

2010 BCSECCOM 630

November 12, 2010

Headnote

National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions – Securities Act*, s. 88 – Cease to be a reporting issuer in BC - The securities of the issuer are beneficially owned by more than 50 persons and are not traded through any exchange or market - The issuer became a wholly owned subsidiary of another company; the issuer has debt securities outstanding that are held by more than 50 holders; there is a de minimis number of Canadian holders of the debt securities holding a de minimis amount of the outstanding debt; there is no market for the debt securities; the issuer is required under the terms of the debt instrument to provide certain continuous disclosure to the holders of the debt securities as long as the securities are outstanding, but is not required to remain a reporting issuer in Canada; the issuer does not intend to do a public offering of its securities to Canadian residents; the issuer will not be a reporting issuer in any Canadian jurisdiction

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, s. 88

In the Matter of
the Securities Legislation of
Newfoundland and Labrador, Prince Edward Island, Nova Scotia
New Brunswick, Quebec, Ontario, Manitoba, Saskatchewan,
Alberta and British Columbia
(the “Jurisdictions”)

and

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

and

In the Matter of Odyssey Re Holdings Corp.
(the “Filer”)

Decision

Background

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

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the securities legislation of the Jurisdictions (the “Legislation”) that the Filer is not a reporting issuer (the “Exemptive Relief Sought”).

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions (for a coordinated review application),

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

Interpretation

Terms defined in National Instrument 14-101 *Definitions* have the same meaning if used in this decision, unless otherwise defined.

Representations

The decision is based on the following facts represented by the Filer:

1. The Filer was incorporated on March 21, 2001 under the laws of the state of Delaware.
2. The Filer’s head office is located in Stamford, Connecticut. The Filer has an office located at 55 University Avenue, Suite 1600, Toronto, Ontario.
3. The Filer is a worldwide underwriter of property and casualty treaty and facultative reinsurance, as well as specialty insurance.
4. At that time, the Filer’s common stock was listed on the Toronto Stock Exchange (“TSX”) and the New York Stock Exchange (“NYSE”).
5. On November 14, 2003, the Filer’s common stock was voluntarily delisted from the TSX.
6. In October 2009, Fairfax Financial Holdings Limited (“Fairfax”), a reporting issuer in each of the Jurisdictions, acquired, pursuant to a tender offer and subsequent merger, all of the outstanding common stock of the Filer that it did not already own and the common stock was delisted from trading on the NYSE. Following that transaction, the Filer continued to have outstanding Series A preferred stock and Series B preferred stock (collectively, the “Preferred Stock”) listed on the NYSE. The Filer also has outstanding the following:

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- (a) US\$224.8 million principal amount of 7.65% senior notes due 2013 (the “2013 Notes”),
 - (b) US\$124.6 million principal amount of 6.875% senior notes due 2015 (the “2015 Notes”),
 - (c) US\$50.0 million principal amount of Series A floating rate debentures due 2021 (the “Series A Debentures”),
 - (d) US\$50.0 million principal amount of Series B floating rate debentures due 2016 (the “Series B Debentures”), and
 - (e) US\$40.0 million principal amount of Series C floating rate debentures due 2021 (the “Series C Debentures”).
7. The 2013 Notes and 2015 Notes (collectively, the “Senior Notes”) were issued in public offerings in the United States and on a private placement basis in Canada in 2003 and 2005, respectively. The Senior A Debentures, the Senior B Debentures and the Senior C Debentures were offered on a private placement basis in the United States in 2006. The Senior Notes, the Series A Debentures, Series B Debentures and Series C Debentures are collectively referred to as the “Debt Securities”.
8. On July 20, 2010, the Filer completed a consent solicitation and obtained the requisite consents to amend the indenture governing the Senior Notes to allow the Filer to provide statutory quarterly financial statements and audited statutory year-end financial statements as filed with applicable state insurance regulators, and quarterly and year-end financial information extracted from the segment information in respect of the Filer that Fairfax makes publicly available in Fairfax’s quarterly and annual financial statements. The foregoing information will be provided to the trustee for the Senior Notes and posted on the Filer’s website (which website may be non-public, in which case the Filer will provide access to such website to any holder of Senior Notes, any beneficial owner of Senior Notes or any prospective investor, securities analysts or market maker in the Senior Notes), in lieu of the reports the Filer currently files with the United States’ Securities and Exchange Commission (the “SEC”).
9. On September 15, 2010, the Filer issued a press release announcing that it was redeeming all of the outstanding Preferred Stock not owned by affiliates. The redemption occurred on October 20, 2010.

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10. Following the redemption, the Preferred Stock was delisted from trading on the NYSE. The NYSE filed a Form 25 with the SEC on October 21, 2010 to effect the delisting of the Preferred Stock and the delisting became effective on November 1, 2010.
11. The Filer also announced that upon redeeming the Preferred Stock, it will terminate its obligation to file periodic reports under the U.S. *Securities Exchange Act of 1934*, as amended, and it would file this application with Canadian securities regulators to cease its continuous disclosure obligations under Canadian securities laws.
12. Based on beneficial ownership information obtained from geographical searches conducted by Broadridge Financial Solutions, Inc. ("Broadridge") as of September 27, 2010 and from Non-Objecting Beneficial Owner lists obtained by the Filer as of September 15, 2010 in respect of the Senior Notes and as of September 27, 2010 in respect of the other Debt Securities, there is one beneficial holder of Debt Securities shown as having a Canadian address (out of 889 beneficial holders worldwide).
13. Based on the results of the Broadridge searches, the Canadian holder has an address in the province of Ontario and holds US\$6.25 million of Debt Securities (the "Ontario Resident").
14. The Filer does not have any securities outstanding except for its common stock, which is 100% owned indirectly by Fairfax, and the Debt Securities.
15. The Filer has no current intention to distribute any securities to the public.
16. The Filer does not currently intend to seek financing by way of a public offering of its securities.
17. In the preceding 12 months, the Filer has not taken any steps that indicate there is a market for its securities in Canada.
18. Based upon the information and diligent inquiries of the Filer, the Filer has concluded that residents of Canada, other than Fairfax, and other than the Ontario Resident who holds less than 1.3% of the outstanding principal amount of Debt Securities, residents of Canada do not:
 - (a) directly or indirectly beneficially own more than 2% of any class or series of outstanding securities of the Filer worldwide; and

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- (b) directly or indirectly comprise more than 2% of the total number of securityholders of the Filer worldwide.
19. The Filer will provide to its holders of Debt Securities in Canada all disclosure material that is required to be provided to holders under the trust indentures governing such Debt Securities.
20. The outstanding securities of the Filer, including debt securities, are beneficially owned, directly or indirectly, by fewer than 15 security holders in each of the jurisdictions in Canada and fewer than 51 security holders in total in Canada.
21. No securities of the Filer are traded on a marketplace as defined in National Instrument 21-101 *Marketplace Operation* and the Filer does not intend to have its securities traded or quoted on such a marketplace.
22. The Filer is not in default of any of its obligations under the Legislation as a reporting issuer.
23. Upon the granting of the Exemptive Relief Sought, the Filer will not be a reporting issuer or its equivalent in any jurisdiction in Canada.

Decision

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 Exemptive Relief Sought is granted.

Jo-Anne Matear, Assistant Manager
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