

2008 BCSECCOM 152

January 4, 2008

Headnote

Mutual Reliance Review System for Exemptive Relief Applications

National Instrument 44-101 *Short Form Prospectus Distributions*, s. 8.1 – exemption from short form qualification requirements - Qualification - An issuer wants relief from the qualification criteria in NI 44-101 so it can file a short form prospectus - The issuer restated its financial statements as a result of accounting errors - With the consent of its principal regulator, the issuer did not amend its continuous disclosure documents for prior periods that contained content deficiencies related to the restatements; none of the prior unamended filings will be included or incorporated by reference in the issuer's short form prospectus; at the time of filing a short form prospectus, the issuer must satisfy all the criteria in s. 2.2(c) or s. 2.3(1)(c) of NI 44-101 except with respect to the prior unamended filings

National Instrument 44-102 *Shelf Distributions*, s. 11.1 – exemption from shelf qualification requirements - An issuer wants relief from the qualification criteria in NI 44-102 so it can file a shelf prospectus - The issuer restated its financial statements as a result of accounting errors; with the consent of its principal regulator, the issuer did not amend its continuous disclosure documents for prior periods that contained content deficiencies related to the restatements; none of the prior unamended filings will be included or incorporated by reference in the issuer's shelf prospectus; at the time of filing a base shelf prospectus, the issuer must satisfy all the criteria in s. 2.2(c) or s. 2.3(1)(c) of NI 44-101 except with respect to the prior unamended filings

Securities Act, s. 169 - confidentiality - An applicant wants to keep an application and order confidential for a limited amount of time after the order is granted - The record provides intimate financial, personal or other information; the disclosure of the information before a specific transaction would be detrimental to the person affected; the information will be made available after a specific date

Applicable British Columbia Provisions

NI 44-101, s. 8.1

NI 44-102, s. 11.1

Securities Act, R.S.B.C. 1996, c. 418, s. 169

In the Matter of
the Securities Legislation of
British Columbia, Alberta, Saskatchewan,
Manitoba, Ontario, Quebec, New Brunswick,

2008 BCSECCOM 152

Nova Scotia, Prince Edward Island,
Newfoundland and Labrador,
the Northwest Territories, Nunavut
and the Yukon
(the Jurisdictions)

and

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

and

In the Matter of
Nortel Networks Corporation (NNC)
and Nortel Networks Limited (NNL)
(NNC and NNL, each a Filer and together, the Filers)

MRRS Decision Document

Background

The local securities regulatory authority or regulator (the Decision Maker) in each of the Jurisdictions has received an application (the Application) from the Filers for:

- (a) a decision (the Qualification Relief) under the securities legislation of the Jurisdictions (the Legislation) pursuant to Section 8.1 of National Instrument 44-101 *Short Form Prospectus Distributions* (NI 44-101) and Section 11.1 of National Instrument 44-102 *Shelf Distributions* (NI 44-102) exempting each of the Filers from the qualification criteria of paragraphs 2.2(c) and 2.3(1)(c) of NI 44-101 for filing a short form prospectus pursuant to NI 44-101 (a Short Form Prospectus) and a short form base shelf prospectus pursuant to NI 44-102 (a Shelf Prospectus), provided that, at the time of filing such Short Form Prospectus or Shelf Prospectus, the applicable Filer satisfies the criteria set forth in paragraph 2.2(c) or 2.3(1)(c), as the case may be, of NI 44-101, other than with respect to the Prior Unamended Filings, as defined below; and
- (b) a decision (the Confidentiality Relief, and together with the Qualification Relief, the Requested Relief) in every Jurisdiction that the application for this decision and this decision be kept confidential until the earliest to occur of:

2008 BCSECCOM 152

- (i) the date either of the Filers obtains a receipt for a preliminary Short Form Prospectus or a preliminary Shelf Prospectus;
- (ii) the date either of the Filers files a shelf registration statement with the United States Securities and Exchange Commission pursuant to Rule 415 under the United States *Securities Act of 1933*, as amended; and
- (iii) the date which is 60 days from the date of this decision.

