

# **2003 BCSECCOM 460**

## **Headnote**

Mutual Reliance Review System for Exemptive Relief Application - relief granted to a reporting issuer from the requirement to prepare, file and mail certain financial statements of predecessor corporations, subject to conditions

## **Applicable British Columbia Provisions**

*Securities Act*, R.S.B.C.1996, c. 418, s. 91

## **IN THE MATTER OF THE SECURITIES LEGISLATION OF BRITISH COLUMBIA AND ALBERTA**

**AND**

## **IN THE MATTER OF THE MUTUAL RELIANCE REVIEW SYSTEM FOR EXEMPTIVE RELIEF APPLICATIONS**

**AND**

## **IN THE MATTER OF TITAN DIGITAL CORPORATION**

## **MRRS DECISION DOCUMENT**

WHEREAS the local securities regulatory authority or regulator (the “Decision Maker”) in each of British Columbia and Alberta (the “Jurisdictions”) has received an application from Titan Digital Corporation (the “Applicant”), as the successor corporation to the three-way statutory amalgamation between Cross Border Capital Inc., Cyan Corporation and Titan Digital Storage Corporation, for a decision, pursuant to the securities legislation of the Jurisdictions (the “Legislation”) that the requirement contained in the Legislation regarding the preparation, filing and mailing of certain financial statements (the “Financial Statement Requirements”) shall not apply to the audited financial statements for the year ended December 31, 2002 for Cyan Corporation nor for the unaudited interim financial statements for the eleven-month period ended December 31, 2002 for Cross Border Capital Inc.;

AND WHEREAS under the Mutual Reliance Review System for Exemptive Relief Applications (the “System”), the Alberta Securities Commission is the principal regulator for this application;

AND WHEREAS, unless otherwise defined, the terms herein have the meaning set out in National Instrument 14-101 Definitions ;

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AND WHEREAS THE Applicant has represented to the Decision Makers that:

1. The Applicant is a corporation which was created pursuant to a statutory three-way amalgamation between Titan Digital Storage Corporation, Cross Border and Cyan pursuant to the *Business Corporations Act (Alberta)* on January 1, 2003 (the “Amalgamation”).
2. The head office of the Applicant is located at Suite #15, 6320 - 11<sup>th</sup> Street S.E., Calgary, Alberta T2H 2L7 and the registered office is located at 1000, 400 - 3<sup>rd</sup> Avenue S.W., Calgary, Alberta T2P 4H2.
3. The common shares of the Applicant are posted and listed for trading on the TSX Venture Exchange under the symbol “TDI”.
4. Prior to the Amalgamation Cross Border and Cyan were capital pool corporations (“CPCs”) whose common shares were listed on the TSX Venture Exchange. Both Cross Border and Cyan were reporting issuers in Alberta and British Columbia.
5. Prior to the Amalgamation, Titan Digital Storage Corporation was a non-reporting private issuer.
6. As CPCs, neither Cross Border nor Cyan had active business operations, but were, in essence, ‘blind pools’ with primarily cash assets and limited accounts payable. In accordance with the policies of the TSX Venture Exchange which govern CPCs, the business of the CPCs was to evaluate potential businesses or assets with the view to completing a “qualifying transaction”.
7. The Amalgamation required the approval of the shareholders of each of Titan Digital Storage Corporation, Cross Border and Cyan, as well as approval by the TSX Venture Exchange. Shareholder approval was received on October 22, 2002 at a joint shareholders meeting for the shareholders of each of the three corporations. The TSX Venture Exchange issued its final exchange bulletin on February 4, 2003, announcing the completion of the qualifying transactions of Cross Border and Cyan pursuant to the three-way amalgamation with Titan Digital Storage Corporation.
8. The date of the last financial year end of Cross Border prior to the Amalgamation was January 31, 2002. The date of the last financial year end of Cyan prior to the Amalgamation was December 31, 2002. The date of the last financial year end of Titan Digital Storage Corporation prior to the Amalgamation was June 30, 2002. Following the Amalgamation, June 30 will be the financial year end of the Applicant.

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9. The Amalgamation has been accounted for as an acquisition by Titan Digital Corporation.
10. The audited financial statements of Titan Digital Storage Corporation for the year ended June 30, 2002 have been filed on SEDAR.
11. With respect to the Applicant, the first financial year end subsequent to the Amalgamation for the Applicant will be June 30, 2003.
12. Notice of change of year end for each of Cross Border and Cyan was filed in accordance with National Policy 51 ("NP 51").
13. Pursuant to the NP 51, for the transitional year of the Applicant, as the continuing filing issuer, the following financial statements will be filed:
  - (a) Unaudited consolidated interim financial statements for the nine months ended March 31, 2003 compared to March 31, 2002; and
  - (b) Audited consolidated financial statements for the year ended June 30, 2003 compared to June 30, 2002.
14. Pursuant to the NP 51, for the new financial year of the Applicant as the continuing filing issuer, the following financial statements will be filed:
  - (a) Unaudited consolidated interim financial statements for the three months ended September 30, 2003 compared to September 30, 2002;
  - (b) Unaudited consolidated interim financial statements for the six months ended December 31, 2003 compared to December 31, 2002;
  - (c) Unaudited consolidated interim financial statements for the nine months ended March 31, 2004 compared to March 31, 2003; and
  - (d) Audited consolidated financial statements for the year ended June 30, 2004 compared to June 30, 2003.
15. As CPCs, neither Cross Border nor Cyan had active business operations, and therefore, the financial statements from which the Applicant wishes to be exempted from preparing and filing will not contain substantive business information nor information regarding the operations of the Applicant.
16. The audited financial statements for Titan Digital Storage Corporation for the year ended June 30, 2002 have been filed on SEDAR and are available for

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review by the shareholders of the Applicant and former shareholders of Cross Border and Cyan.

17. The financial statements for Cyan and Cross Border for which this application is made will not provide any additional substantive information for the shareholders of the Applicant than will the unaudited consolidated interim financial statements for the nine months ended March 31, 2003, along with the prior audited financial statements for the year ended June 30, 2002 for Titan Digital Storage Corporation.

AND WHEREAS under the System, this MRRS Decision Document evidences the decision of each of the Decision Makes (collectively, the “Decision”);

AND WHEREAS each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Makers with the jurisdiction to make the Decision has been met;

THE DECISION of the Decision Makers pursuant to the Legislation is that the requirements contained in the Legislation regarding the preparation and mailing of certain financial statements shall not apply to the audited financial statements for the year ended December 31, 2002 for Cyan Corporation nor for the unaudited interim financial statements for the eleven months ended December 31, 2002 for Cross Border Capital Inc., provided that the Applicant files interim financial statements of Titan Digital Storage Corporation on SEDAR for the six months ended December 31, 2002 which comply with CICA Handbook 1751 except that the financial statements will not include the comparative results for the three months ending December 31, 2001, but will include results for the six and three months ending December 31, 2002 and the six months ending December 31, 2001 and a December 31, 2002 balance sheet.

**DATED** at Calgary, Alberta on this 7<sup>th</sup> day of July, 2003.

Agnes Lau, CA  
Deputy Director, Capital Markets