

2011 BCSECCOM 191

April 14, 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

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*

2011 BCSECCOM 191

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
Hardwoods Distribution Income Fund (the Fund) and Hardwoods Distribution Inc.
(New Hardwoods and together with the Fund, 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):
- (a) 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 (Securityholders) of trust units (Units) and special voting units (Special Voting Units) in connection with an annual and special meeting (Meeting) of Securityholders expected to be held on or about May 19, 2011 at which a statutory plan of arrangement resulting in the internal reorganization of the Fund's trust structure into a corporate structure (the Conversion Transaction): (a) the financial statements of Hardwoods Specialty Products LP and Hardwoods Specialty Products US LP (Partnerships) for the financial years ended December 31, 2010, December 31, 2009 and December 31, 2008; (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 the Partnerships and of New Hardwoods, the resulting entity of the proposed conversion, including (i) a comparative income statement, a statement of retained earnings, and a cash flow statements of New Hardwoods for the most recent interim period ended more than 45 days before the date of the Information Circular and (ii) a balance sheet of New Hardwoods as at the

2011 BCSECCOM 191

end of the most recent interim period ended more than 45 days before the date of the Circular (the Circular Relief);

- (b) exempting New Hardwoods 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 Transaction until the earlier of: (a) March 31, 2012; and (b) the date upon which New Hardwoods has filed both its annual financial statements and annual information form for the year ended December 31, 2011 pursuant to NI 51-102 - *Continuous Disclosure Obligations* (NI 51-102) (the Qualification Relief); and
- (c) exempting New Hardwoods 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).

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

- (a) the British Columbia Securities Commission is the principal regulator for this Application;
- (b) 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
- (c) the decision is the decision of the principal regulator and evidences the decision of the securities regulatory authority or regulator in Ontario.

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 on January 30, 2004;

2011 BCSECCOM 191

2. the Fund is a reporting issuer (or the equivalent thereof) in each of the Jurisdictions; the Fund is not in default of the securities legislation of any jurisdiction;
3. the Fund is authorized to issue an unlimited number of trust units (Units) and an unlimited number of special voting units (Special Voting Units); as at March 25, 2011, the Fund had 14,523,858 Units and 3,602,500 Special Voting Units issued and outstanding; each Special Voting Unit entitles the holder thereof to a number of votes at any meeting of holders of Units equal to the number of Units which may be obtained upon the exchange of corresponding Class B limited partner units (Exchangeable Units) of the Partnerships;
4. the Units are listed and posted for trading on the Toronto Stock Exchange (TSX) under the trading symbol "HWD.UN";
5. the Fund has filed its "AIF" and "current financial statements" (as such terms are defined in NI 44-101) for the financial year ended December 31, 2010;
6. Sauder Industries Limited and certain of its affiliated entities and associates (collectively, Sauder Group) hold all of the Special Voting Units; the Special Voting Units are not listed or posted for trading on any exchange or quotation and trade reporting system;
7. the Fund holds all of the trust units and trust notes of Hardwoods Trust (Trust), an unincorporated, open-ended, limited purpose trust established under the laws of the Province of British Columbia, and all of the outstanding shares of Class A preferred stock (US Corp Preferred Shares) of Hardwoods Specialty Products (Washington) Corp. (Hardwoods US Corp.);
8. the Trust holds (i) shares of Hardwoods Specialty Products GP Inc. (Hardwoods GP), representing approximately 80% of the outstanding shares of Hardwoods GP, and (ii) all of the shares of Hardwoods Specialty Products ULC (Hardwoods ULC); the Sauder Group holds 20% of the outstanding shares of Hardwoods GP;
9. Hardwoods Specialty Products LP (Hardwoods LP) is a limited partnership formed under the laws of the Province of Manitoba; Hardwoods LP holds substantially all assets and properties of, and carries on, the distribution hardwood lumber and sheet goods business (Business) in Canada; Hardwoods GP is the general partner of Hardwoods LP;
10. Hardwoods ULC is an unlimited liability company incorporated under the laws of the Province of British Columbia; Hardwoods ULC holds (i) all of the

2011 BCSECCOM 191

Class A limited partner units (Class A LP Units) of Hardwoods LP, representing 80% of the outstanding limited partner units (LP Units) of Hardwoods LP, and (ii) all of the shares of common stock (US Corp Common Shares) of Hardwoods US Corp.; the Sauder Group holds all of the Class B limited partner units (Class B LP Units) of Hardwoods LP, representing approximately 20% of the outstanding LP Units;

