

2004 BCSECCOM 635

November 3, 2004

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - National Instrument 51-102, s. 13.1 - Continuous Disclosure Obligations - Securities Act s. 119 - Proxies/Information Circular Requirements - An issuer wants relief from the requirement to include financial statements that are accompanied by an auditors' report without reservation of opinion in an information circular to be circulated in connection with an arrangement or reorganization or significant acquisition - The financial statements that are subject to a reservation of opinion are not for the issuer's most recently completed financial year; alternate financial information will be provided about the issuer that is consistent with the financial information required in the continuous disclosure context for significant acquisitions; information will be provided about the parties to the transaction sufficient for shareholders to assess the transaction as a whole

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss. 117 and 119

National Instrument 51-102 *Continuous Disclosure Obligations*, ss. 9.1 and 13.1
Form 51-102F5 *Information Circular*, Part 14

In the Matter of
the Securities Legislation
of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Nova Scotia,
New Brunswick, and Yukon

and

In the Matter of
the Mutual Reliance Review System for Exemptive Relief Applications

and

In the Matter of J.U.M. Capital Inc. (the "Filer")

MRRS Decision Document

Background

The local securities regulatory authority or regulator (the Decision Maker) in each of Alberta, British Columbia, Saskatchewan, Manitoba, Ontario, Nova Scotia, New Brunswick, and Yukon (the Jurisdictions) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) for an exemption from the requirements that the financial statements

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of West 49 Inc. (West 49) to be included in the Filer's information circular (the Circular) in connection with its acquisition of West 49 be accompanied by an unqualified auditors' report (the Requested Relief).

Under the Mutual Reliance Review System for Exemptive Relief Applications

- (a) the Ontario Securities Commission is the principal regulator for this application, and
- (b) this MRRS decision document evidences the decision of each Decision Maker.

Interpretation

Defined terms contained in National Instrument 14-101 *Definitions* and National Instrument 51-102 *Continuous Disclosure Obligations* have the same meaning in this decision unless they are defined in this decision.

Representations

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

1. The Filer was incorporated under the *Business Corporations Act* (Ontario) on June 19, 1987. The Filer's head and registered office is located at 5500 North Service Road, 10th Floor, Burlington, Ontario L7L 5H7.
2. As of September 17, 2004, the Filer's issued capital consisted of 74,460,328 common shares. There were also options outstanding to purchase 5,625,000 common shares as of that date.
3. The common shares trade under the symbol "JUM" on the Toronto Stock Exchange (the "TSX"). On July 9, 2004, the Filer announced that it had completed the sale of substantially all of its assets to Le SuperClub Videotron Ltee after receiving shareholder approval at its Annual and Special Meeting of Shareholders on June 28, 2004. Since such date, the Filer has not operated an active business, but has remained a reporting issuer and has sought out a new business to seek to take advantage of its tax losses and cash.
4. The Filer is a reporting issuer or the equivalent, where applicable, in each province other than Quebec and Newfoundland and Labrador and each territory other than Nunavut and is not in default of its obligations as a reporting issuer.
5. West 49 is a corporation existing under the *Canada Business Corporations Act*. The head and registered office for West 49 is located at 4335 Mainway Drive Burlington, Ontario, Canada L7L 5N9.

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6. West 49 is a retailer of moderately priced brand name and private label apparel, footwear and accessories to action sports enthusiasts, with an emphasis on skateboarding, snowboarding and surfing. West 49 is Canada's largest skateboard retailer. West 49 was established in 1995 and has grown from 3 stores to 55 stores, the majority of which are located in high traffic urban malls.
7. As at September 17, 2004, the outstanding capital of West 49 consisted of 180 Class A common shares and 20 Class B common shares.
8. West 49 is privately held and is not a reporting issuer in any jurisdiction.
9. The Filer intends to purchase a portion of the outstanding West 49 Common Shares through a newly incorporated subsidiary ("Subco"). The purchase will be followed by a three corner amalgamation between Subco, West 49, and JUM (the "Transaction"). The Filer will become the owner of 100% of West 49 upon the completion the Transaction.
10. A special meeting of shareholders of the Filer has been called for November 24, 2004 to consider and, if deemed advisable, to pass, among other things, resolutions to approve certain items, including the Transaction.
11. The Circular will be furnished to the Filer's shareholders in connection with the solicitation of proxies by and on behalf of the management of the Filer in connection with a meeting of shareholders called to consider the Transaction.
12. In accordance with Section 14.2 of Form 51-102F5, the Circular is required to include the disclosure (including financial statement disclosure) prescribed by the form of prospectus for the entity that would result from the significant acquisition. The acquisition of West 49 pursuant to the Transaction will constitute a significant acquisition (at the over 50% significance level) for the Filer.
13. The Filer is required to disclose certain financial statements of West 49 in the Circular including: (i) statements of income, retained earnings and cash flows for each of its three most recently completed financial years ended more than 90 days before the date of the Circular; and (ii) a balance sheet as at the date on which its two most recently completed financial years ended more than 90 days before the date of the Circular. The financial statements must be accompanied by an unqualified auditors' report.
14. The Circular will contain prospectus-level disclosure of the business and affairs of the Filer and West 49 and of the particulars of the Transaction.

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15. It is proposed that the Circular will include, among others, the following historical financial statements of West 49 (the West 49 Financial Statements):
- (a) audited consolidated balance sheets as at January 31, 2004 and January 25, 2003; and
 - (b) audited consolidated statements of income, retained earnings and cash flows for the 53 week period ended January 31, 2004 and the 52 week periods ended January 25, 2003 and January 26, 2002.
16. The auditors' report for the West 49 Financial Statements (the Qualified Report) will be qualified as the auditors were not able to observe the counting of physical inventories at the beginning of the 52 week period ended January 26, 2002, and are not able to satisfy themselves concerning those inventory quantities by alternative means. Since opening inventories enter into the determination of the results of operations and cash flows, they will not be able to determine whether adjustments to cost of goods sold, income taxes, net income for the period, opening retained earnings and cash provided from operations might be necessary for the 52 weeks ended January 26, 2002.
17. The Circular will also:
- (a) incorporate by reference the audited consolidated financial statements of the Filer as at and for each of the three years ended February 28, 2004; and
 - (b) include *pro forma* financial statements of the Filer giving effect to the Transaction.

Decision

Each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Maker with the jurisdiction to make the decision has been met.

The decision of the Decision Makers under the Legislation is that the Requested Relief is granted provided that:

- 1. the West 49 Financial Statements disclosed in the Circular include the Qualified Report; and
- 2. the Circular otherwise complies with the Legislation.

Iva Vranic
Manager, Corporate Finance
Ontario Securities Commission