

2009 BCSECCOM 182

March 27, 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 securities of the issuer are beneficially owned by more than 50 persons and are not traded through any exchange or market - The issuer became a wholly owned subsidiary of another company; the issuer has debt securities outstanding that are held by more than 50 holders; there is no market for the debt securities; the issuer is not required under the terms of the debt instrument to provide certain continuous disclosure to the holders of the debt securities as long as the securities are outstanding, or to remain a reporting issuer; 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 any Canadian jurisdiction

Applicable British Columbia Provisions

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

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

and

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

and

In the Matter of
Centerplate, Inc.
(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

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the securities legislation of the Jurisdictions (the Legislation) that the Filer is not a reporting issuer in the Jurisdictions (the Exemptive Relief Sought).
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 *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 corporation governed by the laws of the State of Delaware with its principal office located in Stamford, Connecticut.
2. The authorized capital of the Filer consists of 1,000 shares of common stock ("Shares"). As of the date hereof, 1,000 shares of common stock of the Filer are issued and outstanding.
3. The Filer is a reporting issuer in each of the Jurisdictions and was a registrant with the United States Securities & Exchange Commission (SEC). The Filer's income deposit securities (IDSs) were listed for trading on the NYSE Alternext US LLC (formerly, the American Stock Exchange) (AMEX) and the Toronto Stock Exchange (TSX).
4. Each IDS was a unit consisting of one share of common stock, par value US\$0.01, of the Filer (the Common Stock), and a 13.5% subordinated note due 2013 with a principal amount of US\$5.70 (the Note).
5. Except for the Shares and Notes, the Filer has no outstanding securities.
6. The Filer issued the IDSs in Canada pursuant to the prospectus dated December 4, 2003 filed on SEDAR for which the Jurisdictions granted a receipt.
7. On September 18, 2008, the Filer entered into an Agreement and Plan of Merger (the Original Merger Agreement) with KPLT Holdings, Inc., a

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Delaware corporation (Parent), and KPLT Mergerco, Inc., a Delaware corporation and wholly-owned subsidiary of Parent (Merger Sub) as amended by the Amendment to Agreement and Plan of Merger dated December 23, 2008, (the Amendment and taken together with the Original Merger Agreement, the Merger Agreement). Parent and Merger Sub are entities directly and indirectly owned by Kohlberg Investors VI, L.P. an affiliate of Kohlberg & Company. Under the terms of the Merger Agreement, Merger Sub was merged with and into the Filer, with the Filer continuing as the surviving corporation (the Merger) at the effective time of the Merger.

8. The Merger Agreement contemplated that the approval of the Merger would be effected through (i) a proxy solicitation to approve the Merger by security holders, and (ii) a tender offer (the Debt Tender) and a consent solicitation (the Consent Solicitation) to purchase up to a maximum of 70% of the issued and outstanding Notes for cash consideration of US\$2.49 per Note and to effect certain amendments to the indenture governing the Notes (the Indenture).
9. The Filer effected the proxy solicitation by mailing a proxy statement dated December 23, 2008, as supplemented on January 15, 2009, (collectively, the Proxy Statement) on Schedule 14A pursuant to the *Securities Exchange Act of 1934* (the Exchange Act) to security holders and by filing the Proxy Statement with SEC and the securities regulatory authority in each of the Jurisdictions.
10. The Proxy Statement disclosed that if the Merger were consummated, the IDSs would be de-listed from the AMEX and TSX, de-registered under the Exchange Act, and that the Filer would make an application to cease to be a reporting issuer in Canada. Further, the Proxy Statement informed security holders that following consummation of the Merger, the Filer would no longer file periodic and other reports with the SEC or the securities regulatory authorities in Canada on account of the IDSs.
11. Simultaneously with the proxy solicitation, the Filer commenced the Debt Tender and Consent Solicitation. Security holders were sent an Offer to Purchase and Consent Solicitation Statement dated December 23, 2008 (the Offer to Purchase) and a Consent and Letter of Transmittal (the Consent and Letter of Transmittal and, together with the Offer to Purchase, the Debt Tender Documents) regarding the Debt Tender and Consent Solicitation. UBS Investment Bank acted as dealer manager and solicitation agent in connection with the Debt Tender and MacKenzie Partners, Inc. acted as information agent for the Proxy Statement and Debt Tender. In order to tender any Notes, security holders were required to consent to the proposed amendments (the Proposed Amendments) to the Indenture which would, among other things, (a) provide for the automatic separation of the IDSs upon the consummation of

