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November 13, 2012

Headnote

National Policy 11-203 *Process for Exemptive Relief Application in Multiple Jurisdictions – Securities Act*, s.88 – Cease to be a reporting issuer - the securities of the issuer are beneficially owned by more than 50 persons and are not traded through any exchange or market - the issuer is in the process of a court-approved winding up; it has ceased all commercial activity and will be dissolved after the liquidation process is complete; a liquidator has been appointed; the issuer's directors have been deemed to have resigned; the issuer's shareholders cannot trade in securities of the issuer; the liquidator is required to provide shareholders with all relevant information about the issuer and the liquidation

Applicable British Columbia Provisions

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

In the Matter of
the Securities Legislation of the Provinces of
Ontario, Alberta, British Columbia, Saskatchewan, Manitoba,
Québec, New Brunswick, Nova Scotia, Prince Edward Island 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 Coventree Inc.
(the Filer)

Decision

Background

- ¶ 1 The securities regulatory authority or regulator in each of the Jurisdictions (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 not a reporting issuer (the Relief).

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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 this application, and
- (b) the decision is the decision of the principal regulator and evidences the decision of each other Decision Maker.

Interpretation

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

Representations

- ¶ 3 The decision is based on the following facts represented by the Filer:
1. the Filer is a corporation incorporated under the *Business Corporations Act* (Ontario) (the OBCA) and its head office is located at 161 Bay Street, 27th Floor, Toronto, Ontario M5J 2S1;
 2. the Filer is a reporting issuer in each of the Jurisdictions and is not in default of any of its reporting issuer or equivalent obligations under the Legislation, other than the requirement of National Instrument 52-110 – *Audit Committees* to have an audit committee;
 3. the Filer currently has 15,157,138 common shares outstanding (the Shares) and has no other securities outstanding;
 4. a geographical breakdown of the Filer's shareholders, based on reports provided by Broadridge Financial Solutions (Broadridge) and the Filer's transfer agent, Equity Financial Trust Company (Equity), is as follows:
 - (a) the Broadridge report identified 282 beneficial security holders holding 5,113,645 Shares; the report lists 265 beneficial security holders in Canada, 11 in the United States and 6 in foreign jurisdictions; of the Canadian beneficial security holders, the report identified 16 in Alberta holding 191,601 Shares, 13 in British Columbia holding 172,032 Shares, one in Nova Scotia holding 2,200 Shares, 118 in Ontario holding 3,169,495 Shares, 117 in Quebec holding 488,172 Shares and none in the remaining Jurisdictions; Ontario's beneficial security holders hold over 60% of the Filer's outstanding Shares; and

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- (b) the Equity report lists 15 registered security holders holding 15,157,138 Shares; there are 12 registered security holders in Canada and three in the United States; of the registered Canadian security holders, Nova Scotia has two holding 44,000 Shares and Ontario has 10 holding 12,205,741 Shares, including the Canadian Depository for Securities Limited holding 7,697,272; Ontario's registered security holders in Ontario hold over 80% of the Filer's outstanding Shares;
5. the Filer is not eligible to use the procedure to voluntarily surrender its reporting issuer status in British Columbia pursuant to BC Instrument 11-502 – *Voluntary Surrender of Reporting Issuer Status* because the Filer has more than 50 security holders;
 6. the Filer is not eligible to use the simplified procedure under CSA Staff Notice 12-307 – *Applications for a Decision that an Issuer is not a Reporting Issuer* because it is a reporting issuer in British Columbia, because it has more than 15 security holders in certain jurisdictions and because it has more than 51 security holders in total worldwide; the Filer is also in default of the requirement in National Instrument 52-110 – *Audit Committees* to have an audit committee;
 7. on December 7, 2009 the Ontario Securities Commission (the OSC) staff commenced a proceeding against the Filer and one current officer, Geoffrey Cornish, and one former officer, Dean Tai; on September 28, 2011 the OSC concluded that the Filer contravened section 75 of the *Securities Act* (Ontario) (the Act); the OSC further found that each of Messrs. Cornish and Tai authorized, permitted or acquiesced in the Filer's non-compliance and therefore were deemed also to have not complied with Ontario securities law. Finally, the OSC found that the conduct of each of the Filer and the two individuals was contrary to the public interest;
 8. on October 26 and 27, 2011 the OSC held a hearing to determine what sanctions ought to be issued against the Filer and Messrs. Cornish and Tai; on November 8, 2011 the OSC ordered the Filer to pay an administrative penalty of \$1 million and to pay \$250,000 of the costs incurred by OSC staff in connection with the hearing; the OSC also ordered that trading in any securities by the Filer cease and that any Ontario securities law exemptions not apply to the Filer until its winding up is completed, provided that these orders would not prevent the winding up of the Filer or trades in securities reasonably related to that winding up;

