

2011 BCSECCOM 420

August 24, 2011

Headnote

Multilateral Instrument 11-102 *Passport System* and National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* - National Instrument 52-107, s. 9.1 - *Acceptable Accounting Principles, Auditing Standards and Reporting Current* – The Filer, a reporting issuer, wants to file a document required by a foreign regulator that contains financial statements prepared using IFRS for financial years beginning before January 1, 2011 – The Filer intends to file a registration statement with the SEC that will contain the Filer’s first IFRS financial statements; the registration statement will be filed after the Filer files its first IFRS interim report; the first IFRS interim report will contain disclosure as required under IFRS 1, as will the IFRS annual financial statements included in the registration statement; the interim reports for the second and third quarter of the changeover year will contain a statement directing investors to the registration statement for IFRS 1 disclosure - *Securities Act* s. 169 - 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 Legislative Provisions

National Instrument 52-107, s. 9.1 - *Acceptable Accounting Principles, Auditing Standards and Reporting Current*
Securities Act, R.S.B.C. 1996, c. 418, s. 169

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
Burcon NutraScience Corporation
(the Filer)

Decision

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Background

- ¶1 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):
- (a) exempting the Filer from the requirements of section 4.2 of National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards* (NI 52-107) and allowing it instead to comply with Part 3 of NI 52-107 with respect to annual financial statements for the fiscal year ended March 31, 2011 (the 2011 IFRS Statements) to be prepared in accordance with IFRS and to be filed pursuant to section 11.1 of National Instrument 51-102 *Continuous Disclosure Obligations* (NI 51-102) in connection with the filing of a registration statement on Form 40-F (the Registration Statement) with the U.S. Securities and Exchange Commission (SEC) (the IFRS Exemption); and
 - (b) that the application and this decision be held in confidence by the Decision Makers (the Confidentiality Relief).

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 each of the provinces of Alberta, Saskatchewan, Manitoba, New Brunswick and Nova Scotia, 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 used in this decision and defined in National Instrument 14-101 *Definitions*, NI 52-107 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 is a corporation incorporated under the *Business Corporations Act* (Yukon) and extra-provincially registered in British Columbia; the head office

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of the Filer is located at 1946 West Broadway, Vancouver, British Columbia, V6J 1Z2;

2. the Filer is a reporting issuer or its equivalent in the provinces of British Columbia, Ontario, Alberta, Saskatchewan, Manitoba, New Brunswick and Nova Scotia; the Filer is not in default of securities legislation in any jurisdiction;
3. the Filer's securities are listed on the Toronto Stock Exchange under the symbol BU;
4. NI 52-107 sets out acceptable accounting principles for financial reporting by domestic issuers, foreign issuers, registrants and other market participants; the Filer is currently a domestic issuer; under Part 4 of NI 52-107, a domestic issuer must use Canadian GAAP – Part V in preparing financial statements for periods relating to financial years beginning before January 1, 2011, with the exception that an SEC registrant may use U.S. GAAP; for financial years beginning before January 1, 2011, only foreign issuers may use IFRS;
5. the Filer has not previously prepared financial statements that contain an explicit and unreserved statement of compliance with IFRS;
6. as required by Part 4 of NI 52-107, the Filer has prepared its most recent annual financial statements as at and for the year ended March 31, 2011 (the 2011 Canadian GAAP Statements) in accordance with Canadian GAAP – Part V; the financial year end of the Filer is March 31;
7. the Canadian Accounting Standards Board adopted IFRS as Canadian GAAP for most publicly accountable enterprises for fiscal years beginning on or after January 1, 2011; the Filer is a publicly accountable enterprise;
8. the Filer intends to prepare and file its unaudited interim financial report for the three months ended June 30, 2011 (the Interim Report) which, as required under section 3.2 of NI 52-107, will be prepared in accordance with Canadian GAAP applicable to publicly accountable enterprises, which is IFRS incorporated into the Handbook;
9. following the filing of the Interim Report, the Filer intends to file the Registration Statement with the SEC in order to register the common shares of the Filer as required in connection with the anticipated listing of the common shares on the NASDAQ Stock Market;

