

2006 BCSECCOM 150

March 15, 2006

Headnote

Mutual Reliance Review System for Exemptive Relief Applications and Multilateral Instrument 11-101 *Principal Regulator System* - Multilateral Instrument 52-109, s. 4.5 - Certification of Disclosure in Issuer's Annual and Interim Filings - An issuer wants relief from the requirement in part 3 of MI 52-109 to file interim certificates - The issuer is exempt from making interim filings, as defined in MI 52-109, and is not required to file interim certificates with the SEC

Applicable British Columbia Provisions

Multilateral Instrument 52-109 *Certification of Disclosure in Issuer's Annual and Interim Filings*, s. 4.5

In the Matter of
Multilateral Instrument 52-109 *Certification of Disclosure in Issuer's Annual and Interim Filings*
of British Columbia (the Jurisdiction)

and

In the Matter of
Multilateral Instrument 11-101 *Principal Regulator System* (MI 11-101)

and

In the Matter of
IsoTis S.A. (the Filer)

Decision

Background

- ¶ 1 The British Columbia Securities Commission (the Decision Maker) in the Jurisdiction has received an application from the Filer for a decision under MI 52-109 that the Filer is exempt from the requirement to file interim certificates with the Decision Maker under section 3.1 of MI 52-109 (the Requested Relief).

Application of Principal Regulator System

- ¶ 2 Under MI 11-101,

(a) the Decision Maker is the principal regulator for the Filer, and

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(b) the Filer is relying on the exemption in Part 3 of MI 11-101 in Québec.

Representations

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

1. the Filer was formed under the laws of Switzerland;
2. the Filer's principal office is at 1 Rue de Sébeillon, 1004, Lausanne, Switzerland;
3. the Filer is a reporting issuer in the Jurisdiction and in Québec and, to the best of its knowledge, is currently not in default of its obligations as a reporting issuer under the legislation of any jurisdiction in which it is a reporting issuer (the Legislation);
4. the Filer's common shares are listed on the mainboard of the SWX Swiss Exchange (SWX), the Official Market segment of the Stock Market of Euronext Amsterdam NV (Euronext) and the Toronto Stock Exchange;
5. the Filer's common shares are registered under Section 12(g) of the *Securities and Exchange Act of 1934* (the 1934 Act);
6. because the Filer is classified as an "SEC foreign issuer" rather than a "designated foreign issuer" under National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers* (NI 71-102), it cannot rely on the certification exemption for foreign issuers in section 4.2 of MI 52-109;
7. the Filer is subject to continuous disclosure and reporting requirements of the U.S. and is subject to the requirements of the SWX and the Euronext;
8. the Filer files annual CEO and CFO certifications relating to its annual report under section 302(a) of the *Sarbanes-Oxley Act of 2002* (SOX) with the Securities and Exchange Commission (the SEC) and files the certifications with the Decision Maker as soon as reasonably practicable after they are filed with the SEC;
9. under subsection 4.1(3) of MI 52-109, the Filer would be exempt from the requirements to file Interim Certificates if
 - (a) it furnished to the SEC a current report on Form 6-K containing its quarterly financial statements and MD&A,

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- (b) the Form 6-K was accompanied by signed certificates that are furnished to the SEC in the same form required by U.S. federal securities laws implementing the quarterly report certification requirements in section 302(a) of SOX, and
 - (c) the signed certificates relating to the quarterly report filed under cover of the Form 6-K were filed through SEDAR as soon as reasonably practicable after they were furnished to the SEC;
10. as a “foreign private issuer” under the 1934 Act, the Filer furnishes to the SEC a current report on Form 6-K containing the Filer’s quarterly financial information;
 11. under current SEC rules implementing certification requirements under Section 302 of SOX, “foreign private issuers” filing summary financial information on Form 6-K are not required to furnish certificates;
 12. the Filer cannot avail itself of the exemption in section 4.1(3) of MI 52-109 because there is no form required to be filed under U.S. securities laws;
 13. the companion policy to NI 71-102 provides that if an issuer is in compliance with a particular aspect of U.S. federal securities laws, and those laws do not require an issuer to disclose, file or send in any information because the issuer is relying on an exemption from those laws, then an issuer is not required to disclose, file or send any information to rely on an exemption in NI 71-102;
 14. under an MRRS decision document dated June 28, 2005, the Filer was exempted, on certain terms and conditions, from the requirements of the securities legislation in Ontario, Alberta and New Brunswick concerning the filing of Interim Certificates.

Decision

¶ 4 The Decision Maker, being satisfied that it has jurisdiction to make this decision and that to do so would not be prejudicial to the public interest, the Requested Relief is granted for so long as:

- (a) the Filer is not required to prepare, file and deliver interim financial statements under the Legislation, whether under exemptive relief or otherwise;
- (b) the Filer is in compliance with U.S. federal securities laws implementing the certification requirements in section 302(a) of SOX applicable to the Filer;

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- (c) the Filer is in compliance with its disclosure obligations under the 1934 Act;
- (d) the Filer's signed certificates filed with the SEC relating to its annual report for each financial year are filed with the Decision Maker as soon as reasonably practicable after they are filed with the SEC; and
- (e) the Filer's signed certificates filed with the SEC relating to its quarterly financial statements, if any, are filed with the Decision Maker as soon as reasonably practicable after they are filed with the SEC.

Martin Eady, CA
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British Columbia Securities Commission