

2010 BCSECCOM 420

July 12, 2010

Headnote

Multilateral Instrument 11-102 *Passport System* and National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* – *Securities Act*, s. 76 – prospectus requirements – Exemption from 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 – Translink seeks prospectus relief for distributions of debt securities that are analogous to debt securities of or guaranteed by any municipal corporation in Canada, or debt securities secured by or payable out of rates or taxes levied under the law of a jurisdiction of Canada on property in the jurisdiction and to be collected by or through the municipality in which the property is situated - The issuer's structure and obligations are analogous to municipal corporations in British Columbia; the issuer will only issue debt securities; the debt securities to be issued will be at least as safe as the debt securities of many municipalities in British Columbia given the statutory authority of the issuer to raise revenues through property and other taxes

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss. 61 and 76

In the Matter of
the Securities Legislation
of British Columbia and Ontario
(the Jurisdictions)

and

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

and

In the Matter of
South Coast British Columbia Transportation Authority
(the Filer)

Decision

Background

- ¶ 1 The local 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 relief from the prospectus requirement in connection with distributions of debt securities of the Filer (the Exemption Sought).

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

- (a) the British Columbia Securities Commission is the principal regulator for this application;
- (b) the Filer has provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (MI 11-102) is intended to be relied upon on in Alberta, Saskatchewan, Manitoba, Quebec, Nova Scotia, New Brunswick, Prince Edward Island, Newfoundland and Labrador, Yukon, Northwest Territories and Nunavut; and
- (c) the decision is the decision of the principal regulator and evidences the decision of the securities regulatory authority or regulator in the Province of Ontario.

Interpretation

- ¶ 2 Terms defined in National Instrument 14-101 *Definitions* and MI 11-102 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 (formerly known as the Greater Vancouver Transportation Authority) is a regional public transportation authority that was established in 1998 under the *Greater Vancouver Transportation Authority Act* (British Columbia); the *Greater Vancouver Transportation Authority Act* (British Columbia) was amended and re-named the *South Coast British Columbia Transportation Authority Act* (British Columbia) (the Act) in November 2007;
 - 2. the governance structure of the Filer includes a board of directors consisting of 9 members; a mayors' council on regional transportation composed of 22 members – the mayors from all 21 municipalities within the Filer's transportation service region and a representative from the Tsawwassen First Nation; and a regional transportation commissioner;
 - 3. the Filer has a head office at 1600 – 4720 Kingsway, Burnaby, British Columbia; the Filer does not have share capital;

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4. the Filer is not a reporting issuer or its equivalent in any jurisdiction of Canada;
5. to its knowledge, the Filer is not in default of any of the requirements of the applicable securities legislation in any Jurisdiction;
6. the Filer is responsible for the provision of an integrated regional public transportation system in Metro Vancouver, which includes the major road network as well as public transit;
7. under the Act, the Filer may raise revenues by means of taxes (including property taxes, fuel taxes and parking sales taxes), levies, project toll charges, user fees and motor vehicle charges; revenues raised by means of property taxes are collected by the applicable municipality on behalf of the Filer; section 7(7) of the Act prohibits the adoption of deficit budgets (after taking into account any cumulative funded surpluses) and sections 194(4) and 200(3) of the Act require that financial plans be balanced;
8. under the Act, the Filer is restricted from incurring debt obligations that exceed the greater of (i) \$1 billion 50 million, (ii) such higher amount that has been ratified by the board of directors of the Greater Vancouver Regional District, and (iii) an amount proposed in a supplementary transportation and financial plan that has been approved by the mayors' council, after consultation with the Greater Vancouver Regional District; the Filer's debt obligation 'cap' is currently \$2 billion 800 million;
9. the Filer intends to issue debt securities to finance capital expenditures;
10. the Filer anticipates that the purchasers of the debt securities will primarily be institutional investors who would qualify as "accredited investors" under National Instrument 45-106 *Prospectus and Registration Exemptions* (NI 45-106);
11. the Filer intends to obtain a credit rating from an "approved credit rating organization" (as that term is defined in NI 45-106) prior to the initial issuance of any debt securities.

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.

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The decision of the Decision Makers under the Legislation is that the Exemption Sought is granted, provided that for each Jurisdiction, this decision will terminate if the Act is amended to remove the Filer's power to assess property taxes.

Brent W. Aitken
Vice Chair
British Columbia Securities Commission