

2010 BCSECCOM 165

January 28, 2010

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 BC Instrument 11-502 *Voluntary Surrender of Reporting Issuer Status* 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, New Brunswick, Nova Scotia,
Prince Edward Island, Newfoundland and Labrador,
Yukon, Northwest Territories and Nunavut
(the Jurisdictions)

and

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

and

In the Matter of
Allen-Vanguard Corporation
(the Filer)

Decision

Background

The securities regulatory authority or regulator in each of the Jurisdictions (each a Decision Maker) has received an application from the Filer for a decision under the securities legislation of each of the Jurisdictions (the Legislation) that the Filer is not a reporting issuer in the Jurisdictions (the Order Sought)

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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) this decision is the decision of the principal regulator and evidences the decision of each other Decision Maker.

Interpretation

Defined terms contained in National Instrument 14-101 - *Definitions* have the same meaning if used in this decision, unless otherwise defined:

Representations

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

1. The Filer is a corporation governed by the *Business Corporations Act* (Ontario).
2. The Filer's head and registered address is located in Ontario at 2400 St. Laurent Blvd., Ottawa, Ontario K1G 6C4.
3. The Filer is a reporting issuer in all the provinces and territories of Canada.
4. The Filer's authorized capital consists of an unlimited number of common shares and an unlimited number of preferred shares, issuable in series. As at December 30, 2009, the only issued and outstanding securities of the Filer were 267,270,639 common shares.
5. The Filer's common shares, which traded on the Toronto Stock Exchange (TSX), were delisted from the TSX at the close of market on October 21, 2009.
6. On September 12, 2009, the Filer entered into an agreement with Contego AV Investments, LLC (Contego) and the Filer's senior lenders, pursuant to which the Filer completed a recapitalization and Contego became the 100% owner of the Filer (Transaction).
7. The Transaction was effected through a Plan of Arrangement and Reorganization (Plan) under the provisions of the *Companies' Creditors Arrangement Act* (CCAA). The Filer commenced the court-supervised process under the CCAA on December 9, 2009 with the Ontario Superior Court of Justice (Court). An Initial Order was granted by the Court on December 9,

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2009, and the Court approved the Plan on December 16, 2009. The Transaction was completed on December 18, 2009.

8. Pursuant to the Plan, upon closing of the Transaction, all of the issued and outstanding common shares of the Filer were transferred to Contego, and all other outstanding securities of the Filer, including its outstanding warrants, options and restricted share units, were cancelled.
9. The Filer is not in default of any of its obligations under the Legislation as a reporting issuer, except for its obligation to file its annual financial statements for the year ended September 30, 2009, its management's discussion & analysis in respect of such financial statements and its annual information form, as required under National Instrument 51-102 - *Continuous Disclosure Obligations*, and the related certification of these filings as required under National Instrument 52-109 - *Certification of Disclosure in Issuers' Annual and Interim Filings*, all of which became due on December 29, 2009.
10. The outstanding securities of the Filer, including debt securities, are beneficially owned, directly or indirectly, by fewer than 15 security holders in each of the jurisdictions in Canada and fewer than 51 security holders in total in Canada.
11. No securities of the Filer are traded on a marketplace as defined in National Instrument 21-101 - *Marketplace Operation*.
12. The Filer is applying for a decision that it will not be a reporting issuer in all of the jurisdictions in Canada in which it is currently a reporting issuer.
13. The Filer did not surrender its status as a reporting issuer in British Columbia pursuant to BC Instrument 11-502 - *Voluntary Surrender of Reporting Issuer Status* (BC Instrument) in order to avoid the 10-day waiting period under the BC Instrument.
14. 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* in order to apply for the Order Sought.
15. The Filer has no current intention to seek public financing by way of an offering of securities.
16. Upon the grant of the Order Sought, the Filer will not be a reporting issuer or the equivalent in any jurisdiction of Canada.

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Decision

Each of the Decision Makers is satisfied that decision meets the test contained in the Legislation for the Decision Maker to make the decision.

The decision of the Decision Makers under the Legislation is that the Order Sought is granted.

Carol S. Perry

Margot C. Howard