



Citation: 2012 BCSECCOM 486

Headnote

Professional organization wants to distribute securities of a trust or limited partnership to partners, professionals and executives, and their family trusts, professional corporations, and family member - The distributions are of securities of entities related to a business; the distributions will only be to professionals working for the business, and their spouses, professional corporations and family trusts

December 17, 2012

Exemption Order

**Borden Ladner Gervais LLP (BLG) and
the LD Management Limited Partnership (LDMLP)
(collectively, the Filers)**

**Section 76 of the *Securities Act*, R.S.B.C. 1996, c. 418
(the Act)**

Background

- ¶ 1 The Filers applied to the Executive Director for a decision under Section 76 of the Act that the Filers be exempt from the prospectus requirement in Section 61 of the Act in connection with the distribution of LP Units (as defined below) by LDMLP to Specified Investors (as defined below) (the Requested Relief).

Interpretation

- ¶ 2 Defined terms contained in NI 14-101 *Definitions* have the same meaning in this decision, unless otherwise defined.

Representations

- ¶ 3 The Filers represent that:
1. BLG is a limited liability partnership formed for the practice of law with one office in each of Vancouver, British Columbia, Calgary, Alberta, and Montreal, Quebec and three offices (Toronto, Ottawa and Waterloo) in Ontario;
 2. the equity partners of BLG together with the lawyers who would otherwise be an equity partner of BLG but for the fact that they are a controlling shareholder of a Professional Corporation (as defined below), (collectively, the BLG Partners) are approximately 395 lawyers or their Professional Corporations, of which approximately 75 lawyers or their Professional Corporations are resident in British Columbia and practice in BLG's Vancouver office (together with the lawyers who

would otherwise be an equity partner in BLG's Vancouver office but for the fact that they are a controlling shareholder of a Professional Corporation, Vancouver BLG Partners);

3. a Professional Corporation of a Vancouver BLG Partner is a corporation that is incorporated or continued under the laws of British Columbia, which holds, where required, a valid permit or licence to practice its profession in British Columbia; any applicable Professional Corporation will be controlled by an individual lawyer (who would otherwise be a Vancouver BLG Partner but for the installation of the Professional Corporation), acting as sole director and holding all voting securities of such of such Professional Corporation; family members of such individual lawyer may own securities of a Professional Corporation, but such securities, if any, are non-voting securities;
4. LDMLP is a limited partnership formed under the *Partnership Act* (British Columbia) on December 22, 1994, that is resident in British Columbia;
5. the general partner of LDMLP is Arthur Services Ltd., a company existing under the *Business Corporations Act* (British Columbia);
6. the capital of LDMLP consists of limited partnership units (LP Units), all of which are currently held by the BLG Income Fund (the Fund);
7. LDMLP is not and does not have any intention of becoming a reporting issuer in any jurisdiction of Canada;
8. LDMLP is not in default of securities legislation in any jurisdiction of Canada;
9. LDMLP provides secretarial, accounting and administrative services to the Vancouver office;
10. BLG Partners propose (the Proposal) to wind-up the Fund as the Fund no longer serves a useful purpose due to changes made in tax legislation, and to create an investment structure where BLG Partners and their families will directly own units of one of the limited partnerships (Limited Partnerships) that provide secretarial, accounting and administrative services to their applicable office of BLG; on the wind up of the Fund, Limited Partnership units held by the Fund will be redeemed and the Fund's funds will be distributed to the Fund's unitholders; BLG Partners, or their spouses or their family trusts, will then use the same amount to subscribe for Limited Partnership units; for Vancouver BLG Partners and their families, this will involve direct investments in LDMLP;
11. each Specified Investor (as defined below) will contribute \$1,000 to subscribe for one LP Unit;

12. LDMLP will issue LP Units to all Vancouver BLG Partners (and, in limited circumstances, Other Approved Persons, as defined below) or one or more of their related Specified Investors;
13. the LP Units will not be transferable; the LP Units will only be redeemable by LDMLP for the original subscription amount and otherwise in accordance with the terms of the LP Units; consequently there is no market, and no market will develop, for the LP Units;
14. under the Proposal, LP Units will be issued only to the following investors, each of whom will be a British Columbia resident at the time of the distribution (each a Specified Investor):
 - (a) a Vancouver BLG Partner;
 - (b) a Professional Corporation;
 - (c) the spouse or common-law partner of a Vancouver BLG Partner;
 - (d) a trust (a Family Trust) established for the benefit of one or more of:
 - (i) a Vancouver BLG Partner (or Other Approved Person);
 - (ii) a spouse or common-law partner of a Vancouver BLG Partner (or Other Approved Person);
 - (iii) the living issue of a Vancouver BLG Partner (or Other Approved Person) or his or her spouse or common-law partner;
 - (iv) the parents of a Vancouver BLG Partner (or Other Approved Person) or his or her spouse or common-law partner;
 - (v) the grandparents of a Vancouver BLG Partner (or Other Approved Person) or his or her spouse or common-law partner;
 - (vi) the siblings of a Vancouver BLG Partner (or Other Approved Person) or his or her spouse or common-law partner; and
 - (vii) the nephews and nieces of a Vancouver BLG Partner (or Other Approved Person) or his or her spouse or common-law partner;
 - (e) any other person approved by the general partner of LDMLP (an Other Approved Person);
15. the class of "Other Approved Person" will be restricted to persons who are any of the following:

- (a) a retired Vancouver BLG Partner or his or her spouse or common-law partner;
 - (b) an income partner, counsel or other special adviser (including trade mark agents and other similar professionals who are not Vancouver BLG Partners) to BLG, or his or her spouse or common-law partner; or
 - (c) a senior executive of BLG's Vancouver office or his or her spouse or common-law partner;
16. except for a Vancouver BLG Partner or Other Approved Person, or the spouse or common-law partner of the Vancouver BLG Partner or Other Approved Person, who is both a trustee of and a beneficiary under a particular Family Trust, no beneficiary of a Family Trust will directly or indirectly contribute money to the Family Trust, be liable for any amount in respect of the Family Trust, or be involved in making any investment decisions by the Family Trust;
17. Specified Investors, other than Vancouver BLG Partners, have not been required, and will not be induced, to purchase the LP Units by expectations of status or continued status as a Vancouver BLG Partner, or by expectation of employment or engagement or continued employment or engagement by any person;
18. LP Unit holders will receive combined unaudited semi-annual and audited annual financial statements of the Limited Partnerships (including LDMLP) and BLG; and
19. although a majority of Specified Investors are expected to be accredited investors, there are occasions when the exemptions in National Instrument 45-106 *Prospectus and Registration Exemptions* may not be available for the issue of LP Units.

Order

- ¶ 4 Considering that it is not prejudicial to the public interest, the Executive Director orders that the Requested Relief is granted under Section 76 of the Act provided that:
- (a) before the issuance of the LP Units to Specified Investors, LDMLP obtains a written statement from the Specified Investor acknowledging receipt of a copy of this decision document and further acknowledging the Specified Investor's understanding that the protections of applicable legislation, including statutory rights of rescission and damages and the right to receive continuous disclosure, will not be available to the Specified Investor in respect of the LP Units; and
 - (b) the first trade of a LP Unit will be a distribution under the legislation of British Columbia.

Peter Brady
Director, Corporate Finance

British Columbia Securities Commission