11. Hardwoods US Corp is a corporation incorporated under the laws of the State of Washington; Hardwoods US Corp holds (i) all of the shares of Hardwoods Specialty Products USGP, Inc. (Hardwoods USGP), and (ii) all of the Class A limited partner units (Class A USLP Units) of Hardwoods Specialty Products US LP (Hardwoods USLP), representing approximately 80% of the outstanding limited partner units (USLP Units) of Hardwoods USLP; the Sauder Group holds all of the Class B limited partner units (Class B USLP Units) of Hardwoods USLP, representing 20% of the outstanding USLP Units;
12. Hardwoods USLP is a limited partnership formed under the laws of the State of Delaware; Hardwoods USLP holds substantially all assets and properties of, and carries on, the Business in the United States; Hardwoods USGP is the general partner of Hardwoods USLP;
13. the Class B LP Units and Class B USLP Units (each unit comprised of a Class B LP Unit and Class B USLP Unit being, an Exchangeable Unit) are exchangeable into Units on the basis of one Unit for each Exchangeable Unit held under certain circumstances in accordance with the terms of the limited partnership agreement of the Partnerships and the amended and restated exchange agreement between the Applicants, the Trust, the Partnerships, Hardwoods Specialty Products Corp. and Hardwoods US Corp. and certain entities of the Sauder Group, dated March 31, 2008 (as same may be amended, Exchange Agreement);
14. neither of the Partnerships is a reporting issuer in any jurisdiction and their respective units, including the Exchangeable Units, are not listed or posted for trading on any exchange or quotation and trade reporting system;
15. the Fund does not carry on an active business, but holds, through the Class A LP Units of the Partnerships held indirectly by the Trust, an approximate 80% interest in the Partnerships carrying on the Business in Canada and the United States; the Exchangeable Units held by the Sauder Group represent approximately a 20% interest in the Partnerships;

2011 BCSECCOM 191

16. New Hardwoods is an indirect wholly-owned subsidiary of the Fund and will have conducted no business prior to the effective date (Effective Date) of the Conversion Transaction;
17. prior to the Effective Date, New Hardwoods will not be a reporting issuer in any jurisdiction and its shares will not be listed or posted for trading on any exchange or quotation and trade reporting system;
18. as part of the Conversion Transaction: (i) the Units, Special Voting Units and Exchangeable Units will be cancelled; (ii) common shares of New Hardwoods (Hardwoods Shares) will be distributed to holders of Units on a one-for-one basis; (iii) Hardwoods Shares will be distributed to holders of Exchangeable Units on the basis of approximately 0.37 of a Hardwoods Share for each Exchangeable Unit and corresponding Special Voting Unit held; (iv) the Fund and the Trust will be dissolved into New Hardwoods; (v) the Partnerships will continue to carry on the Business presently carried out on behalf of the Fund, and (vi) New Hardwoods will own, directly or indirectly, all of the existing assets and assume all of the existing liabilities of the Fund and the Trust, effectively resulting in the internal reorganization of the Fund's trust structure into a corporate structure;
19. following the completion of the Conversion Transaction: (i) the sole business of New Hardwoods will be the current business of the Fund; (ii) all equity holders of the Fund will own Hardwoods Shares, rather than Units now held by unitholders and Special Voting Units, Exchangeable Units and common shares of Hardwoods GP now held by the Sauder Group; (iii) New Hardwoods will be a reporting issuer or the equivalent under the securities legislation in all of the provinces of Canada; and (iv) the Hardwoods Shares will, subject to approval by the TSX, be listed on the TSX;
20. the Conversion Transaction will not result in a change in beneficial ownership of the assets and liabilities of the Fund and New Hardwoods will continue to carry on the Business through the Partnerships following the Conversion Transaction; the Conversion Transaction will be an internal reorganization and the Securityholders will, following completion of the Conversion Transaction, be the shareholders of New Hardwoods;
21. if the Conversion Transaction is approved and becomes effective, a holder of Units will exchange an equity interest in the Fund for an equity interest in New Hardwoods, and will own a greater equity interest in the underlying Business than what they currently hold due to the amendment in the exchange ratio and the exchange of the Exchangeable Units;

