

# 2009 BCSECCOM 204

April 8, 2009

## 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 issuer's securities are traded only on a market or exchange outside of Canada - Canadian residents own less than 2% of the issuer's securities and represent less than 2% of the issuer's total number of security holders; the issuer does not intend to do a public offering of its securities to Canadian residents; the issuer will not be a reporting issuer in a Canadian jurisdiction; the issuer is subject to the reporting requirements of the United States or of a designated foreign jurisdiction; and all shareholders receive the same disclosure

## Applicable British Columbia Provisions

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

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

and

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

and

In the Matter of  
Deutsche Telekom AG  
(the Filer)

## Decision

## Background

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, for Jurisdictions other than Québec, the Filer is not a reporting issuer in such Jurisdictions and, for Québec, the Filer's status as a reporting issuer is revoked (the Exemptive Relief Sought);

## 2009 BCSECCOM 204

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**

Terms defined in National Instrument 14-101 entitled *Definitions* 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 private stock corporation organized under the laws of the Federal Republic of Germany (the Federal Republic).
2. The Filer's registered and principal offices are located at Friedrich-Ebert-Allee 140, 53113 Bonn, Germany.
3. Prior to 1989, and in accordance with the constitution of the Federal Republic as it then existed, the provision of public telecommunications services in Germany was a state monopoly. In 1989, the Federal Republic began to transform the postal, telephone and telegraph services administered by the former monopoly provider into market-oriented businesses, and divided the former monopoly into three distinct entities along their lines of business, one of which was the Filer's predecessor, Deutsche Bundespost Telekom. At the same time, the Federal Republic also began the liberalization of the German telecommunications market. The Filer was transformed into a private stock corporation effective January 1, 1995.
4. The Filer, together with its subsidiaries, is one of the largest integrated telecommunications companies in the world, offering its clients a comprehensive portfolio of mobile, broadband and fixed network telecommunications services, as well as information and communications technology services.
5. The Filer conducts business operations in approximately 50 countries worldwide, with principal markets in the United States, Germany, the United Kingdom, Poland, Hungary, The Netherlands, the Czech Republic, Austria, Croatia, Slovakia, Macedonia and Montenegro.

## 2009 BCSECCOM 204

6. Although the Filer conducts business operations in Canada, these operations are insignificant in comparison to the Filer's overall global operations.
7. The Filer's total assets, as of December 31, 2007, amounted to €120,664 million on a consolidated basis.
8. The Filer is a "reporting issuer" or has equivalent status in each Jurisdiction and, except as set out in paragraph 15, is not in default of its obligations as a reporting issuer in any of the Jurisdictions.
9. The Filer was privatized by the Federal Republic through the global initial public offering (the GPO) of the Filer's ordinary shares (the Shares) on November 18, 1996.
10. As part of the GPO, the Shares were also offered in the United States and in Canada in the form of American Depositary Shares (ADSs) issued by Citibank N.A. (since replaced by Deutsche Bank Trust Company Americas) as Depositary, each ADS representing one Share.
11. As a result of the offering by certain qualified underwriters to investors in Canada (the Canadian Offering) of Shares and ADSs, the Filer has been a reporting issuer in each Jurisdiction since its privatization.
12. The Canadian Offering was made in compliance with procedures contemplated by the Canadian Securities Administrators' (the CSA) August 1993 proposed Draft National Policy Statement No. 53 (as amended in April 1995) entitled *Foreign Issuer Prospectus and Continuous Disclosure System* (DNP53), under which offerings of securities of foreign issuers that meet specified eligibility requirements could be made in Canada on the basis of disclosure documents prepared in accordance with United States securities laws, with certain additional Canadian disclosure.
13. Pursuant to DNP53, the Filer obtained orders of the securities regulatory authorities in each of the Jurisdictions (the DNP53 Orders), to permit the Filer to make the Canadian Offering by way of a prospectus prepared under United States securities laws. Each prospectus used in the Canadian Offering included Canadian wrap pages containing additional information, legends and certificates contemplated by DNP53 and set out in the DNP53 Orders.
14. The DNP53 Orders provide, inter alia,

