

2011 BCSECCOM 489

October 26, 2011

Headnote

Multilateral Instrument 11-102 *Passport System* and National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* - National Instrument 81-102, s. 19.1 *Mutual Funds* – A mutual fund manager seeks approval of a change of control of the mutual fund manager under the approval requirements in NI 81-102 - The Filers have provided information to establish the experience and integrity of the group acquiring control of the Manager; there will not be a material change to the management and administration of the Fund because the person chiefly responsible for these functions will continue in his present capacity; the Filers have confirmed that it intends to re-appoint the current members of the IRC; security holders have been advised of the change of control

Applicable Legislative Provisions

National Instrument 81-102, s. 19.1 *Mutual Funds*

In the Matter of
the Securities Legislation of British Columbia
(the Jurisdiction)

and

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

and

In the Matter of
Lions Investment Management Ltd. (the Manager) and
Maxam Capital Corp. (Maxam)
(collectively, the Filers)

Decision

Background

- ¶ 1 The principal regulator in the Jurisdiction has received an application from the Filers for a decision under the securities legislation of the Jurisdiction (the

2011 BCSECCOM 489

Legislation) for approval under section 5.5(2) of National Instrument 81-102 *Mutual Funds* (NI 81-102) of a change in control of the Manager resulting from the acquisition of certain of the issued and outstanding voting securities of the Manager by Maxam (the Approval Sought).

Under the process for Exemptive Relief Applications in Multiple Jurisdictions (for a passport application):

- (a) the British Columbia Securities Commission is the principal regulator for this application; and
- (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.

Interpretation

- ¶ 2 Terms defined in National Instrument 14-101 *Definitions* and MI 11-102 have the same meaning in this decision unless otherwise defined.

Representations

- ¶ 3 This decision is based on the following facts represented by the Filers:

The Manager and the Fund

1. the Manager is a corporation organized under the *Canada Business Corporations Act* with its head office in Vancouver, British Columbia;
2. the Manager is the investment fund manager and portfolio advisor of the Lions Diversified Strategies Fund (the Fund);
3. the Manager is registered under securities legislation in British Columbia and Alberta in the categories of portfolio manager and exempt market dealer, and in British Columbia in the category of investment fund manager;
4. the Fund is a reporting issuer in British Columbia and Alberta, and its securities are sold to the public pursuant to a simplified prospectus and annual information form filed with the regulator in those jurisdictions; the Fund is not a reporting issuer in any other jurisdictions;
5. neither the Manager nor the Fund is in default of securities legislation in any of the jurisdictions of Canada, other than the Manager's failure to comply with sections 5.5(2) and 5.8(1) of NI 81-102 in connection with the Previous Transaction (as defined below);

2011 BCSECCOM 489

The Previous Transaction

6. effective June 30, 2011, the Manager purchased all of the outstanding securities of the Manager then held by Lions Capital Corp. and these securities were subsequently cancelled (the Previous Transaction); the Previous Transaction was completed in connection with the divestment by Lions Capital Corp. of its investment in the Manager;
7. prior to completion of the Previous Transaction, the beneficial ownership of the outstanding voting securities of the Manager was as follows:
 - 75% Lions Capital Corp.; and
 - 25% Travis Dowle;
8. as a result of the Previous Transaction, Travis Dowle (Dowle), the President, Ultimate Designated Person, Chief Compliance Officer and sole advising representative of the Manager, held beneficial ownership of 100% of the issued and outstanding voting securities of the Manager;
9. the Previous Transaction resulted in a change in control of the Manager; in addition, in connection with the Previous Transaction, Frank Holler and James Heppell resigned as directors of the Manager, and Frank Holler resigned as the Executive Chairman of the Manager and since that time, Dowle has been the sole director and officer of the Manager;
10. section 5.5(2) of NI 81-102 requires the prior approval of the applicable securities regulatory authorities of the change of control of a manager of a mutual fund; section 5.8 of NI 81-102 requires the manager of a mutual fund to give 60 days prior notice to all security holders of the mutual fund before a change of control;
11. an amendment dated August 19, 2011 to the simplified prospectus of the Fund (the Amendment) described the Previous Transaction and the related changes in directors and officers of the Manager;
12. investors in the Fund who purchased units between April 30, 2011 and the date of delivery of the Amendment were provided with a right to cancel their purchase of the units purchased during this period and to receive a refund of their purchase price for those units;

Maxam Capital Corp.

