

2010 BCSECCOM 495

August 27, 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 - Issuer became a reporting issuer by filing a prospectus, but the offering under the prospectus did not close; the issuer does not intend to do a public offering of its securities; the issuer's securities do not trade on any marketplace; the issuer's securityholders are aware of the issuer's intention to cease to be a reporting issuer

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, s. 88

In the Matter of
the Securities Legislation of
Ontario, British Columbia, Alberta, Saskatchewan, Manitoba,
Quebec, Nova Scotia, Newfoundland & Labrador,
Prince Edward Island, New Brunswick,
Northwest Territories, Yukon and Nunavut
(the Jurisdictions)

and

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

and

In the Matter of
Porter Aviation Holdings Inc.
(the Filer)

Decision

Background

The securities regulatory authority or regulator in each of the Jurisdictions (the Decision Makers) have received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) that the Filer is not a reporting issuer (the Exemptive Relief Sought).

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

2010 BCSECCOM 495

- (a) the Ontario 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

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

Representations

This decision is based on the following facts represented by the Filer:

1. The Filer is a corporation incorporated under the *Business Corporations Act* (Ontario) and its head office is located at Billy Bishop Toronto City Airport, Toronto, Ontario, M5V 1A1.
2. The Filer is a reporting issuer in each of the Jurisdictions. It became a reporting issuer in the Jurisdictions upon the issuance of a receipt for a prospectus dated May 21, 2010 (the Prospectus).
3. After receiving the receipt for the Prospectus, the Filer withdrew the public offering of its securities contemplated thereby, as announced in its news release dated June 1, 2010.
4. No securities have been, or will be, distributed pursuant to the Prospectus.
5. No securities of the Filer are traded on a marketplace as defined in National Instrument 21-101 *Marketplace Operation*.
6. The Filer is not in default of any of its obligations under the securities legislation of the Jurisdictions as a reporting issuer.
7. Each of the System for Electronic Document Analysis and Retrieval (SEDAR) and System for Electronic Disclosure by Insiders (SEDI) profiles of the Filer are up to date and there are no outstanding fees under the Legislation required to be paid by the Filer.
8. The Filer is authorized to issue an unlimited number of common shares, an unlimited number of Class A preferred shares, an unlimited number of Class A-1 preferred shares, an unlimited number of Class X variable voting shares, an unlimited number of Class X-1 variable voting shares, an unlimited number

2010 BCSECCOM 495

of Class B special shares, an unlimited number of Class B-2 special shares and an unlimited number of senior preferred shares of which 8,112,292 common shares, 21,612,766 Class A preferred shares, 4,263,861 Class A-1 preferred shares, 5,131,915 Class X variable voting shares, 736,139 Class X-1 variable voting shares and 3,000,000 senior preferred shares are currently issued and outstanding. There are no Class B special shares or Class B-2 special shares currently issued and outstanding. There are an aggregate of 2,870,000 options to purchase Class B special shares outstanding.

9. The Filer currently has the same securityholders as it had prior to filing the Prospectus and the outstanding securities of the Filer have not changed since it filed the Prospectus except that: (a) 325,000 options to purchase Class B special shares held by six former employees of the Filer have expired in accordance with the terms of such options, and (b) on August 8, 2010 the Filer issued 3,000,000 senior preferred shares to existing shareholders of the Filer for aggregate gross proceeds of \$15,000,000.
10. Except as provided for in paragraph 9 above, to the knowledge of the Filer, no trading of its securities has occurred since it filed the Prospectus.
11. The outstanding securities of the Filer are beneficially owned, directly or indirectly, by 62 securityholders, with five shareholders and 57 optionholders (who are not also shareholders).
12. Based on the latest addresses shown on the books of the Filer, the outstanding securities of the Filer are beneficially owned, directly or indirectly, by less than 15 securityholders in each of the Jurisdictions, except in Ontario, where the Filer has 49 securityholders (being three shareholders and 46 optionholders). Of the remaining 13 securityholders, based on the latest addresses shown on the books of the Filer, there are four optionholders in Quebec, one optionholder in Nova Scotia, one optionholder in British Columbia, one optionholder in Newfoundland and Labrador and six securityholders in the United States (being two shareholders and four optionholders).
13. The Filer has delivered a notice (the Notice) to its 62 securityholders that it had filed an application with the Jurisdictions for a decision that it is not a reporting issuer. The Notice was also filed on SEDAR on August 19, 2010.

Decision

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

2010 BCSECCOM 495

Decision Makers under the Legislation is that the Exemptive Relief Sought is granted.

Paulette Kennedy
Commissioner
Ontario Securities Commission

Mary Condon
Commissioner
Ontario Securities Commission