

# 2004 BCSECCOM 220

## **Headnote**

Mutual Reliance Review System for Exemptive Relief Application – relief from the requirement to include prospectus level disclosure in an information circular about a holding company involved in a plan of arrangement

## **Applicable British Columbia Provisions**

*Securities Act*, R.S.B.C.1996, c. 418, s. 119

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

**AND**

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

**AND**

## **IN THE MATTER OF IPC FINANCIAL NETWORK INC.**

## **MRRS DECISION DOCUMENT**

WHEREAS the local securities regulatory authority or regulator (the “Decision Makers”) in British Columbia and Ontario (collectively, the “Jurisdictions”) has received an application from IPC Financial Network Inc. (“IPCFN” or the “Filer”) for a decision under the securities legislation of the Jurisdictions (the “Legislation”) that disclosure contemplated by the requirement in the Legislation to provide prospectus-level disclosure (“Prospectus Level Disclosure”) shall not apply to a management proxy circular (the “Circular”) to be sent to all shareholders of IPCFN in connection with the proposed acquisition by Investors Group Inc. (“Investors Group”) of all of the issued and outstanding shares of IPCFN by way of a plan of arrangement (the “Arrangement”) pursuant to section 192 of the *Canada Business Corporations Act* (the “CBCA”) involving IPCFN, Investors Group and 4221079 Canada Inc. (“IPCFN Holdco”), a subsidiary of Investors Group, solely as the requirements would apply to IPCFN Holdco;

AND WHEREAS under the Mutual Reliance Review System for Exemptive Relief Applications (the “System”), the Ontario 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 Filer has represented to the Decision Makers that:

1. IPCFN is a corporation incorporated under the CBCA. The common shares in the capital of IPCFN (the "IPCFN Shares") are listed and posted for trading on the TSX Venture Exchange. IPCFN is a reporting issuer in British Columbia, Alberta, Saskatchewan, Ontario, Quebec and Nova Scotia.
2. IPCFN is not in default of any requirements of the Legislation.
3. Investors Group is a corporation incorporated under the CBCA. The common shares in the capital of Investors Group are listed and posted for trading on the Toronto Stock Exchange. Investors Group is a reporting issuer in each province and territory of Canada.
4. IPCFN Holdco is a corporation incorporated under the CBCA and is a subsidiary of Investors Group. IPCFN Holdco is not a reporting issuer in any province of Canada. IPCFN Holdco has been incorporated for the sole purpose of acquiring certain of the IPCFN Shares pursuant to the Arrangement.
5. Pursuant to a revised and restated acquisition agreement dated as of February 24, 2004 between IPCFN and Investors Group, Investors Group and IPCFN Holdco will, subject to certain conditions being met, acquire all of the issued and outstanding IPCFN Shares pursuant to the Arrangement.
6. Pursuant to the Arrangement, holders of IPCFN Shares other than the Founder Shareholders and the Advisor and Management Shareholders (as defined below) (each an "IPCFN Shareholder") will be entitled to receive in exchange for each IPCFN Share, at their election, either: (i) \$1.95 in cash (the "Cash Consideration"); or (ii) \$0.975 in cash and 0.02973 of a common share of Investors Group (the "Cash and Shares Consideration").
7. The co-founders of IPCFN, the Vice Chairman of the Board and Chief Executive Officer and Vice Chairman of the Board and President of IPCFN, respectively (along with their respective holding companies and controlled entities, the "Founder Shareholders"), will receive, in exchange for each IPCFN Share held by such shareholder: (a) one IPCFN Holdco share, as to 72.5% of the IPCFN Shares owned or controlled by them and (b) 0.05945 of a common share of Investors Group as to the remaining 27.5% of the IPCFN Shares held by such shareholders.
8. Certain IPCFN Shareholders who are also financial advisors of IPCFN, and other members of IPCFN's management team other than the Founder Shareholders, (collectively, the "Advisor and Management Shareholders") will

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be entitled to receive for each IPCFN Share, at their election: (a) the Cash Consideration, (b) the Cash and Shares Consideration, or (c) one IPCFN Holdco Share subject to pro ration if such elections would otherwise result in the Advisor and Management Shareholders owning more than 14.5% of IPCFN Holdco immediately following completion of the transactions contemplated by the Arrangement.

