Citation: 2021 BCSECCOM 136

Headnote
Multilateral Instrument 11-102 *Passport System* and National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* – National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*, s. 3.3(1)(a) - An issuer requires relief from the requirement that financial statements required by securities legislation to be audited must be accompanied by an auditor's report that expresses an unmodified opinion - The auditors were not in attendance at the physical inventory taking and not able to satisfy themselves by other auditing procedures as to the opening inventory quantities; the inventory reservation relates to the financial statements of a non-reporting issuer whose business is not seasonal; the issuer is providing a subsequent audited period of at least six months for which the auditor's report expresses an unmodified opinion; the qualification is not imposed by, and could not reasonably be eliminated by management; the qualification will not recur in future; the auditor's report will be unmodified except for the qualification related to opening inventory and, since inventory affects the calculation of financial performance and cash flows, the net cash flows from operating activities.

Applicable Legislative Provisions
National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards,* section 3.3(1)(a)

April 5, 2021

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
Ponderous Panda Capital Corp.
(the Filer and post-Transaction, the Resulting Issuer)

and

Wildpack Beverage Alberta Inc.
(the Target)

Decision

Background

¶ 1 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) exempting the Filer from the requirement in section 3.3 of National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards* (NI 52-107) that financial statements, other than acquisition statements, that are required to be audited must be accompanied by an auditor's report that expresses an unmodified opinion, does not apply to the auditor's report that accompanies the financial statements of the Acquired Business for the financial year ended December 31, 2019 (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; and

(c) the decision is the decision of the principal regulator and evidences the decision of the securities regulatory authority or regulator in 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 was incorporated in the province of British Columbia pursuant to the Business Corporations Act (British Columbia) on March 22, 2017;

2. the Filer's head office is located in British Columbia;

3. the Filer is a capital pool company and reporting issuer in the provinces of British Columbia, Alberta and Ontario; the common shares of the Filer are listed for trading on the TSX Venture Exchange (the TSXV) under the symbol "PPCC.P";

4. the Target is a non-reporting issuer formed upon amalgamation pursuant to the provisions of the Business Corporation Act (Alberta) on July 29, 2019;

5. the Target's registered office is located at 3400, 350 – 7th Avenue SW, Calgary, Alberta, T2P 3N9;

6. the Target and the Filer are not in default of any securities legislation of any jurisdiction of Canada;

7. the principal business of the Target is beverage manufacturing and packaging, providing filling, decorating and aluminum can brokering services to brands throughout the United States;

8. the Target's financial year end was previously March 31 up to and including March 31, 2020 and was then changed to December 31;

9. the Target has never been a reporting issuer and its common shares are not listed or quoted for trading on any stock exchange or public quotation system;

10. the Filer and Target intend to complete a business combination pursuant to a non-binding letter of intent dated January 22, 2021 upon completion of which the Target will become a subsidiary of the Filer (then the Resulting Issuer) and the Resulting Issuer will continue to carry on its business through the Target;

11. the Transaction is intended to constitute the "Qualifying Transaction" of the Filer within the meaning of the TSXV Policies;

12. the completion of the Transaction is subject to, among other things, approval of the TSXV;

13. over the preceding three years, the Target was a holding company with minimal operations;

14. on June 25, 2020, the Target acquired significantly all assets and select liabilities of two operating entities under common ownership and operated by common management (the Acquisition), resulting in the Target acquiring all voting and participating units in Wild Leaf Holdings U.S. LLC (the Acquired Business);

15. the Acquired Business is engaged in the business of beverage filling and packaging for third parties and co-manufacturing;

16. the Acquired Business' financial year end was December 31;

17. the Acquisition under applicable securities laws and the policies of the TSXV forms the underlying continuing business of the Target;

18. the Acquisition was treated, for accounting purposes, as a business combination with the Target treated as the acquirer;

19. the Transaction will be accounted for as a "reverse takeover" with the Target identified as the "reverse takeover acquirer" as defined in National Instrument 51-102 *Continuous Disclosure Obligations* (NI 51-102);

20. in connection with the Transaction, the Filer must file a Filing Statement (as defined in TSXV policies) with the TSXV and with the securities regulatory authorities in British Columbia, Ontario and Alberta once the TSXV approves the Filing Statement in its final form;

21. the Filing Statement to be filed in connection with the Transaction will include audited financial statements of:

    (a) the Target for the financial years ended March 31, 2020 and March 31, 2019 and the transition year from April 1, 2020 to December 31, 2020;

    (b) the Acquired Business, on the basis that the Acquired Business is the predecessor business of the Target, for the financial year ended December 31, 2019 and for the period from January 1, 2020 to June 25, 2020; and

    (c) the Filer for the financial years ended December 31, 2020 and December 31, 2019;

    (collectively, the Financial Statements);

22. PricewaterhouseCoopers LLP (the Auditors) were appointed as auditors of the Target on or about January 15, 2021; in connection with the audited financial statements of the Acquired Business for the financial year ended December 31, 2019, the Auditors were not able to observe the counting of physical inventories of the Acquired Business at January 1, 2019 and the Auditors were unable to satisfy themselves by alternative means concerning inventory quantities held January 1, 2019; however, by applying alternative procedures, the Auditors were able to obtain sufficient audit evidence regarding inventory balances for the Target at December 31, 2019;

23. Since opening inventories enter into the determination of the results of financial performance and cash flows; the Auditors were not able to determine whether adjustments to the results of combined financial performance and combined cash flows for the year ended December 31, 2019 or whether adjustments to opening deficit as reported at January 1, 2019 for the Acquired Business might have been necessary;

24. as a result, the Auditors expressed a modified opinion relating to opening inventory on the Acquired Business' financial statements for the financial year ended December 31, 2019 (the Inventory Modification);

25. the audited financial statements of the Acquired Business for the period from January 1, 2020 to June 25, 2020 and the financial statements for the Target for the nine month period ended December 31, 2020 each contain auditor’s reports expressing unmodified opinions;

26. due to the Inventory Modification, the Filer will not be able to obtain TSXV approval of the Transaction or comply with the requirements of section 4.10(2) of NI 51-102 unless the Exemption Sought is granted; and

27. paragraph 5.8(2) of Companion Policy 41-101CP to National Instrument 41-101 *General Prospectus Requirements* contemplates that relief may be granted to non-reporting issuers in appropriate circumstances to permit the auditor's report on financial statements to contain a qualified opinion relating to opening inventory if there is a subsequent audited period of at least six months on which the auditor's report expresses an unmodified opinion and the business is not seasonal.

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:

(a) the Filer files the Financial Statements with the Filing Statement;

(b) the Resulting Issuer files the Financial Statements within the period prescribed under section 4.10(2) of NI 51-102; and

(c) the only modification in the Auditors' report on the financial statements of the Acquired Business for the year ended December 31, 2019 is the Inventory Modification.

John Hinze
Director, Corporate Finance
British Columbia Securities Commission