

## 2006 BCSECCOM 457

### Headnote

A not-for-profit issuer wants to offer securities through its financing arm - A not-for-profit issuer has established a financing arm to separate its education, benevolent, fraternal, charitable, religious or recreational operations from its financing activities; the financing arm will not operate for the purpose of making a profit, but solely to support the operations of the not-for-profit issuer; the not-for-profit issuer will be the only security holder of the financing arm that receives any benefits from the net earnings of the financing arm; investors will receive an information statement that provides disclosure about both the financing arm and the not-for-profit issuer

### Exemption Order

#### Glenfir Capital Inc.

#### Sections 48 and 76 of the Securities Act, R.S.B.C. 1996, c. 418

### Background

- ¶ 1 Glenfir Capital Inc. has applied for an exemption from the requirements to be registered to trade and to file and obtain receipts for a preliminary prospectus and prospectus in sections 34(1)(a) and 61 of the Act (the registration and prospectus requirements) for trades of securities of Glenfir to members (families) of The Glenfir School Society (the Society).

### Representations

- ¶ 2 Glenfir represents that:
1. it is incorporated under the laws of British Columbia with its registered office in Penticton, British Columbia;
  2. it is not, and has no present intention of becoming, a reporting issuer or the equivalent in British Columbia or in any other jurisdiction, nor does it intend to list its securities on any stock exchange or quotation system;
  3. the Society is a registered charity that was initially incorporated in 1992 and organized exclusively for educational purposes;
  4. the Society has established and governs a non-profit, independent, non-denominational and co-educational school – The Glenfir School – with families of students as its members;
  5. all of the families are residents of British Columbia;

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6. the Society owns and operates The Glenfir School, and the approximately 17 acres of land and buildings on which it is situated;
7. Glenfir School is a private school in Summerland, British Columbia, that currently has approximately 130 students, from Kindergarten through Grade 12;
8. Royal Bank of Canada (the Bank) currently has a \$2.6 million mortgage over the Society's land and buildings securing two lines of credit with the Bank with a combined value of \$2.6 million and an effective annual interest rate of 8.16%;
9. under the terms of the mortgage, the Society must make monthly payments totaling approximately \$380,000 per year, of which approximately \$210,000 is interest and \$170,000 is mandatory principal repayment;
10. in the past few years, the Society's financial position has deteriorated significantly;
11. to encourage the families to provide financial relief to the Society through a credible and fiscally responsible structure, and to permit the Society to focus on education-related issues, the members of the Society unanimously approved a financing structure that
  - (a) separates the management and stewardship of the Society's main financial assets from the educational / curriculum management component of the Society,
  - (b) allows the Society to make interest-only payments (as opposed to principal payments) on its material debt,
  - (c) involves the families as lenders, and
  - (d) ensures that the families receive only interest and principal repayments on the amounts invested, not any net earnings of the Society;
12. under the financing structure,
  - (a) all of Glenfir's shares will be owned by the families and the Society,

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- (b) Glenfir will borrow approximately \$3.2 million from the families by way of 5% debentures (Debentures) and use that money and shares of Glenfir to buy the beneficial interest in the land and buildings from the Society,
  - (c) the Society will use the proceeds from the sale to discharge its existing mortgage with the Bank (approximately \$2.6 million) and a registered second mortgage of approximately \$450,000,
  - (d) Glenfir will then lease the land and buildings back to the Society on a triple net basis, meaning that the Society will be responsible for lease payments, ongoing maintenance of the building and grounds as well as all utilities, property taxes (if any) and other costs and fees related to the use or improvement of the property, with monthly payments of approximately \$14,333, and
  - (e) the Society's lease payments will cover the annual interest payments payable by Glenfir on the Debentures and the ongoing administrative costs of Glenfir;
13. through this structure, the Society will be able to lease the land and buildings at a much lower rate than the current mortgage payments required by the Bank and so improve its financial situation and extend its financial viability;
14. Glenfir's authorized capital consists of an unlimited number of Class A shares and 100 Class B shares of which 1 Class A share and no Class B shares were outstanding as at May 5, 2006;
15. the Class A shares will be issued to families for nominal value and will each have one vote but no right to dividends or to residual in the event of a liquidation or winding up;
16. the Class B shares may only be issued to the Society and will be issued for nominal value;
17. the Class B shares will
- (a) have voting rights,
  - (b) have limited dividend rights after appropriate provision for payment of principal and interest owing under the Debentures,
  - (c) be entitled to the residual in the event of a liquidation or winding up, and