Under the Mutual Reliance Review System for Exemptive Relief Applications:

- (a) the Ontario Securities Commission (the OSC) 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*, NI 44-101 or NI 44-102 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 Filers:

1. The registered office, executive head office and senior management of NNC are located in Toronto, Ontario. The common shares of NNC trade on the Toronto and New York stock exchanges.
2. The registered office of NNL, NNC's principal operating subsidiary, is located in Montréal, Québec and the executive head office and senior management of NNL are located in Toronto, Ontario. All of the outstanding common shares of NNL are held by NNC. The preferred shares of NNL trade on the Toronto Stock Exchange.
3. Each of the Filers is a corporation incorporated under the *Canada Business Corporations Act* and is a reporting issuer in each of the Jurisdictions where such concept exists.
4. The Filers currently propose to file a preliminary short form base shelf prospectus, which proposed filing has not been publicly announced.

2008 BCSECCOM 152

5. Each of the Filers has restated its consolidated financial statements on the following four occasions due to accounting errors:
 - (a) In December 2003, each Filer restated its consolidated financial statements for the years ended December 31, 2002, 2001 and 2000 and for the quarters ended March 31 and June 30, 2003 (the First Restatement).
 - (b) In January 2005, following an independent review of the facts and circumstances leading to the First Restatement, each Filer restated its consolidated financial statements for the years ended December 31, 2002 and 2001 and for the quarters ended March 31, June 30 and September 30, 2003 and 2002 (the Second Restatement). However, neither Filer amended its periodic disclosure documents filed prior to the year ended December 31, 2003 containing the unrestated consolidated financial statements for such periods or containing financial information derived from such unrestated consolidated financial statements.
 - (c) In April 2006, each Filer restated its consolidated financial statements for the years ended December 31, 2004, 2003, 2002 and 2001 and the first three quarters of 2005 (the Third Restatement). However, neither Filer amended its periodic disclosure documents for periods prior to the year ended December 31, 2005 containing the unrestated consolidated financial statements for such periods or containing financial information derived from such unrestated consolidated financial statements.
 - (d) In March 2007, each Filer restated its consolidated financial statements for the years ended December 31, 2005 and 2004 and for the quarters ended March 31, June 30 and September 30, 2006 and 2005 (the Fourth Restatement). However, neither Filer amended its periodic disclosure documents for periods prior to the year ended December 31, 2006 containing the unrestated consolidated financial statements for such periods or containing financial information derived from such unrestated consolidated financial statements.

(The First Restatement, the Second Restatement, the Third Restatement and the Fourth Restatement are hereinafter collectively referred to as the Restatements.)
6. The unamended periodic disclosure documents referred to in paragraph 5 consist of all periodic disclosure documents filed by each of the Filers that contained content deficiencies therein due or related to any of the Restatements (collectively referred to as the Prior Unamended Filings), which are the following:

2008 BCSECCOM 152

- (a) any of their periodic disclosure documents filed for periods ended prior to January 1, 2001;
 - (b) their Annual Reports on Form 10-K or Form 10-K/A for the years ended December 31, 2001, 2002, 2003, 2004 and 2005, filed in lieu of an annual information form for such periods, containing their respective audited consolidated financial statements and related management's discussion and analysis of financial condition and results of operations (MD&A) for such periods;
 - (c) any of their Quarterly Reports on Form 10-Q or Form 10-Q/A for each of the three quarterly periods in 2001, 2002, 2003, 2004, 2005 and 2006 containing their respective unaudited interim consolidated financial statements and related MD&A for such periods;
 - (d) any of their respective audited annual or unaudited interim consolidated financial statements, and related MD&A, for the aforementioned periods that were filed separately from the aforementioned Annual Reports or Quarterly Reports; and
 - (e) any of their respective audited annual or unaudited interim consolidated financial statements prepared in accordance with Canadian generally accepted accounting principles, together with the related supplemental MD&A required to be filed under National Instrument 52-102 *Continuous Disclosure Obligations*, for certain of the aforementioned periods.
7. The Filers applied for and obtained orders or decisions of the OSC dated June 21, 2005 (the OSC 2005 Order), the Alberta Securities Commission dated June 21, 2005 and l'Autorité des marchés financiers dated June 23, 2005 revoking certain management cease trade orders imposed in respect of specified insiders of the Filers in connection with the Second Restatement.
8. The Filers applied for and obtained orders or decisions of the OSC dated June 6, 2006 (the OSC 2006 Order and, together with the OSC 2005 Order, the OSC Orders), the British Columbia Securities Commission dated June 8, 2006 and l'Autorité des marchés financiers dated June 9, 2006 revoking certain management cease trade orders imposed in respect of specified insiders of the Filers in connection with the Third Restatement.
9. No management cease trade orders were imposed in connection with the Fourth Restatement.

