

2008 BCSECCOM 545

October 10, 2008

Headnote

Multilateral Instrument 11-102 *Passport System* – National Instrument 45-106 *Prospectus and Registration Exemptions*, Part 6 and Part 7 - The Filers want an exemption from the exempt distribution reporting requirements in Part 6 of NI 45-106 - The issuer is restructuring; the restructuring was approved by the issuer's principal regulator; the issuer previously issued securities under the accredited investor and family, friends and business associates exemptions in NI 45-106 to investors; the issuer filed the requisite report of exempt distribution and fees for those distributions; under the restructuring, those same investors will receive a new security distributed by the issuer under the accredited investor and family, friends and business associates exemptions in NI 45-106; the issuer will provide a list of investors.

Applicable British Columbia Provisions

National Instrument 45-106, Part 6 and Part 7

In the Matter of the
Securities Legislation of
British Columbia
(the Jurisdiction)

and

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

and

In the Matter of
CPLC Limited Partnership and CPLC Management Group Ltd.
(the Filers)

Decision

Background

- ¶ 1 The principal regulator in the Jurisdiction has received an application from the Filers for a decision under the securities legislation of the Jurisdiction of the principal regulator (the Legislation) for a decision pursuant to section 7.1(1) of National Instrument 45-106 *Prospectus and Registration Exemptions* (NI 45-106) that CPLC Limited Partnership (the Partnership) be exempt from the reporting requirements set out in sections 6.1 and 6.2(2) of NI 45-106 in respect of certain distributions of securities of its own issue (the Exemption Sought).

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

- (a) the British Columbia Securities Commission is the principal regulator for this application, and
- (b) the Filers have provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (MI 11-102) is intended to be relied upon in Alberta.

Interpretation

- ¶ 2 Terms defined in National Instrument 14-101 *Definitions* and MI 11-102 have the same meaning as if used in this decision, unless otherwise defined.

Representations

- ¶ 3 This decision is based on the following facts represented by the Filers:
- 1. CPLC Limited Partnership (the Partnership, as defined above) is a limited partnership that has been established under the laws of British Columbia pursuant to a limited partnership agreement (the Limited Partnership Agreement) among CPLC Management Group Ltd. (the General Partner), each initial limited partner listed on Schedule “A” of the Limited Partnership Agreement and each party who from time to time is accepted as a limited partner in the Partnership, and those other persons who become a limited partner upon being registered as such under the *Partnership Act* (British Columbia) (such limited partners collectively, the Limited Partners);
 - 2. units of the Partnership were be offered for sale to the Limited Partners in reliance on available exemptions from the prospectus and dealer registration requirements, namely section 2.3 (accredited investors) and section 2.5 (family, friends and business associates) of NI 45-106;
 - 3. the General Partner is a company organized under the laws of British Columbia, with its head office located in British Columbia;
 - 4. the General Partner has previously made distributions of securities to investors with the General Partner (the Existing Investors) in reliance on available exemptions from the prospectus and dealer registration requirements, namely section 2.3 (accredited investors) and section 2.5 (family, friends and business associates) of NI 45-106;

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5. the requisite Form 45-106F1 and applicable filing fees have been filed in respect of the distributions of securities of the General Partnership to the Existing Investors;
6. under a restructuring of the General Partner's business arrangements (the Restructuring Plan) developed further to discussions with and approved by the principal regulator, the Existing Investors shall invest in the Partnership and become Limited Partners of the Partnership;
7. the Partnership will be an investment fund by virtue of it being a mutual fund in British Columbia;
8. the Partnership is unable to rely on the prospectus and registration exemptions contained in section 2.4 (private issuer) of NI 45-106 (the private issuer exemption) in connection with the sale of units of the Partnership to the Existing Investors because the private issuer exemption does not apply to an investment fund;
9. the private issuer exemption does not require the filing of the Form 45-106F1 and the payment of filing fees;
10. the Partnership seeks to rely on the prospectus and registration exemptions contained in section 2.3 (the accredited investor exemption) and section 2.5 (the family, friends and business associates exemption) of NI 45-106 in connection with the sale of the units of the Partnership to the Existing Investors; both such exemptions require the filing of the Form 45-106F1 and the payment of filing fees;
11. the Exemption Sought is only sought in respect of the sale of units of the Partnership to the Existing Investors pursuant to the Restructuring Plan; the Partnership will file a Form 45-106F1 and applicable filing fees for all other distributions of securities of its own issue, in accordance with Part 6 of NI 45-106;
12. in the absence of the Exemption Sought, the Partnership would be subject to the reporting requirements set out in Part 6 of NI 45-106 in connection with the sale of the units of the Partnership to the Existing Investors; and
13. neither the Partnership nor the General Partner is in default of securities legislation in any jurisdiction.

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Decision

- ¶ 4 The principal regulator is satisfied that the decision meets the test set out in the Legislation for the principal regulator to make the decision.

The decision of the principal regulator under the Legislation is that the Exemption Sought is granted provided that:

1. the decision is only granted in respect of the sale of units of the Partnership to the Existing Investors pursuant to the Restructuring Plan; and
2. the Partnership files a Form 45-106F1, in accordance with Part 6 of NI 45-106 and applicable filing fees for all other distributions of securities of its own issue.

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