## 2009 BCSECCOM 204

- a. exemptions for the Filer from applicable Canadian continuous disclosure requirements, provided that the Filer:
    - i. complies with applicable United States securities laws relating to current reports and annual reports,
    - ii. files two copies of any material filed with the United States Securities and Exchange Commission (the SEC) with the Commission,
      - 1. in the case of current reports, forthwith after the earlier of the date the report is filed with the SEC and the date it is required to be filed with the SEC, and
      - 2. in the case of other documents, within 24 hours after they are filed with the SEC,
    - iii. provides any such documents to security holders whose last address as shown on the book of the Filer is in Canada, to the extent, in the manner and at the time required by United States securities laws,
    - iv. complies with the requirements of the New York Stock Exchange (the NYSE) relating to public disclosure of material information on a timely basis and forthwith issuing in Canada, and
    - v. files with the Commission any press release that discloses a material change in the affairs of the Filer; and
  - b. exemptions for the Filer from applicable Canadian proxy solicitation requirements, provided that any proxies and proxy solicitation material provided to United States security holders are provided to security holders of the same class whose last address as shown on the books of the Filer is in Canada.
15. The Filer has, since the Canadian Offering and in reliance on the DNP53 Orders, filed in the Jurisdictions the continuous disclosure documents filed with the SEC under United States securities laws, and has otherwise complied with the continuous disclosure obligations set out in the DNP53 Orders, except that the Filer has not filed in Canada (i) its annual report on Form 20-F, including financial statements and related information for the year ended December 31, 2008, that was filed with the SEC on February 27, 2009 (or paid related filing and participation fees) or (ii) current reports on Form 6-K filed with the SEC on March 3, 2009, in each case in view of the fact that the final form of this decision document was pending on those dates.

## 2009 BCSECCOM 204

16. In the absence of the DNP53 Orders, the Filer would have qualified for substantially the same relief provided to SEC Foreign Issuers under National Instrument 71-102 entitled *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers* from the time of its adoption in March 2004.
17. Concurrently with the Canadian Offering, The Toronto-Dominion Bank (TD Bank) made a public offering in Canada of TD Bank notes (the TD Bank / DT Equity-Linked Notes) whose value was derived from the economic performance of the ADSs. The TD Bank / DT Equity-Linked Notes matured on August 31, 2003 and are no longer outstanding.
18. In June 2000, as part of a global secondary offering of the Filer's Shares by Kreditanstalt für Wiederaufbau (KfW), a development bank owned by the Federal Republic, retail investors in Canada were offered Shares (in the form of Shares and ADSs) by qualified underwriters by way of a short form prospectus prepared in accordance with United States securities laws, in reliance upon orders of the securities regulatory authorities in each of the Canadian provinces, including the Jurisdictions, similar to the DNP53 Orders.
19. The principal trading market for the Filer's Shares is the Frankfurt Stock Exchange. The Filer's Shares also trade on the Berlin-Bremen, Düsseldorf, Hamburg, Hannover, München and Stuttgart stock exchanges in Germany, and on the Tokyo Stock Exchange. The Filer is not in default of any of the requirements of those exchanges.
20. The ADSs are listed and trade on the NYSE and the Frankfurt Stock Exchange. The Filer is not in default of any of the requirements of those exchanges.
21. As of December 31, 2008, the Filer's issued and outstanding share capital consists of 4,361,319,993 Shares (including the 154,392,758 Shares deposited with the Depositary underlying the 154,392,758 ADSs outstanding on that date).
22. In connection with this its application for the Exemptive Relief Sought, the Filer sought and obtained from a number of sources, information about the number of, the holdings of, the identity of and the geographic location of, the beneficial holders of the outstanding Shares and ADSs. The sources of information included the Filer's own registrar for Shares (ADEUS Aktienregister-Service-GmbH), the Depositary for the ADSs, the depositaries of the book-entry systems in which its Shares and ADSs are held (including the Depositary Trust Company (DTC) in the United States and the Canadian

## 2009 BCSECCOM 204

Depository for Securities (CDS), to the extent that CDS is a participant in DTC), and Thomson Reuters, a third-party information provider recognized within the securities industry as having the expertise and information resources to assist with such analyses.

23. As of December 31, 2008:

- a. there are a total of 7,816 direct and indirect beneficial owners of Shares (including Shares held in the form of ADSs) in Canada – 4,409 of whom were identified as residing in Ontario, 904 in British Columbia, 733 in Alberta, 92 in Saskatchewan, 114 in Manitoba, 1,153 in Quebec, 43 in New Brunswick, 139 in Nova Scotia, 18 in Prince Edward Island, 28 in Newfoundland and Labrador, and 1 in each of the Canadian Territories – together holding approximately 84.45 million Shares, representing approximately 1.94% of all Shares that are issued and outstanding;
- b. of the 84.45 million Shares so held, approximately 79.72 million are held in the form of Shares and 4.73 million in the form of ADSs;
- c. of the 84.45 million Shares and ADSs held by Canadian resident beneficial owners, more than 55% are held by a single Ontario-based Canadian pension fund, and more than 89% are held by 4 pension funds and an asset manager for a single family of mutual funds; and
- d. the 7,816 Canadian beneficial owners together represent approximately 0.41% of the Filer's total shareholder base.

