

2006 BCSECCOM 332

June 1, 2006

Headnote

Multilateral Instrument 11-101 Principal Regulator System - 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 is required to include financial statements for the most recently completed financial year of the business ended more than 45 days before the date of acquisition; the date of the acquisition was two days after the business' financial year-end; the issuer will include financial statements for the most recently completed financial year of the business ended before the date of acquisition

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, s. 187(1)(a)

National Instrument 51-102, s. 8.5(2) and 13.1

In the Matter of the *Securities Act* (the Act) of British Columbia and
National Instrument 51-102 *Continuous Disclosure Obligations* (NI 51-102)

and

In the Matter of
Multilateral Instrument 11-101 *Principal Regulator System* (MI 11-101)

and

In the Matter of
Peer 1 Network Enterprises, Inc. (the Filer)

Decision

Background

- ¶ 1 The British Columbia Securities Commission (the Decision Maker) has received an application from the Filer for a decision under the Act exempting the Filer from the requirement that the audited annual financial statements in respect of the Purchased Assets (as defined below) that the Filer includes in its business acquisition report (BAR) be for the most recently completed financial year of Interland, Inc. (Interland) ended more than 45 days before the date of the acquisition of the Purchased Assets (the Requested Relief).

2006 BCSECCOM 332

Application of Principal Regulator System

¶ 2 Under MI 11-101,

- (a) the Decision Maker is the principal regulator for the Filer, and
- (b) the Filer is relying on the exemption in Part 3 of MI 11-101 in Alberta.

Representations

¶ 3 The Filer represents that:

1. the Filer's head office is in Vancouver, British Columbia;
2. the Filer is a reporting issuer in Alberta and British Columbia, and is not in default of its obligations as a reporting issuer under the legislation of any jurisdiction in which it is a report issuer or its equivalent, except with respect to the filing of the BAR relating to its acquisition of the Purchased Assets;
3. the Filer is a venture issuer for the purposes of NI 51-102;
4. on September 2, 2005 the Filer, indirectly through a wholly-owned subsidiary, acquired all of the assets of Interland that were necessary or incidental for the daily operation of Interland's dedicated server business (the Purchased Assets);
5. the acquisition constituted a "significant acquisition" under NI 51-102;
6. Interland's financial year end is August 31;
7. under NI 51-102, the Filer is required to include in the BAR audited annual financial statements in respect of the Purchased Assets for the most recently completed financial year of Interland ended more than 45 days before the date of the acquisition of the Purchased Assets, namely, August 31, 2004;
8. Cinnamon Jang Willoughby & Company, Chartered Accountants (CJW), the Filer's auditor, advised that it was impractical to prepare "carve out" financial statements because Interland did not maintain separate financial records in respect of the Purchased Assets; and
9. the Filer has prepared a Statement of Dedicated Hosting Assets Acquired and Liabilities Assumed and Statement of Operations for Dedicated Hosting Business for the financial year in respect of the Purchased Assets ended August 31, 2005, which statements have been audited by CJW (the 2005 Statements).

2006 BCSECCOM 332

Decision

- ¶ 4 The Decision Maker, being satisfied that it has jurisdiction to make this decision and that to do so would not be prejudicial to the public interest, orders that the Requested Relief is granted, provided that the Filer includes the 2005 Statements in the BAR.

Martin Eady, CA
Director, Corporate Finance
British Columbia Securities Commission