

2010 BCSECCOM 543

September 7, 2010

Headnote

Multilateral Instrument 11-102 *Passport System* and National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* – National Instrument 52-107, s. 9.1 *Acceptable Accounting Principles, Auditing Standards and Reporting Currency* - An issuer wants relief from the requirements to reconcile certain acquisition statements to Canadian GAAP and to prepare pro forma financial statements in accordance with Canadian GAAP in a BAR - The filer has obtained relief to adopt IFRS early; the target company is using IFRS; the filer will provide an opening balance sheet as at the transition date to IFRS with its first financial statement filing using IFRS. In the BAR, the filer will disclose the adjustments resulting from conversion to IFRS separately from the adjustments resulting from the acquisition

Applicable British Columbia Provisions

National Instrument 52-107, s. 9.1 *Acceptable Accounting Principles, Auditing Standards and Reporting Currency*

In the Matter of
the Securities Legislation of
British Columbia and Ontario
(the Jurisdictions)

and

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

and

In the Matter of
Etrion Corporation
(the Filer)

Decision

Background

- ¶ 1 The securities regulatory authority or regulator in each of the Jurisdictions (the Decision Makers) have received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) exempting the Filer

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from the requirement in section 6.1 of National Instrument 52-107 *Acceptable Accounting Principles, Auditing Standards and Reporting Currency* (NI 52-107) to reconcile acquisition statements to be included in certain business acquisition reports (the BARs) to Canadian GAAP and the requirement in section 7.1 of NI 52-107 to prepare pro forma income statements to be included in the BARs in accordance with Canadian GAAP (the Exemption Sought).

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions (for a dual application):

- (a) the British Columbia Securities Commission is the principal regulator for this application;
- (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 (the Passport Jurisdiction); and
- (c) the decision is the decision of the principal regulator and evidences the decision of the securities regulatory authority or regulator in the Province of Ontario.

Interpretation

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

Representations

- ¶ 3 This decision is based on the following facts represented by the Filer:
- 1. the Filer is a corporation continued under the laws of British Columbia;
 - 2. the Filer's registered office is located in Vancouver, British Columbia and its head office is located in Geneva, Switzerland;
 - 3. the Filer's common shares are listed on the Toronto Stock Exchange;
 - 4. the Filer is a reporting issuer in each of the Jurisdictions and the Passport Jurisdiction; the Filer is not in default of securities legislation of any jurisdiction;
 - 5. the Filer is a renewable energy company focused on developing, financing, building, owning and operating global power plants based on renewable sources of energy, including solar photovoltaic, solar thermal and wind; in

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addition, the Filer owns oil and gas investments in Venezuela through its wholly-owned subsidiary, PFC Oil and Gas, C.A.;

6. prior to the interim period ended June 30, 2010 the Filer prepared its financial statements in accordance with Canadian GAAP;
7. on June 22, 2010 the British Columbia Securities Commission and the Ontario Securities Commission issued a decision document (the Original Decision) that allows Etrion to prepare its financial statements for annual and interim periods beginning on or after January 1, 2010 in accordance with International Financial Reporting Standards (IFRS) as issued by the International Accounting Standards Board (IFRS-IASB); in its application for the Original Decision, the Filer provided notice that it intended to rely on section 4.7(1) of MI 11-102 for purposes of the equivalent provision (as defined in MI 11-102) in the Passport Jurisdiction;
8. as a result of the Original Decision, the Filer prepared and filed on SEDAR on August 16, 2010:
 - (a) restated interim consolidated financial statements for the three months ended March 31, 2010 prepared in accordance with IFRS-IASB, together with related management's discussion and analysis; and
 - (b) interim consolidated financial statements for the three and six months ended June 30, 2010 prepared in accordance with IFRS-IASB, together with related management's discussion and analysis;
9. on June 24, 2010 the Filer completed the acquisition of Helios ITA, Srl (Helios ITA), which constituted a significant acquisition under National Instrument 51-102 *Continuous Disclosure Obligations* (NI 51-102); accordingly, the Filer will be required to file, on or before September 7, 2010, a business acquisition report (the Helios BAR) with respect to such acquisition;
10. Helios ITA was incorporated on January 14, 2008 and the fiscal year end of Helios ITA is December 31; accordingly, the Helios BAR will be required to include:
 - (a) audited annual financial statements of Helios ITA as at and for the years ended December 31, 2009 and 2008;
 - (b) unaudited interim financial statements as at and for the three months ended March 31, 2010 and 2009; and