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9. the OSC ordered that each of Messrs. Cornish and Tai pay an administrative penalty of \$500,000; the OSC also ordered that they be reprimanded, resign any positions as a director or officer of a reporting issuer other than the Filer, and not be permitted to act as a director or officer of a reporting issuer other than the Filer for a period of one year;
10. on January 3, 2012 the Filer announced that it would not appeal the OSC's decision and, shortly thereafter, paid the \$1 million administrative penalty and \$250,000 costs award imposed against it by the OSC; Messrs. Cornish and Tai have personally appealed the OSC decision;
11. at the annual and special meeting of shareholders of the Filer held on June 30, 2010, the shareholders approved a special resolution authorizing the formal winding up of the Filer and the distribution of its remaining assets to shareholders pursuant to a plan of liquidation and distribution (the Liquidation Plan);
12. the Liquidation Plan provided that it will become effective on a date to be determined by the Filer's board of directors (the Board);
13. by resolution of the Board, the effective date for the commencement of the formal winding up in accordance with the Liquidation Plan was determined to be February 15, 2012 (the Effective Date), and the Filer applied to the Superior Court of Justice (Commercial List) (Ontario) (the Court) for the winding up to be supervised by the Court;
14. on February 15, 2012 the Court granted the Filer's application and approved a final liquidation plan (the Final Liquidation Plan) by issuing a winding up order (the Winding-Up Order);
15. Pursuant to the Final Liquidation Plan:
 - (a) Duff & Phelps Canada Restructuring Inc. (being the successor of RSM Richter Inc.) (the Liquidator) was appointed the liquidator of the estate and effects of the Filer for the purpose of winding up its business and affairs and distributing its assets;
 - (b) a process established by the Liquidator and approved by the Court was initiated for the identification, resolution and barring of certain claims against the Filer (the Claims Process);

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- (c) consistent with Section 221 of the OBCA and Section 3.3 of the Final Liquidation Plan, all of the powers of the board of directors of the Filer have ceased and the directors have been deemed to have resigned; and
 - (d) certain former members of the Board, namely Brendan Calder, Geoffrey Cornish and Wesley Voorheis, were appointed inspectors of the Applicant pursuant to Section 194 of the OBCA and Section 6.1 of the Final Liquidation Plan; Brendan Calder resigned as an inspector on February 15, 2012 and his vacancy was filled with the appointment of William Aziz pursuant to Section 6.5 of the Final Liquidation Plan; subsequently, Geoffrey Cornish resigned as an inspector and his vacancy was filled with the appointment of Joseph Wiley pursuant to Section 6.5 of the Final Liquidation Plan; accordingly, the current inspectors are Wesley Voorheis, William Aziz and Joseph Wiley;
16. in accordance with the Claims Process the date by which all claims were required to be filed was April 13, 2012;
 17. on January 25, 2012, the Filer applied to NEX to have the listing and posting for trading of the Shares maintained during the Claims Process; by email dated February 2, 2012, NEX advised that it would not maintain the listing of the Shares after the Effective Date;
 18. as a result of the foregoing, by letter dated February 8, 2012, the Filer applied to voluntarily de-list the Shares from NEX as of the Effective Date;
 19. by press release issued on February 3, 2012, the Filer announced that February 14, 2012 was to be the final day for trading in the Shares on the NEX; NEX also issued a bulletin to this effect on February 12, 2012; pursuant to Section 198 of the OBCA and paragraph 6 of the Winding-Up Order, all Share transfers made after that date are void unless made with the explicit sanction of the Liquidator;
 20. on February 15, 2012 the Filer submitted a letter to CDS requesting that they place a restriction on the Shares so that no transfers among participants may occur; on February 17, 2012 CDS published a bulletin announcing that the Shares would be fully restricted in CDS as of opening of business on February 20, 2012, subject to any Liquidator sanctioned transfers;
 21. the Filer and CDS have been informed by the Liquidator that the Liquidator will not sanction any share transfers unless, in the opinion of the Liquidator, material extenuating circumstances exist (such as in a deceased's estate matters

