

2011 BCSECCOM 180

April 13, 2011

Headnote

National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* - Securities Act s. 88 Cease to be a reporting issuer in BC - The securities of the issuer are beneficially owned by not more than 50 persons and are not traded through any exchange or market - The issuer falls within the definition of “closely held reporting issuer” contained in BC Instrument 11-502 *Voluntary Surrender of Reporting Issuer Status* as the securities of the issuer are beneficially owned by not more than 50 persons and are not traded through any exchange or market

Applicable British Columbia Provisions

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

In the Matter of
the Securities Legislation of
British Columbia and Alberta
(the Jurisdictions)

and

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

and

In the Matter of
Proginet Corporation
(the Filer)

Decision

Background

- ¶ 1 The securities regulatory authority or regulator in each of the Jurisdictions (Decision Maker) has received an application from the Filer for a decision under

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the securities legislation of the Jurisdictions (the Legislation) that the Filer is not a reporting issuer in the Jurisdictions (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 corporation governed by Delaware Law with its corporate head office located at 200 Garden City Plaza, Garden City, New York, 11530;
 - 2. the Filer was incorporated under the laws of New York in 1986 as Teleprocessing Connection, Inc. and changed its name in 1990 to Proginet Corp.; in 1994, the Filer merged with a Delaware corporation, was renamed Proginet Corporation, and obtained a listing on what was then the Vancouver Stock Exchange;
 - 3. the Filer is a reporting issuer in British Columbia and Alberta;
 - 4. the common shares of the Filer were voluntarily delisted from the TSX Venture Exchange effective March 31, 2003;
 - 5. pursuant to a merger agreement dated June 21, 2010 under the General Corporation Law of the State of Delaware, TIBCO Software Inc. (TIBCO), a Delaware corporation, agreed to acquire all of the Filer's outstanding securities for cash consideration;
 - 6. TIBCO is a reporting company in the United States with its principal office located at 3303 Hillview Avenue, Palo Alto, California, 94304, and is listed on the Nasdaq Stock Market under the symbol "TIBX";

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7. the certificate of merger was filed with the State of Delaware Secretary of State on September 15, 2010 at which time TIBCO acquired all of the Filer's outstanding securities and the Filer became a wholly owned subsidiary of TIBCO;
8. the Filer's *Certification and Notice of Termination of Registration* under section 12(g) of the *Securities Exchange Act of 1934* dated September 17, 2010 was filed with the United States Securities and Exchange Commission;
9. the common shares of the Filer ceased trading on the U.S. OTC Bulletin Board as of September 15, 2010 and no securities of the Filer are traded on a marketplace as defined in National Instrument 21-101 – *Marketplace Operation*;
10. according to Part 4 and 5 of National Instrument 51-102 – *Continuous Disclosure Obligations* (NI 51-102), the Filer was required to file a comparative financial statement and a Form 51-102F1 *Management's Discussion and Analysis* for the financial year ended July 31, 2010 (the Annual Filings) by no later than October 29, 2010;
11. pursuant to Part 4 of National Instrument 52-109 – *Certification of Disclosure in Issuers' Annual and Interim Filings* (NI 52-109), the Filer was required to file annual certificates of the Chief Executive Officer and Chief Financial Officer (the Officers' Certificates) on the same day that the Filer filed the Annual Filings;
12. a cease trade order was issued by the British Columbia Securities Commission on December 14, 2010 as a result of the default of the Filer to file its Annual Filings and Officers' Certificates (the Cease Trade Order);
13. the defaults in failing to file the required continuous disclosure that led to the issuance of the Cease Trade Order remain;
14. the Filer is also in default of the requirement to file its financial statements and management's discussion and analysis required by NI 51-102, and any related certifications required by NI 52-109, for the interim periods ended October 31, 2010 and January 31, 2011, as well as a material change report with respect to its merger with TIBCO;
15. the Filer is not in default of any requirements of the Cease Trade Order or the Legislation, except for the deficiencies that led to the issuance of the Cease Trade Order and the defaults described in paragraph 14;

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16. the simplified procedure under Canadian Securities Administrator, Staff Notice 12-307 – *Applications for a Decision that an Issuer is not a Reporting Issuer* is not available to the Filer, as the Filer is a reporting issuer in British Columbia and is in default of certain filing obligations;
17. the Filer did not voluntarily surrender its status as a reporting issuer in British Columbia pursuant to BC Instrument 11-102 *Voluntary Surrender of Reporting Issuer Status* (the BC Instrument) in order to avoid the 10-day waiting period under the BC Instrument;
18. the Filer has no current intention to seek public financing by way of offering of securities in Canada;
19. upon the grant of the Exemptive Relief Sought, the Filer will no longer be a reporting issuer or the equivalent in any jurisdiction in Canada; and
20. the Filer has been advised by staff of the British Columbia Securities Commission that the Cease Trade Order will be revoked concurrently upon the grant of the Exemptive Relief Sought.

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.

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