

# 2010 BCSECCOM 227

April 30, 2010

## **Headnote**

National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* – The securities of the issuer are beneficially owned by more than 50 persons and are not traded through any exchange or market - As a result of an arrangement, the issuer became a reporting issuer with more than 50 shareholders; the only security holders are former security holders of a non-reporting issuer who voted to approve the arrangement and were advised that the issuer would cease to be a reporting issuer following the arrangement; the security holders will receive the same disclosure that they received prior to the arrangement; the shares will not be listed or quoted on any 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,  
Quebec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and  
Labrador, Yukon Territory, the 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 CellFor Inc.  
(the Filer)

Decision

## **Background**

- ¶ 1 The securities regulatory authority or regulator in each of the Jurisdictions (Decision Maker) has received an application from the Filer for a decision under

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the securities legislation of the Jurisdictions (the Legislation) for an order that the Filer be deemed to have ceased to be a reporting issuer (the Exemptive Relief Sought).

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

- (a) the British Columbia Securities Commission 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**

- ¶ 2 Terms defined in National Instrument 14-101 *Definitions* have the same meaning if used in this decision, unless otherwise defined.

### **Representations**

- ¶ 3 This decision is based on the following facts represented by the Filer:
1. the Filer was incorporated on November 5, 2009 under the *Canada Business Corporations Act* (the CBCA) under incorporation number 727312-6 and is the successor to the business carried on since 1999 by another CBCA corporation formerly known as CellFor Inc., incorporation number 362927-9 (Old CellFor);
  2. the Filer's head office is located in Vancouver, British Columbia;
  3. the Filer is a reporting issuer in each of the Jurisdictions and not a reporting issuer in Ontario;
  4. the Filer is not in default of its obligations under the Legislation;
  5. the Filer's authorized capital consists of an unlimited number of common shares (Common Shares), of which 61,875,523 are issued and outstanding, and US\$18,491,495 principal amount of notes (Notes); the Common Shares and Notes are referred to herein collectively as the Filer's Securities;
  6. the Filer has 67 holders of Common Shares and 43 holders of Notes; all but 9 of the holders of Notes are also shareholders; the holders of Common Shares and holders of Notes are referred to herein collectively as the Filer Securityholders;

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7. of the total of 76 Filer Securityholders, 15 are resident in British Columbia and hold in aggregate 15,884,692 Common Shares and US\$5,879,583 principal amount of Notes, being 25.7% and 31.9% of the total number of outstanding shares and total outstanding principal amount of the Notes, respectively; the remaining Filer Securityholders are resident in the United States or other foreign jurisdictions;
8. the Filer succeeded to the business of Old CellFor pursuant to the terms of an arrangement under the CBCA (the Arrangement) that became effective on January 1, 2010; under the Arrangement, Old CellFor caused its entire business and operations, including all assets and liabilities (but excluding certain retained assets and liabilities and certain tax losses) to be transferred to the Filer; a successor under the Arrangement to Old CellFor, Acadian Timber Corp., then exchanged its securities with the holders of securities of Acadian Timber Income Fund (Acadian), which was a reporting issuer in each of the Canadian Provinces and Territories, to effect the conversion of Acadian from an income trust to a corporation;
9. Immediately prior to completion of the Arrangement, there were:
  - (a) 2 shareholders holding in aggregate 1,377,597 common shares of Old CellFor;
  - (b) 3 shareholders holding in aggregate 5,857,524 preferred shares of Old CellFor, which were convertible to common shares in certain circumstances;
  - (c) 9 shareholders holding in aggregate 35,700,423 Class B Voting shares of Old CellFor;
  - (d) 49 shareholders holding in aggregate 52,591,640 Class C Voting shares of Old CellFor;
  - (e) 55 shareholders holding in aggregate 25,003,035 Class D Voting shares of Old CellFor (the Class B Voting shares, Class C Voting shares and Class D Voting shares being referred to collectively as Old CellFor Voting Shares);
  - (f) 9 noteholders holding an aggregate US\$35,700,425 amount of series B notes of Old CellFor;
  - (g) 49 noteholders holding an aggregate US\$52,591,640 amount of series C notes of Old CellFor;

