

2011 BCSECCOM 347

April 27, 2011

Headnote

Multilateral Instrument 11-102 *Passport System* and National Policy 11-203
Process for Exemptive Relief Applications in Multiple Jurisdictions

National Instrument 51-102, s. 13.1 *Continuous Disclosure Obligations* - Circular Relief - An issuer wants relief from the requirement to include prospectus-level disclosure in an information circular to be circulated in connection with an arrangement, reorganization, acquisition or amalgamation - The issuer is only internally restructuring, not adding or removing any assets or changing the shareholders' proportionate interest in the issuer's operations; the issuer will provide sufficient information about the transaction for shareholders to understand the restructuring

National Instrument 44-101, s. 8.1 *Short Form Prospectus Distributions* - Qualification Relief - An issuer wants relief from the qualification criteria in NI 44-101 so it can file a short form prospectus - The issuer is a new reporting issuer that is the continuation of an existing business; the issuer satisfies all the criteria for the exemption in s. 2.7 except that the audited comparative annual financial statements incorporated in its final prospectus are not its own, but are the financial statements of the existing business

National Instrument 44-101, s. 8.1 *Short Form Prospectus Distributions* - Prospectus Relief - The filer wants to file its short form prospectus less than 10 days after it files its notice of intention to file a short form prospectus - The issuer is a successor issuer resulting from the conversion of an income fund under a plan of arrangement; the issuer would be entitled to rely on the exemption for successor issuers in s. 2.7(2) except that the financial statements incorporated into the information circular are not its own but are those of the existing business; the issuer is otherwise qualified to file a short form prospectus; the existing business is not required to file a notice of intention by virtue of s. 2.8(4); the relevant continuous disclosure for investors under the offering is the continuous disclosure of the fund, which will be incorporated by reference into the short form prospectus

Securities Act s. 169 - Confidentiality Relief - An applicant wants to keep an application and order confidential for a limited amount of time after the order is granted - The record provides intimate financial, personal or other information; the disclosure of the information before a specific transaction would be detrimental to the person affected; the information will be made available after a specific date

2011 BCSECCOM 347

Applicable British Columbia Provisions

National Instrument 51-102, s. 13.1 *Continuous Disclosure Obligations*

National Instrument 44-101, s. 8.1 *Short Form Prospectus Distributions*

Securities Act, R.S.B.C. 1996, c. 418, s. 169

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
Pacific Forest Regeneration Income Fund (the Fund)
and PRT Inc. (PRT Inc.), a company resulting from the amalgamation of the
Fund's two wholly-owned subsidiaries,
Pacific Regeneration Technologies Inc. (PRT) and a newly incorporated wholly-
owned subsidiary of the Fund (PRT Newco)
(together, the Applicants)

Decision

Background

- ¶ 1 The securities regulatory authority or regulator in each of the Jurisdictions (the Decision Maker) has received an application from the Applicants for a decision under the securities legislation of the Jurisdictions (the Legislation):
- (i) exempting the Fund from the requirement under Item 14.2 of Form 51-102F5 *Information Circular* (the Circular Form) of the Legislation to include in the management information circular (Information Circular) to be prepared by the Fund and delivered to the holders (Unitholders) of trust units (Units) in connection with a special meeting (Meeting) of Unitholders expected to be held in June 2011 for the purposes of considering a statutory plan of arrangement resulting in the reorganization of the Fund's trust structure into a corporate structure (the Conversion Transactions): (a) the financial statements of PRT for the financial years ended December 31, 2010, December 31, 2009, and December 31, 2008;

