

2005 BCSECCOM 707

November 14, 2005

Headnote

Mutual Reliance Review System for Exemptive Relief Applications

NI 52-107 Acceptable Accounting Principles, Auditing Standards and Reporting Currency, s. 9.1 - An issuer that is not yet an 'SEC issuer' wants to file financial statements prepared in accordance with U.S. GAAP and audited in accordance with U.S. GAAS - The issuer is contractually bound to become an SEC registrant; the issuer has filed a registration statement with the SEC; the issuer will meet all the elements of the definition of 'SEC issuer' once the SEC accepts its registration statement; the issuer will file financial statements that comply with the requirements for SEC issuers in NI 52-107 and NI 51-102; if the issuer does not become an SEC issuer by a set date, it will re-file its financial statements in accordance with Canadian GAAP and Canadian GAAS

NI 51-102 Continuous Disclosure Obligations, s. 13.1 - An issuer that is not yet an 'SEC issuer' wants to file MD&A using the U.S. form of MD&A - The issuer is contractually bound to become an SEC registrant; the issuer has filed a registration statement with the SEC; the issuer will meet all the elements of the definition of 'SEC issuer' once the SEC accepts its registration statement; the issuer will file MD&A in the U.S. form; if the issuer does not become an SEC issuer by a set date, it will re-file its MD&A in Form 51-102F1

Applicable British Columbia Provisions

National Instrument 52-107, ss. 3.1, 3.2 and 9.1

National Instrument 51-102 ss. 1.1, 5.1, 5.2 and 13.1

Securities Rules, B.C. Reg. 194/97, ss. 2 and 3

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

and

In the Matter of
the Mutual Reliance System for Exemption Relief Application

and

In the Matter of
BPI Industries Inc. (the Filer)

MRRS Decision Document

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Background

- ¶ 1 The local securities regulatory authority or regulator (the Decision Maker) in each of the Jurisdictions has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) that:
- (a) the requirement in the Legislation that financial statements, other than acquisition statements, be prepared and audited in accordance with Canadian GAAP and GAAS not apply to the Filer in respect of its July 31, 2005 annual financial statements (the 2005 financial statements); and
 - (b) the Filer be permitted to file its management's discussion and analysis relating to the 2005 financial statements in accordance with Item 303 of Regulation S-K under the 1934 Act,
- (the Requested Relief).

Under the Mutual Reliance Review System for Exemptive Relief Applications

- (a) the British Columbia Securities Commission is the principal regulator for this application, and
- (b) this MRRS decision document evidences the decision of each Decision Maker.

Interpretation

- ¶ 2 Defined terms contained in National Instrument 14-101 *Definitions* or National Instrument 52-107 *Acceptable Accounting Principles, Auditing Standards and Reporting Currency* (NI 52-107) have the same meaning in this decision.

Representations

- ¶ 3 This decision is based on the following facts represented by the Filer:
- 1. the Filer is a corporation governed by the *Business Corporations Act* (British Columbia) with its head office in Solon, Ohio;
 - 2. the Filer is a reporting issuer under the Legislation and is not, to its knowledge, in default of any applicable requirement under the Legislation;
 - 3. the Filer's authorized capital consists of 100,000,000 common shares without par value, of which 62,940,237 common shares were outstanding as at October 17, 2005;
 - 4. the common shares trade on the TSX Venture Exchange;

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5. the Filer is contractually bound under its latest financing documents to become registered with the Securities Exchange Commission (SEC);
6. the Filer has filed a Form S1 with the SEC and expects the SEC will approve the S1 on or before December 15, 2005;
7. the Filer will become an SEC issuer when it satisfactorily answers all comments raised by the SEC relating to the S1; and
8. the Filer intends to file the 2005 financial statements and mail them with its proxy materials for its annual general meeting of shareholders on or before November 16, 2005, which may be before it becomes an SEC issuer.

Decision

- ¶ 4 Each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Maker with the jurisdiction to make the decision has been met.

The decision of the Decision Makers under the Legislation is that the Requested Relief is granted provided that:

1. the Filer files the 2005 financial statements prepared in accordance with U.S. GAAP;
2. the notes to the first two sets of the Filer's annual financial statements after the change from Canadian GAAP to U.S. GAAP and the notes to the Filer's interim financial statements for interim periods during those two years:
 - (a) explain the material differences between Canadian GAAP as applicable to public enterprises and U.S. GAAP that relate to recognition, measurement and presentation;
 - (b) quantify the effect of material differences between Canadian GAAP as applicable to public enterprises and U.S. GAAP that relate to recognition, measurement and presentation, including a tabular reconciliation between net income reported in the financial statements and net income computed in accordance with Canadian GAAP as applicable to public enterprises; and
 - (c) provide disclosure consistent with disclosure requirements of Canadian GAAP as applicable to public enterprises to the extent not already reflected in the financial statements;

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3. the financial information for any comparative periods that were previously reported in accordance with Canadian GAAP are presented as follows:
 - (a) as previously reported in accordance with Canadian GAAP;
 - (b) as restated and presented in accordance with U.S. GAAP; and
 - (c) supported by an accompanying note that
 - (i) explains the material differences between Canadian GAAP as applicable to public enterprises and U.S. GAAP that relate to recognition, measurement and presentation;
 - (ii) quantifies the effect of material differences between Canadian GAAP as applicable to public enterprises and U.S. GAAP that relate to recognition, measurement and presentation, including a tabular reconciliation between net income as previously reported in the financial statements and net income as restated and presented in accordance with U.S. GAAP;
4. by November 28, 2005, the Filer re-files its October 31, 2004, January 31, 2005 and April 30, 2005 interim financial statements restated in accordance with U.S. GAAP and including notes that:
 - (a) explain the material differences between Canadian GAAP as applicable to public enterprises and U.S. GAAP that relate to recognition, measurement and presentation;
 - (b) quantify the effect of material differences between Canadian GAAP as applicable to public enterprises and U.S. GAAP that relate to recognition, measurement and presentation, including a tabular reconciliation between net income reported in the financial statements and net income computed in accordance with Canadian GAAP as applicable to public enterprises; and
 - (c) provide disclosure consistent with disclosure requirements of Canadian GAAP as applicable to public enterprises to the extent not already reflected in the financial statements;
5. the 2005 financial statements are audited in accordance with U.S. GAAS and are accompanied by an auditor's report prepared in accordance with U.S. GAAS that

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- (a) contains an unqualified opinion;
 - (b) identifies all financial periods presented for which the auditor has issued an auditor's report;
 - (c) refers to the former auditor's reports on the comparative periods, if the Filer has changed its auditor and one or more of the comparative periods presented in the financial statements were audited by a different auditor; and
 - (d) identifies the auditing standards used to conduct the audit and the accounting principles used to prepare the financial statements;
6. the Filer files the supplement to its management's discussion and analysis of the 2005 financial statements set out in section 5.2 of National Instrument 51-102 *Continuous Disclosure Obligations*; and
7. if the Filer does not become an SEC issuer by January 15, 2006, the Filer will immediately re-file on SEDAR all the previous financial statements and management discussion and analysis it filed using U.S. GAAP and U.S. GAAS using Canadian GAAP and Canadian GAAS and Form 51-102F1 *Management's Discussion and Analysis*.

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