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- (h) 55 noteholders holding an aggregate US\$26,691,034 amount of series D notes of Old CellFor (the series B notes, series C notes and series D notes being referred to collectively as the Old CellFor Convertible Notes);
- (i) 33 noteholders holding in aggregate US\$11,167,123 principal (plus accrued interest) amount of interim (unsecured) notes of Old CellFor; and
- (j) 40 noteholders holding in aggregate US\$7,324,372 principal (plus accrued interest) amount of senior (secured) notes of Old CellFor

(the former holders of the securities of Old CellFor are referred to as the Old CellFor Securityholders).

10. the Arrangement specified the manner by which the existing Old CellFor securities were either redeemed or converted to securities of the Filer:

- (a) each interim note and senior note was exchanged for an equivalent principal (plus accrued interest as of January 1, 2010 on completion of the Arrangement) amount of Notes of the Filer;
- (b) the principal amounts of the Old CellFor Convertible Notes were partially repaid by the delivery of Common Shares of the Filer, and the holders of the Old CellFor common shares and preferred shares received as a return of capital Common Shares of the Filer pro-rata based on their entitlements to common shares of Old CellFor on a fully converted basis, and in aggregate 61,875,522 Common Shares of the Filer were issued to such holders;
- (c) the remaining principal amount of the Old CellFor Convertible Notes following partial repayment in (b) above was converted to redeemable common shares of the Filer based on the basis of one redeemable common share for each common share of Old CellFor such holders were entitled to acquire upon conversion of the Old CellFor Convertible Notes, and in aggregate 57,491,554 redeemable common shares were issued to the former holders of Old CellFor Convertible Notes;
- (d) all of the outstanding common shares of Old CellFor were converted to redeemable common shares of the Filer on a one for one basis, and in aggregate 1,377,597 redeemable common shares were issued to the former holders of common shares of Old CellFor;

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- (e) all of the outstanding preferred shares of Old CellFor were converted to redeemable common shares of the Filer on the basis of one redeemable common share being issued for each common share to which holders of the preferred shares would be entitled upon conversion of the preferred shares, and in aggregate 3,006,371 redeemable common shares were issued to the former holders of preferred shares;
  - (f) all of the redeemable common shares issued in steps (c), (d) and (e) above were redeemed by payment of \$1,000 in aggregate to the holders thereof; and
  - (g) all of the Old CellFor Voting Shares were purchased for cancellation by payment of \$1.00 in aggregate to the holders thereof.
11. Under the Arrangement, the former Acadian unitholders became shareholders of a successor to Old CellFor, effected by the following exchange of securities:
- (a) Old CellFor and a wholly owned subsidiary of Old CellFor, 7273177 Canada Inc. (incorporation number 727317-7), amalgamated to form a new corporation (Amalgamated Old CellFor) (incorporation number 4528654);
  - (b) unitholders of Acadian were deemed to transfer all of their Acadian units to Amalgamated Old CellFor in exchange for common shares of Amalgamated Old CellFor on a one-for-one basis, with the effect that the former Acadian unitholders held, collectively, all of the common shares of Amalgamated Old CellFor; and
  - (c) Amalgamated Old CellFor changed its name to “Acadian Timber Corp.”.
12. The securityholders of Acadian did not have an interest in New CellFor immediately after the Arrangement was completed;
13. Acadian Timber Corp. is a reporting issuer in each of the Canadian Provinces and Territories;
14. pursuant to an order (the Interim Order) of the Ontario Superior Court of Justice (the Court), Old CellFor convened a meeting of all of the Old CellFor Securityholders at which approval of the Arrangement was sought;
15. the Court directed that a notice of the meeting along with an information circular (the Notice and Circular) be provided to the Old CellFor

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Securityholders and that the Notice and Circular be distributed to the Old CellFor Securityholders not later than 21 days prior to the meeting;