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10. the Registration Statement will include the:
 - (a) 2011 Canadian GAAP Statements, and
 - (b) 2011 IFRS Statements;
11. the 2011 IFRS Statements contained in the Registration Statement will be the Filer's first IFRS financial statements, as defined in Appendix A of IFRS 1 *First-time Adoption of International Financial Reporting Standards*;
12. at the time of filing of the Form 40-F, the 2011 IFRS Statements will be filed pursuant to section 11.1 of NI 51-102;
13. under section 2.1(2)(e) of NI 52-107, the filing of the 2011 IFRS Statements in Canada brings such financial statements within the scope of NI 52-107 and, in particular, Part 4 *Rules Applying to Financial Years Beginning Before January 1, 2011* given that the 2011 IFRS Statements are in respect of the financial year ended March 31, 2011, which began before January 1, 2011;
14. under Part 4 of NI 52-107, only foreign issuers may file financial statements prepared in accordance with IFRS; the Filer is not and will not be, at the time of the filing of the 2011 IFRS Statements, a foreign issuer;
15. in CSA Staff Notice 52-321 *Early Adoption of International Financial Reporting Standards, Use of US GAAP and Reference to IFRS-IASB*, staff of the Canadian Securities Administrators recognized that some issuers may wish to prepare their financial statements in accordance with IFRS for periods beginning prior to January 1, 2011 and indicated that staff were prepared to recommend exemptive relief on a case by case basis to permit a domestic issuer to do so;
16. the Filer intends to use April 1, 2009 as its transition date to IFRS for purposes of the Interim Report and the 2011 IFRS Statements;
17. at the time of filing the Interim Report, no annual financial statements prepared in accordance with Canadian GAAP applicable to publicly accountable enterprises, which is IFRS incorporated into the Handbook, will have been filed; as such, for the purposes of preparing the Interim Report, the year ending March 31, 2012 would be considered to be the first year of adoption of IFRS by the Filer;
18. the Interim Report will include all the requirements of IFRS 1 for an interim financial report presented in accordance with IAS 34 *Interim Financial*

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Reporting for part of the period covered by an issuer's first IFRS financial statements, including the following reconciliations:

(a) reconciliation of shareholders' equity as at:

March 31, 2011;
June 30, 2010;
March 31, 2010; and
April 1, 2009 (opening statement of financial position);

(b) reconciliation of comprehensive income for the period ended:

three months ended June 30, 2010;
year ended March 31, 2011; and
year ended March 31, 2010;

19. the 2011 IFRS Statements will include all the requirements of IFRS 1 for first IFRS financial statements, as defined in Appendix A of IFRS 1 *First-time Adoption of International Financial Reporting Standards*, including an explicit and unreserved statement of compliance with IFRS and an opening statement of financial position as at the transition date to IFRS, required reconciliations to previous GAAP, and required disclosures regarding the transition;
20. following the filing of the Interim Report and the 2011 IFRS Statements, interim and annual financial statements for periods relating to the financial year ending March 31, 2012 and thereafter (the Subsequent Statements) will be prepared in accordance with Canadian GAAP applicable to publicly accountable enterprises, which is IFRS incorporated into the Handbook, as required by section 3.2 of NI 52-107; in the case of the second and third quarter interim financial statements for the financial year ending March 31, 2012, a statement will be included advising readers that such interim financial statements should be read in conjunction with the 2011 IFRS Statements;
21. the audited financial statements for the financial year ended March 31, 2011 prepared in accordance with Canadian GAAP – Part V will remain available to the public, as previously filed;
22. in preparing for the mandatory conversion to IFRS and in seeking the IFRS Exemption, the Filer has worked closely with its external auditors, PwC; PwC has significant experience with companies that have already transitioned to IFRS or have been reporting under IFRS;

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23. the Filer has considered the implications of adopting IFRS on its obligations under securities legislation including, but not limited to those relating to CEO and CFO certifications, business acquisition reports, offering documents, and previously released material forward looking information; and
24. the Filer has carefully assessed the readiness of its staff, board of directors, audit committee, auditors, investors and other market participants for the adoption by the Filer of IFRS and has concluded that the Filer will be adequately prepared for the preparation of the Interim Report and the 2011 IFRS Statements in accordance with IFRS.

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:

1. the Exemption Sought is granted, provided that:
 - (a) the Registration Statement containing the 2011 IFRS Statements is filed with the SEC;
 - (b) the Filer prepares all Subsequent Statements in accordance with Canadian GAAP applicable to publicly accountable enterprises, which is IFRS incorporated into the Handbook;
 - (c) the Interim Report complies with IFRS 1 for an interim financial report presented in accordance with IAS 34 *Interim Financial Reporting* for part of the period covered by an issuer's first IFRS financial statements and with Part 3 of NI 52-107 and include:
 - (i) an opening statement of financial position as at April 1, 2009 presented with prominence equal to the other statements that comprise the Interim Report;
 - (ii) the reconciliations described in paragraph 18 above, including sufficient information to enable users to understand material adjustments to the Filer's statement of financial position as at April 1, 2009 and March 31, 2011, and the Filer's statements of comprehensive income for the three months ended June 30, 2010 and the years ended March 31, 2010 and March 31, 2011; and

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- (iii) material differences, if any, between the statement of cash flows as previously reported in accordance with Canadian GAAP – Part V and restated IFRS amounts for the three months ended June 30, 2010;
 - (d) the 2011 IFRS Statements comply with IFRS 1 for first IFRS financial statements, as defined in Appendix A of IFRS 1 *First-time Adoption of International Financial Reporting Standards* and with Part 3 of NI 52-107; and
 - (e) the Filer includes the statement described in paragraph 20 above in its second and third quarter interim financial statements for the financial year ending March 31, 2012; and
2. the Confidentiality Relief is granted until the earlier of:
- (a) the date on which the Filer files the Registration Statement with the SEC;
 - (b) the date the Filer advises the principal regulator that there is no longer any need for the application and this decision to remain confidential; and
 - (c) that date that is 60 days after the date of this decision.

Martin Eady, CA
Director, Corporate Finance
British Columbia Securities Commission