2011 BCSECCOM 347

- (b) the corresponding management's discussion and analysis for the financial years ended December 31, 2010, and December 31, 2009; and (c) certain comparative statements of PRT and of PRT Inc., including (i) a comparative income statement, a statement of retained earnings, and a cash flow statement of PRT Inc. for the most recent interim period ended more than 45 days before the date of the Information Circular, and (ii) a balance sheet of PRT Inc. as at the end of the most recent interim period ended more than 45 days before the date of the Information Circular (the Circular Relief);
- (ii) exempting PRT Inc. from the qualification criteria for short form prospectus eligibility contained in subsection 2.2(d) of National Instrument 44-101 *Short Form Prospectus Distributions* (NI 44-101) following completion of the Conversion Transactions until the earlier of (a) March 31, 2012; and (b) the date upon which PRT Inc. has filed both its annual financial statements and annual information form for the year ended December 31, 2011, under NI 51-102 *Continuous Disclosure Obligations* (NI 51-102) (the Qualification Relief);
- (iii) exempting PRT Inc. from the requirement to file a notice declaring its intention to be qualified to file a short form prospectus at least 10 business days prior to the filing of its first preliminary short form prospectus after the notice (the Prospectus Relief); and
- (iv) the application and this decision be held in confidence by the Decision Makers (the Confidentiality Relief).

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

- (i) the British Columbia Securities Commission is the principal regulator for this Application;
- (ii) the Applicants have provided notice that subsection 4.7(1) of Multilateral Instrument 11-102 *Passport System* (MI 11-102) is intended to be relied upon in Alberta, Saskatchewan, Manitoba, Quebec, New Brunswick, Nova Scotia, Prince Edward Island, and Newfoundland and Labrador; and
- (iii) the decision is the decision of the principal regulator and evidences the decision of the securities regulatory authority or regulator in Ontario.

2011 BCSECCOM 347

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 Applicants:
1. the Fund is an unincorporated, open-ended, limited purpose trust established under the laws of the Province of British Columbia pursuant to a trust indenture dated May 14, 1997;
 2. the Fund is a reporting issuer (or the equivalent thereof) in each province of Canada and is currently not in default of the securities legislation of any jurisdiction;
 3. the Fund is authorized to issue an unlimited number of Units and as at March 23, 2011, the Fund had 9,757,631 Units issued and outstanding;
 4. the Units are listed and posted for trading on the Toronto Stock Exchange (TSX) under the trading symbol “PRT.UN”;
 5. the Fund has filed an AIF and has current financial statements (as such terms are defined in NI 44-101) for the financial year ended December 31, 2010;
 6. the Fund holds all of the common shares (PRT Shares) and unsecured subordinated notes (PRT Notes) of PRT, a corporation incorporated under the laws of British Columbia;
 7. PRT is not a reporting issuer in any jurisdiction and the PRT Shares and the PRT Notes are not listed or posted for trading on any exchange or quotation and trade reporting system;
 8. the Fund does not carry on an active business, but holds, through the PRT Shares and the PRT Notes, an indirect 100% interest in PRT which carries on a forest seedling business (the Business);
 9. PRT Newco is a direct wholly-owned subsidiary of the Fund and will have conducted no business prior to the effective date (the Effective Date) of the Conversion Transactions;
 10. as the final step of the Conversion Transaction, PRT and PRT Newco will amalgamate and will continue as PRT Inc.;

2011 BCSECCOM 347

11. prior to the completion of the Conversion Transactions, PRT Inc. will not be a reporting issuer in any jurisdiction and its common shares (PRT Inc. Shares) will not be listed or posted for trading on any exchange or quotation and trade reporting system;
12. as part of the Conversion Transactions: (i) the Units will be cancelled; (ii) PRT Newco Shares will be distributed to holders of Units on a one-for-one basis; (iii) the Fund will be dissolved into PRT Newco; (iv) PRT Newco and PRT will amalgamate and continue as PRT Inc.; (v) PRT Inc. will continue to carry on the Business presently carried out on behalf of the Fund by PRT; and (vi) PRT Inc. will own, directly or indirectly, all of the existing assets and assume all of the existing liabilities of the Fund, effectively resulting in the reorganization of the Fund's trust structure into a corporate structure;
13. following the completion of the Conversion Transactions: (i) the sole business of PRT Inc. will be the current business of the Fund; (ii) all Unitholders of the Fund will own PRT Inc. Shares; (iii) PRT Inc. will be a reporting issuer or the equivalent under the securities legislation in all of the provinces of Canada; and (iv) the PRT Inc. Shares will, subject to approval by the TSX, be listed on the TSX;
14. the Conversion Transactions will not result in a change in beneficial ownership of the assets and liabilities of the Fund and PRT Inc. will continue to carry on the Business following the Conversion Transactions; the Conversion Transactions will be an internal reorganization undertaken without dilution to the Unitholders; the Unitholders will, following completion of the Conversion Transactions, be the shareholders of PRT Inc.;
15. under the Fund's constating documents and applicable corporate and securities laws, the Unitholders will be required to approve the Conversion Transactions at the Meeting; the Conversion Transactions must be approved by not less than two-thirds of the votes cast by Unitholders at the Meeting; the Meeting is anticipated to take place on June 13, 2011, and the Information Circular is expected to be mailed on or around May 16, 2011;
16. the Conversion Transactions will be accounted for on a continuity of interest basis and accordingly, following the Conversion Transactions, the comparative consolidated financial statements for PRT Inc. prior to the Conversion Transactions will reflect the financial position, results of operations and cash flows as if PRT Inc. had always carried on the business formerly carried on by the Fund;