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- (d) entitle the Society, as the holder of the Class B shares, to purchase the land and buildings from Glenfir at any time for \$3,250,000 plus any accrued but unpaid lease payments;
18. families will be required, as a condition of each child being eligible to attend the school, to become a member of the Society and to purchase at least 5 Units from Glenfir – each Unit comprising \$5,000 principal amount of Debentures and 1 Class A share;
19. the families' investment will be separate from, and in addition to, tuition payable directly to the Society in respect of each child who attends the school;
20. in the event of default on the Debentures, principal and accrued but unpaid interest to date will become due;
21. the Society will have the first right, but not an obligation, to purchase the Units of any family when the family's child to which the Units relate leaves the school;
22. any Class A shares purchased by the Society will automatically be deemed to be tendered for nominal consideration to Glenfir for cancellation;
23. the Debentures will bear interest at 5%, payable monthly, and will each mature in October 31 of the year the family no longer has a child enrolled in the school, unless a Debenture has been purchased by the Society, in which case it will mature one year after the date the Society acquired the Debenture;
24. if the Society does not or is unable to purchase the Units from a family in a timely fashion, Glenfir will repurchase such Units when a new student enters the school (and, consequently, a new investment in Units is made by a new family);
25. if there are families who have subscribed for more than 5 Units per child at the school, there will be procedures put in place to allow the families to divest of their holdings of Units over time (down to the 5 Unit per family minimum) as new families join the Society in order to share the financial participation as equitably as possible among the families;
26. Glenfir's Articles will provide that the Society must approve any amendment to the Articles, including the share rights, and that, subject to certain exceptions, the Society must consent to any sale, lease or division of all or any part of the land and buildings, such consent not to be unreasonably withheld;

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27. the lease agreement will provide that in the event the Society defaults in its lease payments, subject to limited grace and cure periods, it will first be given the opportunity to purchase the land and buildings from Glenfir for \$3,250,000 plus any accrued but unpaid lease payments and, if it does not exercise this option, Glenfir will be entitled to sell the land and buildings;
28. if Glenfir sells all or any part of the land and buildings, either to the Society or to a third party, Glenfir will apply the proceeds of the sale to redeem any outstanding Debentures on a pro rata basis for the principal amount, and any accrued but unpaid interest, with the balance paid to the Society as a dividend payment on the Class B shares;
29. in certain circumstances, and with the consent of the Debentureholders, the proceeds may be paid directly to the Society, without the prior redemption of outstanding Debentures;
30. the members of the Society and Glenfir's Class A shareholders will be identical and any net earnings derived from the Society's current or future assets will still flow only to the Society itself;
31. Glenfir's Board of Directors will be comprised of individuals who have significant experience with the financing and day to day operation of both public and private companies;
32. the Board of Directors will be elected annually by the Class A shareholders;
33. Glenfir will deliver an information statement in Form 32-901F, with all modifications necessary to reflect that it is Glenfir, not the Society, that is issuing securities, to the families before they purchase Units; and
34. the information statement will provide disclosure about both Glenfir and the Society, and will include disclosure about the risk of the families not receiving interest or a return of principal on the Debentures.

### **Order**

- ¶ 3 Because it is not prejudicial to the public interest, the decision maker orders under sections 48 and 76 of the Act, that the prospectus and registration requirement shall not apply to the distribution, from time to time, of the Units comprised of Class A Shares and Debentures to families provided that

- (a) Glenfir delivers to each purchaser and the Society a copy of this order before it distributes the Units to the purchaser,

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- (b) Glenfir delivers the information statement to each purchaser before the purchaser agrees in writing to purchase the Units, and
- (c) no commission or remuneration is paid in connection with the sale of the Units.

¶ 4 July 26, 2006

Noreen Bent  
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British Columbia Securities Commission