13. Maxam is a company organized under the laws of British Columbia with its head office in Vancouver, British Columbia; Maxam is not registered under securities legislation in any jurisdiction;

2011 BCSECCOM 489

14. Maxam is owned 50% by Kaiya Capital Corp. and 50% by Lucris Capital Corp., which are each in turn 100% owned by Sean Morrison and Johnny Ciampi, respectively; the directors of Maxam are Sean Morrison and Johnny Ciampi;
15. Maxam is the largest shareholder of the general partner of the Maxam Opportunities Fund LP and Maxam Opportunities Fund (International) LP (together, the Maxam Funds); the Maxam Funds consist of a \$101 million pool of capital for opportunistic structured investments including mezzanine loans, bridge loans and private equity investments;

The Proposed Transaction

16. effective August 9, 2011, the Manager, JTD Holdings Inc. (JTD) (a holding company that is the registered owner of all of the issued and outstanding securities of the Manager and is wholly-owned by Dowle), Dowle and Maxam entered into an investment agreement (the Investment Agreement), pursuant to which Maxam agreed, among other things, to acquire 50% of the issued and outstanding voting securities of the Manager, with the remaining 50% of such securities held by JTD (the Proposed Transaction); pursuant to the terms of the Investment Agreement, a portion of the voting securities held by JTD will be placed in escrow and released upon satisfaction of certain conditions related to the value of assets under management by the Manager; while these voting securities are held in escrow, JTD will not be entitled to exercise the related voting rights; accordingly, upon closing of the Proposed Transaction and until these voting securities are released from escrow to JTD, voting rights attributable to 70% of the issued and outstanding voting securities of the Manager will be held by Maxam, with the remaining 30% of such voting rights held by Dowle;
17. subject to the receipt of all required regulatory approvals and certain other conditions set out in the Investment Agreement, the parties are seeking to close the Transaction by no later than October 31, 2011;
18. as required by section 11.2 of National Instrument 81-106 *Investment Fund Continuous Disclosure*, a press release disclosing the Proposed Transaction was issued and posted on the website of the Manager and the press release, a Form 51-102F3 *Material Change Report* describing the Proposed Transaction and amendments to the Fund's simplified prospectus and annual information form disclosing the Proposed Transaction were filed on SEDAR;
19. as required by section 11.10 of National Instrument 31-103 *Registration Requirements and Exemptions and Ongoing Registrant Obligations* (NI 31-

2011 BCSECCOM 489

103) the Manager provided the Commission written notice of the Proposed Transaction by letter dated August 10, 2011;

20. as part of the Transaction, the Manager will change its name to “Maxam Investment Management Ltd.” and will move its head office to the head office of Maxam; in addition, as part of the Proposed Transaction, Sean Morrison (Morrison), a director of Maxam, will become a director of the Manager and Greg Gutmanis (Gutmanis), an employee of Maxam, will become the Chief Financial Officer and Corporate Secretary of the Manager; notice of these changes and a Form 33-109F4 for Morrison will be filed in a timely manner as required under NI 31-103 and National Instrument 33-109 *Registration Information*;
21. the change in control of the Manager occurring as a result of the Proposed Transaction will not affect the management or administration of the Fund in any way; other than the appointment of Morrison and Gutmanis to the positions described above, no other changes to the directors and officers of the Manager are proposed in connection with the Proposed Transaction; in particular, Dowle will remain the President, Ultimate Designated Person and Chief Compliance Officer of the Manager, and will continue to be responsible for managing the assets of the Fund; further, it is not anticipated that there will be any material changes to the day-to-day business operations or activities of the Manager as a result of the Proposed Transaction;
22. the Manager and Maxam do not foresee that the Proposed Transaction will give rise to any conflicts of interest that will not be addressed by the Manager’s current policies and procedures; the Manager has (or will have prior to the completion of the Proposed Transaction) appropriate policies and procedures in place, and will address, or put controls in place to address, any actual or potential conflicts of interest which may exist as a result of the Proposed Transaction;
23. the Manager has implemented a 12-month compliance monitoring program acceptable to the British Columbia Securities Commission; under the monitoring program, the monitor approved by the Commission will monitor the compliance of the Manager and the Fund with the applicable provisions of NI 81-102 and National Instrument 81-106 *Investment Fund Continuous Disclosure* (NI 81-106) and provide quarterly reports to the Commission; the monitor is or will be legal counsel with a thorough understanding of securities laws relating to investment funds and significant experience advising public investment funds, and that has been approved by the Commission;

2011 BCSECCOM 489

24. upon completion of the Proposed Transaction, all the then current members of the Independent Review Committee (IRC) for the Fund will cease to be members of the IRC pursuant to section 3.10(1)(c) of National Instrument 81-107 *Independent Review Committee for Investment Funds* (NI 81-107); in accordance with section 3.3(5) of NI 81-107, the Manager will fill the vacancies by appointing new members of the IRC; the Manager intends to re-appoint the individuals currently serving as members of the IRC to serve as members of the IRC;
25. unitholders of the Fund were notified of the proposed change in control of the Manager on August 10, 2011 and therefore have been provided with the required notice at least 60 days before the change of control becomes effective in accordance with section 5.8(1) of NI 81-102;
26. the Proposed Transaction and the resulting change of control of the Manager is not expected to affect the financial stability of the Manager or its ability to fulfil its regulatory obligations or its obligations to the Fund.

Decision

- ¶ 4 The principal regulator is satisfied that the decision meets the test contained in the Legislation for the principal regulator to make the decision.

The decision of the principal regulator under the Legislation is that the Approval Sought is granted.

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