2011 BCSECCOM 347

17. the Conversion Transactions will be a restructuring transaction under NI 51-102 in respect of the Fund and therefore will require compliance with Item 14.2 of the Circular Form;
18. Item 14.2 of the Circular Form requires, among other items, that the Information Circular contain the disclosure (including financial statements and management's discussion and analysis) prescribed under securities legislation and described in the form of prospectus that PRT Inc. would be eligible to use immediately prior to the sending and filing of the Information Circular for a distribution of its securities; therefore, the Information Circular must contain the disclosure in respect of PRT Inc. prescribed by Form 41-101F1 *Information Required in a Prospectus* (the Prospectus Form) and by NI 41-101;
19. as PRT Inc. will not have been in existence for three years on the date of the Information Circular, Item 32.1(a) of the Prospectus Form requires that the financial statements of PRT be included as it is the predecessor entity that will form the business of PRT Inc.;
20. Items 8.2(1)(a) and 8.2(2) of the Prospectus Form require the Fund to include management's discussion and analysis corresponding to each of the financial years ended December 31, 2010, and December 31, 2009, of PRT (the MD&A) in the Information Circular;
21. Item 32.2(1) of the Prospectus Form requires the Fund to include certain annual financial statements of PRT in the Information Circular, including: (i) statements of income, retained earnings and cash flows of PRT for each of the financial years ended December 31, 2010, December 31, 2009, and December 31, 2008; and (ii) a balance sheet of PRT as at the end of December 31, 2010, and December 31, 2009 (the PRT Financial Statements); in addition, Item 32.3(1) of the Prospectus Form requires the Fund to include certain comparative statements of PRT and of PRT Inc. in the Information Circular (the Interim Financial Statements), including (a) a comparative income statement, a statement of retained earnings, and a cash flow statement of PRT Inc. for the most recent interim period ended more than 45 days before the date of the Information Circular and (b) a balance sheet of PRT Inc. as at the end of the most recent interim period ended more than 45 days before the date of the Information Circular (the PRT Financial Statements and the Interim Financial Statements are referred to collectively as the Financial Statements);
22. subsection 4.2(1) of NI 41-101 requires that the PRT Financial Statements required to be included in the Information Circular must be audited in

2011 BCSECCOM 347

accordance with National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards* (NI 52-107);

23. PRT Newco was established for the exclusive purpose of effecting the Conversion Transactions and will have no material assets (other than a nominal amount of cash) or business operations prior to the Effective Date;
24. PRT Inc. will result from the amalgamation of PRT and PRT Newco on the Effective Date;
25. the financial statements of the Fund are reported on a consolidated basis, which includes the financial results of PRT; PRT does not report its financial results independently from the consolidated financial statements of the Fund; the Financial Statements and the MD&A, if prepared, would not include the accounts of the Fund; there are transactions between the Fund and PRT that would be eliminated when consolidation is performed; to present the Financial Statements and the MD&A in the Information Circular, which would exclude accounts of the Fund, would present the effects of only one side of the financing activities between the Fund and PRT; this would result in intra-group liabilities and intragroup interest expense being reflected in the Financial Statements;
26. the Financial Statements and the MD&A are not relevant to the Unitholders for the purposes of considering the Conversion Transactions; once the Conversion Transactions are completed, the financial statements and management's discussion and analysis of PRT Inc. will be substantially and materially the same as the consolidated financial statements of the Fund filed in accordance with Part 4 of NI 51-102 because the financial position of the entity that exists both before and after the Conversion Transactions is substantially the same;
27. the Information Circular will contain prospectus level disclosure in accordance with the Prospectus Form (other than the Financial Statements and MD&A) and will contain sufficient information to enable a reasonable Unitholder to form a reasoned judgement concerning the nature and effect of the Conversion Transactions and the nature of the resultant public entity and reporting issuer from the Conversion Transactions, being PRT Inc.;
28. subsection 2.7(2) of NI 44-101 contains an exemption for successor issuers from the qualification criteria for short form prospectus eligibility contained in subsection 2.2(d) of NI 44-101, if an information circular relating to the restructuring transaction that resulted in the successor issuer was filed by the successor issuer or an issuer that was a party to the restructuring transaction, and