2011 BCSECCOM 191

22. under the Fund's constating documents and applicable securities laws, the Securityholders will be required to approve the Conversion Transaction at the Meeting; the Conversion Transaction must be approved by not less than two-thirds of the votes cast by Securityholders at the Meeting; the Meeting is anticipated to take place on May 19, 2011 and the Circular is expected to be mailed on or around April 18, 2011;
23. the Conversion Transaction will be accounted for on a continuity of interest basis and accordingly, following the Conversion Transaction, the comparative consolidated financial statements for New Hardwoods prior to the Conversion Transaction will reflect the financial position, results of operations and cash flows as if New Hardwood had always carried on the business formerly carried on by the Fund;
24. the Conversion Transaction will be a "restructuring transaction" under NI 51-102 in respect of the Fund and therefore will require compliance with Section 14.2 of the Circular Form;
25. Item 14.2 of the Circular Form requires, among other items, that the 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 New Hardwoods would be eligible to use immediately prior to the sending and filing of the Circular for a distribution of its securities; therefore, the Circular must contain the disclosure in respect of New Hardwoods prescribed by Form 41-101F1 - *Information Required in a Prospectus* (the Prospectus Form) and by NI 41-101;
26. as New Hardwoods 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 the Partnerships be included as they are the predecessor entities that will form the business of New Hardwoods;
27. 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 the Partnerships (the MD&A) in the Circular;
28. Item 32.2(1) of the Prospectus Form requires the Fund to include certain annual financial statements of the Partnerships in the Circular, including: (i) statements of income, retained earnings and cash flows of the Partnerships for each of the financial years ended December 31, 2010, December 31, 2009 and December 31, 2008; and (ii) a balance sheet of each of the Partnerships as at the end of December 31, 2010 and December 31, 2009 (the Partnerships

2011 BCSECCOM 191

Financial Statements); in addition, Item 32.3(1) of the Prospectus Form requires the Fund to include certain comparative statements of the Partnerships and of New Hardwoods in the Circular (the Interim Financial Statements), including (a) a comparative income statement, a statement of retained earnings, and a cash flow statements of New Hardwoods for the most recent interim period ended more than 45 days before the date of the Circular and (b) a balance sheet of New Hardwoods as at the end of the most recent interim period ended more than 45 days before the date of the Circular (collectively, the Financial Statements);

29. Subsection 4.2(1) of NI 41-101 requires that the Partnerships Financial Statements required to be included in the Circular must be audited in accordance with National Instrument 52-107 - *Acceptable Accounting Principles and Auditing Standards* (NI 52-107);
30. New Hardwoods was established for the exclusive purpose of effecting the Conversion Transaction and will have no material assets (other than a nominal amount of cash) or business operations prior to the Effective Date;
31. the financial statements of the Fund are reported on a consolidated basis, which includes the financial results of the Partnerships; the Partnerships do not report their 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 the Partnerships 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 the Partnerships; this would result in intra-group liabilities and intra-group interest expense being reflected on the Financial Statements;
32. the Financial Statements and the MD&A are not relevant to the Securityholders for the purposes of considering the Conversion Transaction; the financial statements and the management's discussion and analysis of New Hardwoods 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 Transaction is substantially the same;
33. the 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 Securityholder to form a reasoned judgement concerning the nature and effect of the Conversion

2011 BCSECCOM 191

Transaction and the nature of the resultant public entity and reporting issuer from the Conversion Transaction, being New Hardwoods;

34. 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 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; New Hardwoods cannot rely on this exemption because the Financial Statements and MD&A will not be included in the Circular if the Circular Relief is granted;
35. 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 section 2.8(4) of NI 44-101;
36. the Fund anticipates that New Hardwoods may wish to file a preliminary short form prospectus following the completion of the Conversion Transaction, relating to the offering or potential offering of securities (including common shares, debt securities or subscription receipts) of New Hardwoods;
37. in anticipation of the filing of a preliminary short form prospectus, and assuming the Conversion Transaction has been completed, New Hardwoods 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 Transaction; in the absence of the Prospectus Relief, New Hardwoods will not be qualified to file a preliminary short form prospectus until 10 business days from the date upon which the Notice of Intention is filed;
38. pursuant to the qualification criteria set forth in section 2.2 of NI 44-101 as modified in the Qualification Relief, following the Conversion Transaction, New Hardwoods will be qualified to file a short form prospectus pursuant to NI 44-101;
39. notwithstanding section 2.2 of NI 44-101 as modified in the Qualification Relief, section 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

2011 BCSECCOM 191

40. the short form prospectus of New Hardwoods will incorporate by reference the documents that would be required to be incorporated by reference under Item 11 of Form 44-101 F1 in a short form prospectus of New Hardwoods, 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.

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

- (a) the Circular Relief is granted provided the Information Circular discloses that New Hardwoods is a newly incorporated entity that has no material assets, income or liabilities;
- (b) the Qualification Relief is granted provided that any short form prospectus filed by New Hardwoods under NI 44-101 during the Qualification Relief specifically incorporates by reference:
 - i. 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
 - ii. 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; and
- (c) the Prospectus Relief is granted, provided that at the time New Hardwoods files its Notice of Intention, New Hardwoods meets the requirements of section 2.2 of NI 44-101, as modified by the Qualification Relief.

Andrew Richardson, CA
Acting Director, Corporate Finance
British Columbia Securities Commission