9. Investors Group has required, and the Founder Shareholders have agreed to accept, IPCFN Holdco Shares as consideration in order to provide the Founder Shareholders with a direct incentive to grow the business of IPCFN and to provide Investors Group with assurances that the Founder Shareholders will have ongoing interests for a period of time in growing the business of IPCFN and preserving Investors Group's investment.
10. IPCFN Holdco Shares are being offered as consideration for the Advisor and Management Shareholders in order to continue IPCFN's philosophy of providing the opportunity for this group to have equity participation in the business.
11. Notwithstanding the fact that the terms of the Arrangement provide for different consideration per IPCFN Share for IPCFN Shareholders, Advisor and Management Shareholders and Founder Shareholders, the Arrangement effectively constitutes an offer to acquire all of the IPCFN Shares at a consideration valued at approximately \$1.95 per IPCFN Share (based on the \$32.80 closing price per Investors Group share on February 24, 2004).
12. Pursuant to the requirements of OSC Rule 61-501 *Insider Bids, Issuer Bids, Going Private Transactions and Related Party Transactions*, an issuer that proposes to carry out a transaction such as the Arrangement is required to engage an independent valuator to prepare a valuation of the affected securities (and any non-cash consideration being offered therefore) and to provide to the holders of the affected securities a summary of such valuation (the "Valuation Requirement").
13. The Applicant intends to rely on an exemption from the Valuation Requirement by virtue of the agreement of an institutional shareholder of IPCFN (an "Institutional Shareholder") to sell its IPCFN Shares to Investors Group pursuant to a support agreement ("Institutional Shareholder Support Agreement"). The arrangements between the Institutional Shareholder and Investors Group provides for the same consideration per Share to be payable to the Institutional Shareholder as the consideration per Share payable to the other IPCFN Shareholders pursuant to the Arrangement.

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14. Investors Group, IPCFN Holdco, the Founder Shareholders and the Advisor and Management Shareholders who receive shares of IPCFN Holdco will be required to enter into a shareholders agreement (the “IPCFN Holdco Shareholders Agreement”). Investors Group, IPCFN Holdco and the Founder Shareholders have also entered into a founder shareholders agreement (the “Founder Shareholders Agreement”) which addresses certain matters relating to the operation of IPCFN Holdco and IPCFN and the rights and obligations of IPCFN Holdco, the Founder Shareholders and Investors Group.
15. The IPCFN Holdco Shareholders Agreement and the Founder Shareholders Agreement (together, the “Shareholders Agreements”) restrict the transfer of IPCFN Holdco Shares held by IPCFN Holdco Shareholders (other than Investors Group) but do provide specific liquidity rights to such shareholders in certain circumstances. The liquidity rights include ‘put-rights’ allowing IPCFN Holdco Shareholders to require Investors Group to purchase their IPCFN Holdco Shares under specified circumstances and ‘piggy-back’ rights allowing them to join in a sale by Investors Group of its IPCFN Holdco Shares to a third party under certain conditions.
16. The Founder Shareholders are subject to to an escrow arrangement which will (except in certain limited circumstances) limit their liquidity rights in respect of all of their IPCFN Holdco Shares for a period of two years from the effective date of the Arrangement (the “Effective Date”) and thereafter in respect of an annually declining balance of their IPCFN Holdco Shares until the fifth anniversary of the Effective Date at which point the balance of their IPCFN Holdco Shares then held in escrow will be released.
17. The Advisor and Management Shareholders are not subject to an escrow arrangement.
18. All material terms of the Shareholders Agreements are described in the Circular.
19. The Circular will include the disclosure required by the Legislation in respect of Investors Group. IPCFN Holdco is a private company that was incorporated for the sole purpose of acquiring IPCFN Shares pursuant to the Arrangement. Investors Group will remain the controlling shareholder of IPCFN Holdco following the Arrangement. IPCFN Holdco’s sole business immediately following completion of the Arrangement will be the ownership of IPCFN and the operation of IPCFN’s business.

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20. Under the requirements of the Legislation, IPCFN is required to provide Prospectus Level Disclosure about Investors Group and IPCFN Holdco. Prospectus Level Disclosure about IPCFN Holdco would include certain information about IPCFN as a 'significant acquisition' (as defined in the Legislation) of IPCFN Holdco. The Applicant is seeking relief from the disclosure requirements contemplated by the requirement to provide Prospectus Level Disclosure as they would apply to IPCFN Holdco.
21. IPCFN is currently a reporting issuer in the Jurisdictions and therefore current information concerning IPCFN is already available to all shareholders including the Founder Shareholders and Advisor and Management Shareholders. There has been no material change to the information currently in the public domain other than with respect to the Arrangement.
22. All material information about the Arrangement and the collateral interest of the Founder Shareholders and Advisor and Management Shareholders is being provided in the Circular in accordance with the requirements of OSC Rule 61-501 – *Insider Bids, Issuer Bids, Going Private Transactions and Related Party Transactions* which IPCFN is required to comply with in the circumstances, including the disclosure required by OSC Form 33, to the extent applicable with the necessary modifications.

AND WHEREAS under the System, this MRRS Decision Document evidences the decision of each Decision Maker (collectively, the "Decision");

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

THE DECISION of the Decision Makers under the Legislation is that the requirement to provide Prospectus Level Disclosure shall not apply to the Circular in respect of IPCFN Holdco.

DATED April 5, 2004.

Charlie MacCready