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or certain family law matters) and such circumstances can be evidenced to the Liquidator in a manner satisfactory to the Liquidator; notwithstanding the foregoing, the Liquidator has maintained and reserved the right not to sanction any share transfers regardless of the circumstances;

22. the Filer's shareholders no longer have the ability to trade in the Shares; as a result, the Filer's shareholders do not receive any further benefit from the Filer continuing to be a reporting issuer given that all pertinent information will be disclosed by the Liquidator;
23. as a result of the appointment of the Liquidator and the inspectors, the Filer is no longer able to satisfy any of the requirements pertaining to boards of directors and committees thereof;
24. no securities of the Filer are listed, traded or quoted for trading on any "marketplace" in Canada or elsewhere (as defined in National Instrument 21-101 *Marketplace Operation*), and the Filer does not intend to have any of its securities listed, traded or quoted on such a marketplace in Canada or any other jurisdiction;
25. the Filer has no current intention to seek public financing by way of offering of securities;
26. the Liquidator is required by the Final Liquidation Plan to report to the Filer's shareholders with respect to all matters relating to the assets, the Filer and such other matters as may be relevant to the Final Liquidation Plan;
27. the Liquidator has established a website in respect of the liquidation where it intends to continue to post information and issue press releases where considered advisable (with the advice of outside counsel) with respect to material claims raised during the Claims Process, the resolution of any material claims and the timing and expected amounts of any distributions to the Filer's shareholders; as a result of the Liquidator being an officer of the Court and the Liquidation being under the supervision of the Court, the Liquidator will report to the Court from time to time with respect to disclosure made to the Filer's shareholders;
28. on February 28, 2012 the Filer filed its financial statements and Management Discussion and Analysis for the first quarter ended December 31, 2011; on May 25, 2012, the Filer filed its financial statements and Management Discussion and Analysis for the second quarter ended March 31, 2012; on

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August 28, 2012, the Filer filed its financial statements and Management Discussion and Analysis for the third quarter ended June 30, 2012;

29. on October 4, 2012, the Filer issued a press release disclosing that the Filer has made an application for a decision that the Filer is not a reporting issuer; the press release was filed on SEDAR on October 4, 2012;

30. the Filer's assets consists primarily of cash;

31. the Filer has ceased exercising commercial activity of any kind and will be dissolved after the Claims Process is complete, all claims are resolved and all assets are distributed; as a result, there is no further need to inform the Filer's shareholders and the public about the business and financial situation of the Filer outside of the requirements of the Final Liquidation Plan; and

32. the Relief would also alleviate the significant burden and costs associated with being a reporting issuer under the Legislation without prejudicing the Filer's shareholders; in fact, such costs would only serve to ultimately diminish the amounts available for distribution to the Filer's shareholders.

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 and grant the Relief.

The decision of the Decision Makers under the Legislation is that the Relief sought is granted.

James E.A. Turner
Commissioner
Ontario Securities Commission

Mary G. Condon
Commissioner
Ontario Securities Commission