

2012 BCSECCOM 356

August 31, 2012

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 not more than 50 persons and are not traded through any exchange or market – The issuer falls within the definition of “closely held reporting issuer” contained in BCI 11-502 as the securities of the issuer are beneficially owned by not more than 50 persons and are not traded through any exchange or market

Applicable British Columbia Provisions

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

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

and

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

and

In the Matter of
Gazit America Inc. (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 the securities legislation of the Jurisdictions (the “Legislation”) that the Filer is deemed to have ceased to be a reporting issuer in the Jurisdictions (the “Exemptive Relief Sought”).

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

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- (a) the Ontario Securities Commission is the principal regulator for this 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* and MI 11-102 *Passport System* have the same meaning if used in this decision, unless otherwise defined.

Representations

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

1. the Filer is a corporation governed by the *Business Corporations Act* (Ontario) with its registered address located at 109 Atlantic Avenue, Suite 303, Toronto, Ontario M6K 1X4;
2. the Filer is a reporting issuer in the Jurisdictions;
3. the Filer is authorized to issue an unlimited number of common shares (the “Shares”);
4. no securities of the Filer, including debt securities, are listed or traded in Canada or another country on a marketplace as defined in National Instrument 21-101 *Marketplace Operation*;
5. on June 20, 2012, the Filer entered into an agreement with Gazit-Globe Ltd. (“Gazit-Globe”), being the sole shareholder of Gazit Maple Inc., and First Capital Realty Inc. (“First Capital Realty”) to complete a transaction by way of statutory plan of arrangement in accordance with the *Business Corporations Act* (Ontario) (the “Arrangement”);
6. the Filer’s issued and outstanding share capital immediately prior to the effective time of the Arrangement was 23,345,088 Shares;
7. the Arrangement was completed on August 8, 2012;
8. pursuant to the Arrangement, Gazit-Globe indirectly acquired the 6,311,114 Shares not already beneficially owned by it, resulting in Gazit-Globe holding 100% of the 23,345,088 outstanding Shares, and First Capital Realty indirectly acquired the medical office and retail properties of the Filer and the related debt;

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9. pursuant to the Arrangement, shareholders of the Filer are entitled to receive cash consideration of \$3.31 and 0.2343 of a First Capital Realty common share for each Share previously held by them;
10. pursuant to the Arrangement, the Filer acquired all of the issued and outstanding warrants to purchase Shares of the Filer expiring November 30, 2015 ("2010 Warrants") and all of the outstanding warrants to purchase Shares of the Filer expiring November 30, 2016 ("2011 Warrants"). The cash consideration payable to (i) holders of 2010 Warrants, each of which was exercisable for 1.065625 Shares, is \$2.02 for each Share subject to a 2010 Warrant held; and (ii) holders of 2011 Warrants, each of which was exercisable for one Share, is \$0.25 per Share subject to a 2011 Warrant held;
11. prior to the completion of the Arrangement, the Shares, the 2010 Warrants and the 2011 Warrants were listed for trading on the Toronto Stock Exchange under the symbols "GAA", "GAA.WT", and "GAA.WT.A", respectively;
12. the Shares, the 2010 Warrants and the 2011 Warrants were delisted from the Toronto Stock Exchange as of the close of business on August 13, 2012;
13. pursuant to the terms of the Arrangement, the Filer amalgamated with Gazit Maple Inc. and all of the Shares have been cancelled. The stated capital of the amalgamated entity is an amount equal to the common shares and preferred shares of Gazit Maple Inc. that were issued and outstanding immediately prior to the effective time of the Arrangement, which are all held directly by Gazit-Globe;
14. the Filer has no current intention to seek public financing by way of an offering of securities;
15. the Filer is applying for relief to cease to be a reporting issuer in all of the Jurisdictions;
16. the Filer did not voluntarily surrender its status as a reporting issuer in British Columbia pursuant to British Columbia Instrument 11-502 *Voluntary Surrender of Reporting Issuer Status* because it wanted to avoid the 10-day waiting period under that Instrument;
17. the Filer is not eligible to use the simplified procedure under CSA Notice 12-307 *Applications for a Decision that an Issuer is not a Reporting Issuer* because it is a reporting issuer in British Columbia;

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18. the Filer is not in default of any requirement of the securities legislation in any of the Jurisdictions except for the obligation arising after Gazit-Globe came to be the Filer's sole shareholder pursuant to the Arrangement to file its interim financial statements and related management's discussion and analysis for the three-month period ended June 30, 2012, as required under National Instrument 51-102 *Continuous Disclosure Obligations* and the related certification of such financial statements as required under National Instrument 52-109 *Certification of Disclosure in Filers' Annual and Interim Filings*; and
19. the Filer, upon the granting of the Exemptive Relief Sought, will no longer be a reporting issuer or the 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.

Edward P. Kernin
Commissioner
Ontario Securities Commission

Paulette Kennedy
Commissioner
Ontario Securities Commission