2007 BCSECCOM 548

September 4, 2007

Headnote
Mutual Reliance Review System for Exemptive Relief Applications – National Instrument 51-102 Continuous Disclosure Obligations, s. 13.1 – BAR – An issuer requires relief from the requirement to include certain financial statements in a business acquisition report – The issuer made a significant acquisition of properties owned by a private company; the private company owned the properties for an extended period; the necessary information to prepare the required financial statements is unavailable; the BAR will contain sufficient alternative information about the acquisition

Applicable British Columbia Provisions
National Instrument 51-102, ss. 8.4 and 13.1

In the Matter of
the Securities Legislation of
British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, New Brunswick, Nova Scotia and Newfoundland and Labrador
(the "Jurisdictions")

and

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

and

In the Matter of
Novadaq Technologies Inc. (the "Filer")

MRRS Decision Document

Background
The local securities regulatory authority or regulator (the "Decision Maker") in each of the Jurisdictions has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the "Legislation") to grant an exemption from the continuous disclosure obligation to include the financial statements in a business acquisition report ("BAR") in connection with the Acquisition (as defined below) as required by subsection 8.4(1) of National Instrument 51-102 – *Continuous Disclosure Obligations* ("NI 51-102") (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* 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, a corporation incorporated under the *Canada Business Corporations Act* with its head office in Ontario, is a reporting issuer in each of the Jurisdictions and has its common shares listed on the Toronto Stock Exchange.

2. On March 20, 2007, the Filer acquired (the "Acquisition") the exclusive right to distribute certain products together with related property and the rights and obligations of certain customer agreements (collectively the "Business") from a vendor.

3. The Acquisition constituted a significant acquisition by the Filer for the purposes of NI 51-102 which required the Filer to file a BAR by June 4, 2007 and, accordingly, the Filer is currently in default of its continuous disclosure obligations with regard to this requirement but is otherwise not in default of any requirements of the Legislation, to the best of its knowledge.

4. In compliance with the other continuous disclosure obligations under NI 51-102 applicable to the Filer, the Filer has filed its unaudited interim financial statements for the three-month periods ended March 31, 2007 and June 30, 2007 (the "Interim Financial Statements"). The Interim Financial Statements include balance sheets which show, as of the applicable dates, the assets and liabilities of the combined business of the Filer, including the Business.

5. The value of the Business on March 20, 2007 is the same as on December 31, 2006.

6. The Filer is required to provide audited financial statements of the Business for the most recently completed financial year ended on or before the date of acquisition in the BAR.

7. The Filer has been made aware of the following facts contained in a letter from the vendor to the Filer dated June 1, 2007 ("the Letter"):

   (a) the vendor did not maintain administrative support functions (such as accounting, treasury, tax and legal functions) dedicated to the Business. Rather, these functions were provided by the vendor at the corporate level and the related costs were not allocated to the Business;

   (b) the vendor's systems and procedures did not provide sufficient information for the preparation of stand-alone income tax and interest provisions for the Business;

   (c) accounts receivable and accounts payable were maintained for the entire operations of the vendor and it is not practicable to identify specifically those accounts receivable and accounts payable attributable to the Business;

   (d) separate cash balances were not maintained for the Business. Cash receipts and disbursements relating to the operations of the Business were aggregated with the cash activity for the entire operations of the vendor; and

   (e) the revenue generated by the Business for the year ended December 31, 2006 was approximately $12 million, or approximately 1% of the total revenue of the vendor. The Business represented approximately 0.3% of the vendor's total assets.

8. The vendor indicated to the Filer in the Letter that since it did not manage the Business as a stand-alone division, it did not maintain separate financial statements or records for the Business. Therefore "divisional" financial statements for the Business were not available. Based on the facts contained in the Letter, "carve-out" financial statements for the Business cannot be prepared as the financial records were not sufficiently detailed to extract information specific to the Business.

9. Accordingly, it is impracticable to prepare the financial statements required by NI 51-102 relating to the Business.

10. The Filer will provide the following financial information in lieu of the financial statements required by subsection 8.4(1) of NI 51-102:

    (a) an audited statement of operations as at December 31, 2006 with an unaudited comparative statement of operations as at December 31, 2005 ("Statement of Operations"). These statements will include revenues generated by the Business acquired less expenses directly attributable to the Business. Expenses will include sales and marketing, depreciation and other expenses directly attributable to the Business but will not include any allocation of general costs incurred for administrative support (such as accounting, treasury, tax and legal support) nor an allocation of interest and income taxes;

    (b) an audited statement of assets acquired and liabilities assumed for the year ended December 31, 2006 ("Statement of Assets Acquired and Liabilities Assumed") which will consist only of the assets acquired and liabilities specifically assumed;

    (c) a Presentation Note including a description of the significant accounting policies followed in the preparation of the financial statements; and

    (d) *pro forma* income statement required by subsection 8.4(5)(b) of NI 51-102 which will include the Filer's Income Statement for the period ended December 31, 2006, and the Statement of Operations for the period ended December 31, 2006 and any necessary *pro forma* adjustments.. For avoidance of doubt, no *pro forma* Balance Sheets will be required to be submitted as part of the BAR.

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:

(a) the Filer includes the following information in its BAR:

    (i) an audited Statement of Operations as at December 31, 2006 with an unaudited comparative Statement of Operations as at December 31, 2005;

(ii) an audited Statement of Assets Acquired and Liabilities Assumed for the year ended December 31, 2006;

(iii) a Presentation Note including a description of the significant accounting policies followed in the preparation of the financial statements; and

(iv) *pro forma* income statement required by subsection 8.4(5) of NI 51-102 which will include the Filer's Income Statement for the period ended December 31, 2006, and the Statement of Operations for the period ended December 31, 2006 and any necessary *pro forma* adjustments,; for avoidance of doubt, no *pro forma* balance sheets will be required to be submitted as part of the BAR; and

(b) the Filer complies with all other provisions in the Legislation applicable to the required content of the BAR.

Lisa Enright
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Ontario Securities Commission