

# 2007 BCSECCOM 339

June 11, 2007

## Headnote

Mutual Reliance Review System for Exemptive Relief Applications - National Instrument 51-102 *Continuous Disclosure Obligations*, s. 13.1 – relief from BAR requirements - BAR – An issuer requires relief from the requirement to file a business acquisition report - The acquisition is insignificant applying the asset and investment tests; applying the income test, the acquisition is significant only because the issuer incurred a loss in its most recently completed financial year; the filer will apply an alternative income test based on the average of the absolute value of the losses it incurred in its three most recently completed financial years; the alternative income test yields approximately the same result as the asset and investment tests

## Applicable British Columbia Provisions

NI 51-102, ss. 8.2 and 13.1

In the Matter of  
the Securities Legislation of  
British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, New Brunswick,  
Nova Scotia and Newfoundland and Labrador  
(the Jurisdictions)

and

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

and

In the Matter of  
Kaboose Inc.  
(the Filer)

## MRRS Decision Document

## Background

The local securities regulatory or regulator (the Decision Maker) in each of the Jurisdictions has received an application from the Filer for a decision pursuant to the securities legislation of the Jurisdictions (the Legislation) granting relief to use an alternative income test (as defined below) for purposes of its continuous disclosure obligations under the Legislation in respect of its acquisition (the

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Acquisition) of substantially all of the assets of Amazing Moms.com Inc. (Amazing Moms) (the Requested Relief).

Under the Mutual Reliance Review System for Exemptive Relief Applications (MRRS):

- (a) the Ontario Securities Commission is the principal regulator for this application, and
- (b) the MRRS decision document evidences the decision of each Decision Maker.

### **Interpretation**

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

### **Representations**

This Decision is based on the following facts represented by the Filer:

1. the Filer was formed by Articles of Incorporation under the *Business Corporations Act* (Ontario) on October 8, 1999;
2. the Filer is a reporting issuer in each province in Canada (except Quebec) and its common shares trade on the Toronto Stock Exchange;
3. The Filer is not in default of its obligations as a reporting issuer under the legislation of any jurisdiction in which it is a reporting issuer or its equivalent;
4. Amazing Moms is a corporation that was formed under the laws of the State of New York on November 30, 2006;
5. the Acquisition closed effective March 30, 2007 pursuant to which Kaboose acquired substantially all of the assets of Amazing Moms;
6. the consideration for the Acquisition was the payment of US\$750,000 in cash at closing, with a further US\$750,000 paid to Amazing Moms when certain post-closing milestones were achieved;
7. the application of the income test in Subsection 8.3(2)(c) of National Instrument 51-102 *Continuous Disclosure Obligations* (NI 51-102) using the income from continuing operations of the Filer for the year ended December 31, 2006 leads to anomalous results in that the significance of the Acquisition

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is out of proportion to its significance on an objective basis and in comparison to the results of the asset and investment tests required by NI 51-102;

8. the Filer incurred a small loss in the year ended December 31, 2006, resulting in virtually any acquisition exceeding 20% under the income test;
9. the Filer has incurred 3 years of consecutive losses: a loss of \$90,000 for the year ended December 31, 2006, a loss of \$3,313,000 for the year ended December 31, 2005 and a loss of \$1,348,000 for the year ended December 31, 2004;
10. a review of the relative significance under the asset test and the investment test reveals that the Acquisition is not otherwise significant; and
11. the use of an alternative income test (the average of the absolute value of the losses incurred by the Filer for the years ended December 31, 2006, December 31, 2005 and December 31, 2004), rather than using income from continuing operations for the year ended December 31, 2006, provides a more realistic indication of the significance of the Acquisition and its results are consistent with the asset test and the investment test.

### **Decision**

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.

Lisa Enright  
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Ontario Securities Commission