

Citation: 2013 BCSECCOM 67

Headnote

National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions – Multilateral Instrument 51-105 Issuers Quoted in the U.S. Over-the-Counter Markets* - An issuer that will only offer securities to accredited investors wants relief from the requirements of MI 51-105 so that it does not become an OTC reporting issuer - The issuer may become an OTC issuer under section 3(c) of MI 51-105; issuer is either a registrant under the legislation or exempt from applicable registration requirements; issuer proposes to sell securities to “accredited investors” in the local jurisdiction; the minimum acquisition price of the securities is US\$200,000

Applicable Legislative Provisions

Multilateral Instrument 51-105 *Issuers Quoted in the U.S. Over-the-Counter Markets*

March 1, 2013

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

and

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

and

In the Matter of
Pershing Square Holdings, Ltd. (the Filer)

Decision

Background

- ¶ 1 The securities regulatory authority or regulator in each of the Jurisdictions (the Decision Maker) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) for an order exempting the Filer from the requirements of section 3(c) of Multilateral

Instrument 51-105 *Issuers Quoted in the U.S. Over-the-Counter Markets* (MI 51-105) (the Exemptive Relief Sought).

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

- (a) the British Columbia 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

- ¶ 2 Terms defined in National Instrument 14-101 *Definitions* 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 is a limited liability company incorporated and registered under the Companies (Guernsey) Law, 2008, as amended; the Filer's head office is located in St. Peter Port, Guernsey; the Filer is not in default of securities legislation in Guernsey or in any jurisdiction of Canada;
 2. Pershing Square Capital Management, L.P., the investment manager of the Filer (the Investment Manager):
 - (a) was formed in 2003 under the laws of Delaware,
 - (b) has its principal office in New York, New York,
 - (c) is a registered investment advisor under the U.S. Investment Advisers Act of 1940, as amended,
 - (d) is registered as an exempt market dealer in each of Alberta, New Brunswick, Newfoundland and Labrador, Nova Scotia, Nunavut, Ontario, Prince Edward Island, Quebec, Saskatchewan, and the Yukon Territory,
 - (e) is relying on the international advisor exemption in all jurisdictions of Canada,
 - (f) as of October 1, 2012, had approximately U.S.\$10.4 billion assets under management;
 3. the Filer intends to invest in a portfolio of investments, either directly or through one or more subsidiaries or affiliates in a manner that generally will be (subject to certain exceptions) side-by-side with Pershing Square, L.P. and Pershing Square II, L.P., two Delaware limited partnerships launched in

January 2004 and 2005, respectively, and with Pershing Square International, Ltd., a Cayman Islands exempted company launched in January 2005;

4. the Filer intends to offer redeemable ordinary shares in the capital of the Filer (the Ordinary Shares) for sale to qualified investors; qualified investors include:
 - (a) non-U.S. Persons (within the meaning of Regulation S under the U.S. Securities Act of 1933, as amended (the U.S. Securities Act)) outside the United States (subject to any applicable legal and regulatory requirements), and
 - (b) U.S. Persons or persons in the United States who are both “qualified purchasers” within the meaning of the U.S. Investment Company Act of 1940, as amended and “accredited investors” within the meaning of Regulation D under the U.S. Securities Act;
5. although the Filer expects to offer for sale the Ordinary Shares internationally, in Canada the Filer would only offer for sale the Ordinary Shares to “accredited investors” within the meaning of National Instrument 45-106 *Prospectus and Registration Exemptions* (NI 45-106) in the following jurisdictions: Ontario, British Columbia, Alberta, Saskatchewan, Manitoba, Quebec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, the Northwest Territories, Nunavut and the Yukon Territory;
6. the Filer is an investment fund under the Legislation;
7. the investment conditions for Canadian investors purchasing Ordinary Shares will be:
 - (a) each investor’s minimum initial investment in Ordinary Shares is not less than US\$200,000,
 - (b) an investor may only acquire the Ordinary Shares for the investor’s own account and only for investment purposes,
 - (c) each investor will be required to certify to the Filer that the Ordinary Shares are not being acquired, and will not at any time be held, for the account or benefit, directly or indirectly, of any person other than that investor,
 - (d) the Ordinary Shares may not be transferred or assigned, unless the board of directors of the Filer approves the transfer, and
 - (e) the Ordinary Shares will be redeemable in limited circumstances and such redemption rights may be suspended under certain circumstances;
8. in the future the Filer proposes, subject to certain conditions, to:
 - (a) convert into a closed-ended non-redeemable fund,

- (b) cause its shares to be admitted to trading on a non-U.S. stock exchange, such as the London Stock Exchange (Specialist Fund Market), and
 - (c) issue additional shares in a public offering (the Public Offering), following which, the Ordinary Shares will automatically convert into shares that are no longer redeemable at the shareholder's option; and
9. the Filer will become a reporting issuer under section 3(c) of MI 51-105 if:
- (a) a U.S. broker-dealer requests that the Financial Industry Regulatory Authority (FINRA) assign a ticker symbol to securities of the Filer for use on any of the over-the-counter markets in the United States (a U.S. broker-dealer can make this request without any involvement from the Filer), and
 - (b) on or before the ticker-symbol date (as defined in MI 51-105), the Filer distributed a security to a person resident in a Jurisdiction and that security is a class of securities that became the Filer's OTC-quoted securities (as defined in MI 51-105).

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.

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

- (a) the Filer only offers to sell the Ordinary Shares in the Jurisdictions to “accredited investors” within the meaning of NI 45-106, and
- (b) each Canadian investor's minimum initial investment in Ordinary Shares is not less than U.S.\$200,000.

Brent Aitken
Vice-Chair
British Columbia Securities Commission