relief from certain requirements in securities legislation; the policy reasons for granting that relief have not changed, but the applicant needs the relief expanded to cover additional classes of securities

### Exemption Order

#### Triton Logging Inc.

#### Sections 48, 76 and 171 of the *Securities Act*, R.S.B.C. 1996, c. 418

### Background

- ¶ 1 Triton Logging Inc. (the Issuer) has applied for a variation of an exemption order dated September 10, 2008 (Original Order) that granted the Issuer an exemption from the requirements to be registered to trade and to file and obtain receipts for a preliminary prospectus and prospectus in sections 34(1)(a) and 61 of the Act (the registration and prospectus requirements) for certain intended trades of its securities to International Finance Corporation (IFC), acting in its capacity as administrator of the Sustainability Business Innovator facility (the Innovator).

### Representations

- ¶ 2 The Issuer represents that:
1. it is a company existing under the *Business Corporations Act* (British Columbia) and was incorporated on May 30, 2000; its head office is located in Saanichton, British Columbia;
  2. it has an authorized share structure of an unlimited number of common shares without par value as well as an unlimited number of Class A preferred shares without par value (Preferred Shares);

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3. it currently has 7,328,766.86 common shares issued and outstanding and 1,053,800 Preferred Shares issued and outstanding;
4. it is not a reporting issuer under the securities legislation in any province or territory of Canada;
5. IFC is an international organization, established in 1956 to further economic growth in its developing member countries by promoting private sector development; it is a member of the World Bank Group, which also comprises the International Bank for Reconstruction and Development (IBRD), the International Development Association (IDA), the Multilateral Investment Guarantee Agency (MIGA) and the International Centre for Settlement of Investment Disputes (ICSID); IFC is a legal entity separate and distinct from IBRD, IDA, MIGA and ICSID with its own Articles of Agreement, share capital, financial structure, management and staff;
6. the Innovator is a multi donor facility of IFC that funds activities for a variety of environmental and social projects undertaken by IFC's Environmental and Social Development Department; the purpose of the Innovator is to support environmental and social innovations in the private sector globally, in the form of technical assistance, grants, IFC-managed consultancies, loans, guarantees, equity, mezzanine investments and risk capital;
7. the sole donors to the Innovator are IFC and certain countries that are members of the World Bank Group;
8. IFC has sole responsibility for the operation of the Innovator and has full discretion over the funds donated to the Innovator provided that the funds are used in a manner consistent with IFC's agreements with the donors and to meet the articulated objectives of the Innovator;
9. IFC, acting in its capacity as administrator of the Innovator, wishes to subscribe for 221,852 Preferred Shares at a subscription price of US\$9.015 per share for a total subscription price of US\$2,000,000;
10. the Issuer intends to grant IFC pre-emptive rights under the Issuer's Articles; under the pre-emptive rights, the Issuer will be required to offer additional Preferred Shares to IFC and any other holders of Preferred Shares before the Issuer is able to issue Preferred Shares to other persons;

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11. IFC, acting in its capacity as administrator of the Innovator, may purchase additional Preferred Shares from the Issuer either by exercising its pre-emptive rights or by way of private placement;
12. the Issuer intends to grant to IFC, acting in its capacity as administrator of the Innovator, a put option (Put Option) entitling IFC, during the term of the Put Option to require the Issuer to re-purchase the Preferred Shares acquired by IFC, acting in its capacity as administrator of the Innovator, following the occurrence of certain events;
13. IFC is acting at arm's length to the Issuer; IFC is making the investment decision to purchase the Preferred Shares;
14. IFC is an accredited investor and a "permitted supranational agency" under National Instrument 45-106 *Prospectus and Registration Exemptions* (NI 45-106);
15. the Innovator was not created or used solely to purchase or hold securities under exemptions from the registration and prospectus requirements; and
16. neither IFC nor the Innovator is purchasing the Preferred Shares or Put Option as principal; for this reason, the Issuer cannot rely on sections 2.3 or 2.10 of NI 45-106 to distribute the Preferred Shares or Put Option to IFC, acting in its capacity as administrator of the Innovator.

### Order

¶ 3 Because it is not prejudicial to the public interest, the Executive Director orders that:

1. under section 171 of the Act, the Original Order is revoked;
2. under sections 48 and 76 of the Act, the Issuer is exempt from the registration and prospectus requirements for trades of securities of its own issue to IFC, acting in its capacity as administrator of the Innovator provided that at the time of the trade;
  - (a) IFC is an accredited investor, and
  - (b) the sole donors to the Innovator are IFC and certain countries that are members of the World Bank Group; and

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3. under section 76 of the Act, any trade in securities of the Issuer issued under this Order is deemed to be a distribution unless the conditions in subsection 2.5(2) of National Instrument 45-102 *Resale of Securities* are satisfied.

October 16, 2008

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