24. The Filer has issued two series of Japanese Yen denominated bonds (the Samurai Bonds), in an aggregate principal amount of 47.5 billion Yen (approximately €300 million at the time of issuance), that remain outstanding.

25. The Samurai Bonds were issued in February 2008 and mature 5 years after their respective dates of issuance, the first series with a fixed coupon rate of 2.47% per annum, the other carrying interest at a floating rate of 1.3 percentage points above the London Interbank Offered Rate (LIBOR) for six-month Euroyen.

26. The Samurai Bonds were offered in Japan through a Japanese language prospectus, and are listed on the Tokyo Stock Exchange. None of the Samurai bonds were offered, publicly or on a private placement basis, to Canadian investors or other investors outside of Japan.

## 2009 BCSECCOM 204

27. Based upon enquiries to underwriters participating in the original Samurai Bond distribution, broker dealers in the Japanese market and the paying agent for the Samurai Bonds, as of November 3, 2008, there are no Canadian resident beneficial holders of the Samurai Bonds.
28. Based on the diligent enquiries described above, the Filer has concluded that residents of Canada do not:
  - i. directly or indirectly beneficially own more than 2% of each class or series of outstanding securities of the Filer worldwide; and
  - ii. directly or indirectly comprise more than 2% of the total number of security holders of each class or series of outstanding securities of the Filer worldwide.
29. There is not a marketplace (as that term is defined in National Instrument 21-101 entitled *Marketplace Operation* (NI 21-101)) in Canada for any securities of the Filer.
30. Neither the Shares nor the ADSs were listed for trading on a marketplace in Canada (as defined in NI 21-101), no securities of the Filer are listed, traded or quoted on a marketplace in Canada and the Filer does not intend to have any of its securities posted for trading on such a marketplace in Canada.
31. Following the completion of the GPO, the Filer became and continues to be subject to the informational requirements of the United States Securities Exchange Act of 1934, as amended (the 1934 Act).
32. The Filer is not in default of any of the requirements of the 1934 Act, and will, as an issuer with a class of securities registered under section 12 of the 1934 Act, continue to file and furnish reports and other information with the SEC pursuant to the 1934 Act on an ongoing basis.
33. As a result of the listing of the ADSs on the NYSE at the time of the GPO, the Filer became and continues to be subject to the requirements of the NYSE relating to public disclosure of material information on a timely basis.
34. The Filer is not in default of any of the requirements of the NYSE and will continue, as a listed issuer, to comply with such requirements.
35. The Filer is unable to rely on the simplified procedure set out in CSA 12-307 in order to apply for the Exemptive Relief Sought because the information obtained about securities holdings referred to in paragraph 23(a) indicates that

## 2009 BCSECCOM 204

there are more than 15 beneficial owners in each of the Jurisdictions (other than the Territories).

36. The Filer does not intend to issue any securities in Canada, either by way of public offering or an offering pursuant to an exemption from the registration and prospectus requirements in the Legislation.
37. In the last 12 months the Filer has not conducted an offering of its securities in Canada nor taken any steps that indicate there is a market for its securities in Canada.
38. On December 19, 2008, the Filer provided notice by way of press release to Canadian resident security holders that it is applying to the securities regulatory authorities in the Jurisdictions for a decision that the Filer is not a reporting issuer in Canada and that if the Exemptive Relief Sought is granted, the Filer will no longer be a reporting issuer in any jurisdiction in Canada.
39. The Filer currently delivers to Canadian resident security holders all disclosure material it is required under United States federal securities laws and stock exchange requirements to deliver to United States resident security holders.
40. The Filer has undertaken in favour of each of the Decision Makers that it will continue to concurrently deliver to its security holders resident in Canada, all disclosure material it is required under United States federal securities laws and stock exchange requirements to deliver to United States resident security holders.
41. Should the Exemptive Relief Sought be granted, all of the Filer's security holders resident in each of the Jurisdictions will continue to have immediate access to the same continuous disclosure documents through "EDGAR", the filings section of the SEC website, that are currently being provided to the securities regulatory authorities in each of the Jurisdictions.

### **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.

Dated this 8th day of April, 2009.

Kevin J. Kelly

Margot C. Howard