2011 BCSECCOM 347

such information circular (i) complied with applicable securities legislation, and (ii) included disclosure in accordance with Item 14.2 or 14.5 of the Circular Form of the successor issuer; PRT Inc. cannot rely on this exemption because the Financial Statements and MD&A will not be included in the Information Circular if the Circular Relief is granted;

29. the Fund is qualified to file a prospectus in the form of a short form prospectus under section 2.2 of NI 44-101 and is deemed to have filed a notice of intention to be qualified to file a short form prospectus under subsection 2.8(4) of NI 44-101;
30. the Applicants anticipate that PRT Inc. may wish to have the ability to file a preliminary short form prospectus following the completion of the Conversion Transactions, relating to the offering or potential offering of securities (including common shares or debt securities) of PRT Inc.;
31. in anticipation of the filing of a preliminary short form prospectus, and assuming the Conversion Transactions have been completed, PRT Inc. intends to file a notice of intention to be qualified to file a short form prospectus (the Notice of Intention) following completion of the Conversion Transactions; in the absence of the Prospectus Relief, PRT Inc. will not be qualified to file a preliminary short form prospectus until 10 business days after the date upon which the Notice of Intention is filed;
32. pursuant to the qualification criteria set forth in section 2.2 of NI 44-101 as modified in the Qualification Relief, following the Conversion Transactions, PRT Inc. will be qualified to file a short form prospectus under NI 44-101;
33. notwithstanding section 2.2 of NI 44-101 as modified in the Qualification Relief, subsection 2.8(1) of NI 44-101 provides that an issuer is not qualified to file a short form prospectus unless it has filed a notice declaring its intention to be qualified to file a short form prospectus at least 10 business days prior to the issuer filing its first preliminary short form prospectus; and
34. the short form prospectus of PRT Inc. will incorporate by reference the documents that would be required to be incorporated by reference under Item 11 of Form 44-101F1 in a short form prospectus of PRT Inc., as modified by the Qualification Relief.

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.

2011 BCSECCOM 347

The decision of the Decision Makers under the Legislation is that:

- (i) the Circular Relief is granted provided that the Information Circular discloses that PRT Newco is a newly incorporated entity that has no material assets, income or liabilities and that PRT Inc. is a corporation resulting from the amalgamation of PRT and PRT Newco on the Effective Date;
- (ii) the Qualification Relief is granted provided that any short form prospectus filed by PRT Inc. under NI 44-101 during the Qualification Relief specifically incorporates by reference:
 - (a) the Information Circular and any financial statements and related management's discussion and analysis of the Fund incorporated by reference into the Information Circular, and
 - (b) any financial statements, management's discussion and analysis, material change reports or other documents that would have to be incorporated by reference in any short form prospectus filed by the Fund;
- (iii) the Prospectus Relief is granted provided that, at the time PRT Inc. files its Notice of Intention, PRT Inc. meets the requirements of section 2.2 of NI 44-101, as modified by the Qualification Relief; and
- (iv) the Confidentiality Relief is granted until the earlier of:
 - (a) the date on which the Fund publicly announces the Conversion Transactions;
 - (b) the date on which the Fund mails the Information Circular;
 - (c) the date the Fund advises the principal regulator that there is no longer any need for the application and this decision to remain confidential; and
 - (d) that date that is 60 days after the date of this decision.

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