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January 25, 2010

Headnote

Multilateral Instrument 11-102 *Passport System* and National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* – National Instrument 52-107, s. 9.1 - *Acceptable Accounting Principles, Auditing Standards and Reporting Currency* - An issuer wants relief from the requirement that financial statements required by securities legislation to be audited must be accompanied by an auditor's report that does not contain a reservation - The issuer will provide an audited balance sheet for the acquired business as at a date subsequent to the date to which the qualification relates; that balance sheet will be accompanied by an auditor's report that does not contain a reservation

Applicable British Columbia Provisions

National Instrument 52-107, s. 9.1 *Acceptable Accounting Principles, Auditing Standards and Reporting Currency*

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

and

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

and

In the Matter of
Seacliff Construction Corp.
(the Filer)

Decision

Background

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

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from the requirement in subsection 6.2(4) of National Instrument 52-107 *Acceptable Accounting Principles, Auditing Standards and Reporting Currency* (NI 52-107) that an auditor's report filed in connection with certain acquisition statements must not contain a reservation in order that the Filer may file a business acquisition report containing audited financial statements of Broda Construction Inc. (Broda) with an auditor's report containing a reservation relating to Broda's work in progress (the Exemption Sought).

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

- (a) British Columbia is the principal regulator for this application;
- (b) the Filer has provided notice that section 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 evidence the decision of the 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 Filer:
- 1. the Filer is incorporated under the *Business Corporations Act* (British Columbia) and its head office is located in Vancouver;
 - 2. the Filer is a reporting issuer in British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland and Labrador;
 - 3. the Filer is authorized to issue an unlimited number of common shares without par value; as of the date hereof, the Filer has 20,874,818 common shares issued and outstanding;
 - 4. the common shares of the Filer are listed on the Toronto Stock Exchange;

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5. Broda is a privately held earth moving and heavy civil construction company based in Prince Albert, Saskatchewan;
6. on November 17, 2009, the Filer entered into a share purchase agreement to acquire all of the issued and outstanding shares of Broda (the Transaction);
7. the Transaction will constitute a “significant acquisition” for the purposes of National Instrument 51-102 *Continuous Disclosure Requirements* (NI 51-102) and the Filer will be required to file a business acquisition report (BAR) within 75 days of the closing of Transaction;
8. under section 8.4 of NI 51-102, the BAR must be accompanied by financial statements of Broda for its two most recently completed financial years, being March 31, 2008 and March 31, 2009, and the statements for the most recently completed financial year must be audited;
9. under subsection 6.2(4) of NI 52-107, the audited financial statements of Broda included in the BAR must be accompanied by an auditor’s report that does not contain a reservation;
10. Broda is a private company that historically has not had its financial statements audited;
11. historically, Broda has not had its work in progress (WIP) balances verified by external sources; Broda has relied on internal records to determine WIP balances; as a result, Broda’s auditors are unable to satisfy themselves as to the physical existence and ownership of the WIP balances at April 1, 2008 (Opening WIP Balance) and March 31, 2009 (Closing WIP Balance);
12. the WIP in question is rock ballast crushed by Broda for the Canadian National Railway Company and Canadian Pacific Railway Company;
13. Broda’s audited financial statements for the year ended March 31, 2009 will be accompanied by an auditor’s report that contains a reservation relating to both the Opening WIP Balance and the Closing WIP Balance;
14. subsection 6.2(6) of NI 52-107 provides an exemption from the requirement in subsection 6.2(4) for an unqualified opinion relating to inventory provided:
 - (a) the issuer includes in the BAR a balance sheet for the business that is for a date that is subsequent to the date to which the qualification relates; and

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- (b) the balance sheet referred to in paragraph (a) is accompanied by an auditor's report that does not contain a qualification of opinion relating to closing inventory; and

15. subsequent to entering into the Transaction, Broda has taken steps to have its WIP balances verified by independent, third party engineering firms; as a result, Broda's auditors are able to satisfy themselves as to the physical existence and ownership of the WIP balance as at November 30, 2009.

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 Exemption Sought is granted provided that the Filer includes in the BAR an audited balance sheet of Broda as at November 30, 2009 that is accompanied by an auditor's report that does not contain a reservation relating to closing WIP balances.

Martin Eady, CA
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British Columbia Securities Commission