16. the Notice and Circular was either mailed or delivered in person or by courier to each of the Old CellFor Securityholders at their addresses set out in Old CellFor's register;
17. the Notice and Circular stated that the Filer would be making this application for cessation of its status as a reporting issuer;
18. the Notice and Circular were prepared in conformity with the requirements of sections 55 and 56 of the *Canada Business Corporations Regulations* (the Regulations), which specified that the Notice and Circular be in the form of and contain the disclosure provided in Form 51-102F5, subject to certain exceptions as set out in section 55(3) of the Regulations;
19. as Old CellFor was not a reporting issuer, the solicitation of proxies for the purposes of the meeting of Securityholders was not subject to Part 9 of National Instrument 51-102 *Ongoing Requirements for Issuers and Insiders* and National Instrument 54-101 *Communication with Beneficial Holders of Securities of a Reporting* did not apply;
20. in the Interim Order, the Court specified that the Old CellFor Securityholders would be organized into three classes for the purposes of voting to approve the Arrangement, with the effect that all of the Old CellFor Securityholders were entitled to vote:
  - (a) the first class was comprised of shareholders holding all three classes of Old CellFor's equity securities (the common, preferred and Old CellFor Voting Shares); holders of Old CellFor's Convertible Notes also comprised this first class, as such noteholders voted through the Old CellFor Voting Shares held by them in accordance with the terms of Old CellFor's articles and securityholder agreement;
  - (b) the second class was comprised of holders of Old CellFor's interim (unsecured) notes; and
  - (c) the third class was comprised of holders of Old CellFor's senior (secured) notes.
21. none of the Old CellFor Securityholders contested the composition of the three classes;

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22. the Court also specified that the affirmative vote of 2/3 of the Old CellFor Securityholders in each of the three classes voting at the meeting would be required for the Arrangement to be approved;
23. at the meeting, 87.6% of the Old CellFor Securityholders comprising the first class, 85.4% of the Old CellFor Securityholders comprising the second class and 97% of the Old CellFor Securityholders comprising the third class voted in person or by proxy;
24. the Arrangement was approved unanimously by those Old CellFor Securityholders voting at the meeting;
25. the Arrangement was subsequently approved by an order of the Court;
26. all of the Filer Securityholders will receive audited annual financial statements of the Filer in compliance with the provisions of the CBCA and the terms of the securityholder agreement; this disclosure is equivalent to the disclosure provided by Old CellFor to the Old CellFor Securityholders;
27. Filer Securityholders holding more than 5% of the Filer's outstanding Common Shares are entitled to receive additional disclosure regarding the Filer's business and operations, including monthly financial statements and budget variance information, scientific and operational progress reports and forward looking budget planning materials in accordance with the terms of the securityholder agreement; all of the Filer Securityholders receiving this additional disclosure were entitled to receive the equivalent disclosure from Old CellFor;
28. no Filer Securityholder is entitled to receive less disclosure from the Filer than was received by such Filer Securityholder in its capacity as an Old CellFor Securityholder from Old CellFor;
29. the Filer became a reporting issuer in the Jurisdiction upon the completion of the Arrangement as a result of the application of the definition of "reporting issuer" in the Legislation;
30. Old CellFor relied on registration and prospectus exemptions under the *Securities Act* (British Columbia) in respect of the distribution of its securities to the Old CellFor Securityholders, who are now the Filer Securityholders;
31. Old CellFor was not a reporting issuer in any Jurisdiction and did not have (and the Filer does not now have) any intention of effecting a distribution to

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the public pursuant to a prospectus or in any manner other than in reliance on exemptions from the prospectus requirements of the Legislation;

32. none of the Filer Securityholders acquired their interests in the Filer's Securities or the Old CellFor Securities in circumstances where they relied upon or expected to rely upon the disclosure mandated in respect of a distribution of a security of a reporting issuer;

33. all of the Filer Securityholders are bound by the terms of a securityholder agreement that restricts transfer of the Filer's Securities; and

34. the Filer's Securities are not listed on any stock exchange or similar market.

### **Decision**

¶ 4 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.

Martin Eady, CA  
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British Columbia Securities Commission