

2005 BCSECCOM 611

September 26, 2005

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - National Instrument 51-102, s. 13.1 *Continuous Disclosure Obligations* - BAR - An issuer requires relief from the requirement to include certain financial statements in a business acquisition report - The issuer filed a prospectus that included the financial information for the acquisition as a probable significant acquisition; the financial information in the prospectus is for a period that ended less than one interim period before the financial information that would be required under Part 8 of NI 51-102; the issuer will include the financial information that was in the prospectus in the BAR

Applicable British Columbia Provisions

National Instrument 51-102, sections 8.4(3) and 13.1

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

and

In the Matter of
the Mutual Reliance Review System for Exemptive Relief Applications

and

In the Matter of
Sterling Shoes Income Fund (the Filer)

MRRS Decision Document

Background

- ¶ 1 The local securities regulatory authority or regulator (the Decision Maker) in each of the Jurisdictions has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) exempting the Filer from the requirement to include certain financial statements in the business acquisition report (the BAR) to be filed by the Filer in connection with an acquisition it completed on July 12, 2005 (the Requested Relief).

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Application of Principal Regulator System

- ¶ 2 Under Multilateral Instrument 11-101 *Principal Regulator System* (MI 11-101) and the Mutual Reliance Review System for Exemptive Relief Applications (the System)
- (a) the British Columbia Securities Commission is the principal regulator for the Filer,
 - (b) the Filer is relying on the exemption in Part 3 of MI 11-101 in each of the provinces in Canada except British Columbia and Ontario, and
 - (c) this MRRS decision document evidences the decision of each Decision Maker.

Interpretation

- ¶ 3 Defined terms in National Instrument 14-101 *Definitions* have the same meaning in this decision unless they are otherwise defined in this decision.

Representations

- ¶ 4 This decision is based on the following facts represented by the Filer:
- 1. the Filer is an unincorporated, open-ended, limited-purpose trust established under the laws of British Columbia by a declaration of trust;
 - 2. the Filer's head office is in Richmond, British Columbia,
 - 3. the Filer is a reporting issuer, where such status exists, in each of the provinces of Canada;
 - 4. the trust units of the Filer are listed and posted for trading on the Toronto Stock Exchange;
 - 5. on June 30, 2005, the Filer filed a final prospectus in each of the provinces of Canada for its initial public offering;
 - 6. the Filer disclosed in the prospectus that
 - (a) it was established to acquire and hold units and series 1 trust notes of SS Holdings Trust;

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- (b) SS Holdings Trust was established to acquire and hold Class C Limited Partner Units of Sterling Shoes Limited Partnership, representing an 80% indirect interest in Sterling Shoes Limited Partnership; and
 - (c) Sterling Shoes Limited Partnership was created to acquire and hold substantially all of the assets of, and carry on the footwear retail business (the Business) previously carried on by, Sterling Shoes Inc. (the Acquisition);
- 7. the Filer completed the Acquisition on July 12, 2005;
- 8. because the Acquisition is a “significant acquisition” by the Filer for the purposes of National Instrument 51-102 *Continuous Disclosure Obligations* (NI 51-102), the Filer must file a BAR by September 26, 2005;
- 9. OSC Rule 41-501 *General Prospectus Requirements* (Rule 41-501) sets out the financial statements required to be included in a prospectus, including financial statements relating to “significant acquisitions”;
- 10. under Rule 41-501, the Filer’s prospectus included the following financial statements (the Prospectus Financial Statements):
 - (a) for Sterling Shoes Inc.,
 - (i) audited balance sheets as at January 31, 2005 and 2004 and an unaudited balance sheet as at April 30, 2005, and
 - (ii) audited statements of operations and retained earnings and cash flows for the years ended January 31, 2005, 2004 and 2003 and unaudited statements of operations and retained earnings and cash flows for the three-month periods ended April 30, 2005 and 2004; and
 - (b) for the Filer,
 - (i) an audited balance sheet, and notes thereto, as at May 31, 2005,
 - (ii) an unaudited pro forma consolidated balance sheet as at April 30, 2005,
 - (iii) unaudited pro forma consolidated statements of operations for the year ended January 31, 2005 and for the three months ended April 30, 2005, and

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- (iv) a compilation report on the unaudited pro forma balance sheet as at April 30, 2005 and the unaudited pro forma consolidated statements of operations for the year ended January 31, 2005 and for the three months ended April 30, 2005;
- 11. under NI 51-102, the Filer is required to include in its BAR for the Acquisition certain financial statements, including
 - (a) audited financial statements for Sterling Shoes Inc. for the years ended January 31, 2005 and January 31, 2004;
 - (b) interim financial statements for Sterling Shoes Inc. for the three month period ended April 30, 2005 together with comparative interim financial statements for the three month period ended April 30, 2004;
 - (c) an unaudited pro forma consolidated balance sheet of the Filer as at June 30, 2005;
 - (d) unaudited pro forma consolidated statements of operations for the year ended January 31, 2005 and for the five months ended June 30, 2005; and
 - (e) a compilation report on the unaudited pro forma balance sheet as at June 30, 2005 and the unaudited pro forma consolidated statements of operations for the year ended January 31, 2005 and for the five months ended June 30, 2005;
- 12. the Filer's prospectus contains full, true and plain disclosure of all material facts relating to the Filer and the Acquisition and included the financial statements required by Rule 41-501 required for a significant acquisition;
- 13. the Filer will include the Prospectus Financial Statements in the BAR for the Acquisition; and
- 14. except for the closing of the Offering on July 12, 2005, there was no material change in the financial condition or results of operations of the Business from April 30, 2005, the date of the most recent financial statements of Sterling Shoes Inc. included in the prospectus, to July 12, 2005, the closing date of the Acquisition.

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Decision

- ¶ 5 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 Requested Relief is granted provided that the Filer includes the Prospectus Financial Statements in the BAR.

“Martin Eady”

Martin Eady, CA

Director, Corporate Finance

British Columbia Securities Commission