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- (c) pro forma income statements of the Filer for the year ended December 31, 2009 and the three months ended March 31, 2010 that give effect to the acquisition of Helios ITA as if it had taken place on January 1, 2009;
- 11. the Filer is not required to include a pro forma balance sheet in the Helios BAR because the acquisition of Helios ITA will be reflected in Etrion's balance sheet as at June 30, 2010;
- 12. on August 5, 2010 the Filer completed the acquisition of SunRay Italy Holding, Srl (SunRay Italy), which also constituted a significant acquisition under NI 51-102; accordingly the Filer will be required to file, on or before October 19, 2010, a business acquisition report (the SunRay BAR and, together with the Helios BAR, the BARs) with respect to such acquisition;
- 13. SunRay Italy was incorporated on August 8, 2008 and the fiscal year end of SunRay Italy is June 30; accordingly, the SunRay BAR will be required to include:
 - (a) annual audited financial statements of SunRay Italy as at and for the years ended June 30, 2010 and 2009;
 - (b) a pro forma balance sheet of the Filer as at June 30, 2010 that gives effect to the acquisition of SunRay Italy as if it had taken place on June 30, 2010; and
 - (c) pro forma income statements of the Filer for the year ended December 31, 2009 and the six months ended June 30, 2010 that give effect to the acquisition of Helios ITA and SunRay Italy as if they had taken place on January 1, 2009;
- 14. Helios ITA and SunRay Italy are both based in Italy and prepare their financial statements in accordance with IFRS-IASB;
- 15. under Part 6 of NI 52-107, if acquisition statements of an acquired business are prepared under accounting principles different from the accounting principles used to prepare the issuer's financial statements (the issuer's GAAP), the acquisition statements must be reconciled to the issuer's GAAP;
- 16. Part 7 of NI 52-107 provides that pro forma financial statements must be prepared in accordance with the issuer's GAAP;
- 17. the audited financial statements of the Filer for the year ended December 31, 2009 were prepared in accordance with Canadian GAAP; under the Original

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Decision, the Filer intends to prepare its interim financial statements for interim periods beginning on or after January 1, 2010 in accordance with IFRS-IASB;

18. without the Exemption Sought:

- (a) the historical financial statements of Helios ITA for the year ended December 31, 2009 to be included in the Helios BAR would have to be reconciled to Canadian GAAP, whereas the historical financial statements of Helios ITA for the three months ended March 31, 2010 to be included in the Helios BAR would not have to be so reconciled;
- (b) the pro forma income statement of the Filer for the year ended December 31, 2009 to be included in the Helios BAR would have to be prepared in accordance with Canadian GAAP, whereas the pro forma income statement of the Filer for the three months ended March 31, 2010 to be included in the Helios BAR would have to be prepared in accordance with IFRS-IASB;
- (c) the historical financial statements of SunRay Italy for the year ended June 30, 2010 to be included in the SunRay BAR would have to be reconciled to Canadian GAAP; and
- (d) the pro forma income statement of the Filer for the year ended December 31, 2009 to be included in the SunRay BAR would have to be prepared in accordance with Canadian GAAP, whereas the pro forma balance sheet of the Filer as at June 30, 2010 and the pro forma income statement of the Filer for the six months ended June 30, 2010 to be included in the SunRay BAR would have to be prepared in accordance with IFRS-IASB;

19. the Filer's first IFRS-IASB financial statements for the three months ended March 31, 2010 will include the reconciliations and other information specified in paragraphs 6 and 23 through 28 of IFRS 1 *First-time Adoption of International Financial Reporting Standards*, including but not limited to:

- (a) an opening IFRS statement of financial position as at the transition date of January 1, 2009;
- (b) a reconciliation of equity as previously reported in accordance with Canadian GAAP to equity in accordance with IFRS as at the transition date of January 1, 2009 and as at each year end since that date;

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- (c) a reconciliation of total comprehensive income as previously reported in accordance with Canadian GAAP to total comprehensive income in accordance with IFRS for the year ended December 31, 2009;
- (d) sufficient information to enable users to understand the material adjustments to the statement of financial position and statement of comprehensive income for the year ended December 31, 2009; and
- (e) material differences between the statements of cash flows as previously reported in accordance with Canadian GAAP and restated IFRS amounts for the year ended December 31, 2009.

Decision

- ¶ 4 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 Exemption Sought is granted, provided that the pro forma income statements of the Filer for the year ended December 31, 2009 to be included in the BARs include:

- (a) the applicable amounts reported in the audited financial statements of the Filer for the year ended December 31, 2009;
- (b) adjustments to the amounts referred to in paragraph (a) required to restate them in accordance with IFRS-IASB;
- (c) the applicable amounts reported in the audited annual financial statements of Helios ITA for the year ended December 31, 2009;
- (d) in the SunRay BAR, the applicable amounts for SunRay Italy for a twelve month period ending no more than 93 days before or after December 31, 2009 prepared in compliance with the requirements in section 8.4(7)(c) and (d) of NI 51-102; and
- (e) separately from the adjustments referred to in paragraph (b), other adjustments relating to the significant acquisitions presented in such pro forma income statements.

Andrew S. Richardson, CA
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British Columbia Securities Commission