2008 BCSECCOM 152

10. The representations of the Filers set forth in the OSC Orders provide the reasons why it was not considered feasible to amend the Prior Unamended Filings that were impacted by the Second Restatement and the Third Restatement. Similar submissions were made on behalf of the Filers to OSC Staff in connection with the Filers' decision not to amend the Prior Unamended Filings that were impacted by the Fourth Restatement.
11. Except for the Prior Unamended Filings, NNC and NNL, the Filers are not in default of their obligations as a reporting issuer under the legislation of any jurisdiction in which they are a reporting issuer or its equivalent.
12. Having regard to their capital needs and prevailing market conditions, the Filers may from time to time wish to file a Short Form Prospectus or a Shelf Prospectus for the distribution of securities. In order to be eligible to do so, NNC may wish to qualify under the basic qualification criteria set out in Section 2.2 of NI 44-101, either on its own behalf or as a "credit supporter" of guaranteed non-convertible debt securities, preferred shares or cash settled derivatives of certain of its subsidiaries, including NNL, pursuant to Section 2.4 of NI 44-101 or Section 2.4 of NI 44-102 or as a "credit supporter" of guaranteed convertible debt securities or preferred shares of its subsidiaries, including NNL, pursuant to Section 2.5 of NI 44-101 or Section 2.5 of NI 44-102. In addition, NNL may wish to qualify under the alternative qualification criteria set out in Section 2.3 of NI 44-101 to offer approved rating non-convertible securities of its own issue pursuant to such Section or Section 2.3 of NI 44-102.
13. The basic qualification criteria set out in Section 2.2(c) of NI 44-101 and the alternative qualification criteria set out in Section 2.3(1)(c) of NI 44-101 each require an issuer to have "filed with the securities regulatory authority in each jurisdiction in which it is a reporting issuer *all periodic and timely disclosure documents that it is required to have filed in that jurisdiction: (i) under applicable securities legislation...*" (emphasis added).
14. Because the Filers have not amended the Prior Unamended Filings, based on a reading of the qualification criteria referred to in paragraph 12 above, the Filers would not be able to certify, as contemplated by Section 4.1(a)(ii) of NI 44-101 in connection with the filing of a Short Form Prospectus or as contemplated by Section 7.1 of NI 44-102 in connection with the filing of a Shelf Prospectus, that the qualification criteria set out in Section 2.2(c) or 2.3(1)(c), as the case may be, of NI 44-101 have been satisfied. Accordingly, absent the Requested Relief, neither of the Filers would ever be able to meet the basic or alternative qualification criteria required to file a Short Form Prospectus or a Shelf Prospectus based on a reading of those criteria.

2008 BCSECCOM 152

15. None of the Prior Unamended Filings will be included or incorporated by reference into a Short Form Prospectus or a Shelf Prospectus of the Filers.
16. None of the Prior Unamended filings will be required to be incorporated by reference into a Short Form Prospectus or a Shelf Prospectus of the Filers under Item 11 of Form 44-101F1 *Short Form Prospectus*.

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 Qualification Relief is granted, provided that, at the time of filing a Short Form Prospectus or Shelf Prospectus, the applicable Filer satisfies the criteria set forth in Section 2.2(c) or 2.3(1)(c), as the case may be, of NI 44-101, other than with respect to the Prior Unamended Filings.

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

Jo-Anne Matear
Assistant Manager, Corporate Finance
Ontario Securities Commission