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the Merger, and (b) eliminate the affirmative covenant of the Filer to file reports specified in sections 13 and 15(d) of the Exchange Act with the SEC. The Debt Tender Documents disclosed that, following the consummation of the Merger, there would be no trading market for the Notes and that the Filer would no longer be required to file annual, quarterly and other reports with the SEC.

12. On January 26, 2009, the Debt Tender expired and holders of US\$73,200,198 of the outstanding Notes, which represents approximately 61.2% of the US\$119,596,334.10 outstanding principal amount of Notes, tendered their Notes and delivered consents. US\$46,396,136.10 of Notes remain outstanding (which represents the Notes forming part of 8,139,673 of the Filer's 20,981,813 IDSs outstanding just prior to consummation of the Merger). All Notes not tendered under the Debt Tender remain outstanding and entitle the holder to the rights specified in the Indenture as amended by the Supplemental Indenture dated January 23, 2009.
13. On January 27, 2009, at a special meeting of security holders (the Meeting), the Filer's security holders voted to approve the Merger by the requisite majority under applicable law. Following the Meeting on January 27, 2009, the Merger closed and a certificate of merger was filed with the Delaware Secretary of State and KPLT Holdings, Inc. became the sole stockholder of the Filer. Upon consummation of the Merger, the Notes and the shares of Common Stock comprising the IDSs were separated. Each issued and outstanding share of Common Stock was cancelled and converted automatically into the right to receive US\$0.01 in cash and each Note properly tendered to the Debt Tender became entitled to receive US\$2.49 per Note plus accrued and unpaid interest.
14. Based on information provided to the Filer by Broadridge, which reported on approximately 93% of the issued and outstanding Notes as of February 6, 2009, the outstanding securities of the Filer, including debt securities, are beneficially owned, directly or indirectly, by: (i) 8 security holders in Québec, 13 security holders in Ontario, 4 security holders in Manitoba, 1 security holder in Saskatchewan, 2 security holders in Alberta, 3 security holders in British Columbia and 1 security holder in an unknown address in Canada, for a total of 32 security holders resident in Canada. Based on Broadridge data, as of February 6, 2009, Note holder residents of Canada represented approximately 0.4% of the Filer's total number of Note holders and the number of Notes held by residents of Canada represented approximately 1.12% of the total issued and outstanding Notes.

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15. The Filer has taken all reasonable steps to determine the number of security holders residing in the Jurisdictions. The Notes are held in the Depository Trust Company (DTC) in book-entry form. As a result, the Filer does not have direct access to beneficial security holder data and must rely on the searches conducted by Broadridge of DTC and its participants. The Filer engaged Broadridge to search its beneficial security holder information following the closing of the Merger. Broadridge has reported on the geographical ownership of approximately 93% of the issued and outstanding Notes and has confirmed to the Filer that its searches are unable to report on 100% of the geographical ownership of the Filer's Notes.
16. Although the Filer has engaged a provider of investor communications in the United States to obtain information about Canadian Note holders, the Filer is unable to determine whether any Canadian residents beneficially own Notes through United States DTC participants.
17. The IDSs ceased trading on the TSX and AMEX on January 28, 2009. The Filer has delisted its IDSs from the TSX and AMEX and no securities of the Filer are traded on a marketplace as defined in National Instrument 21-101 - *Marketplace Operation*.
18. The Filer de-registered its IDSs on February 9, 2009, when it filed a Form 15 *Certification and Notice of Termination of Registration Under Section 12(g) of the Securities Act of 1934 or Suspension of Duty to File Reports under Sections 13 and 15(d) of the Securities Exchange Act of 1934* with the SEC. As a result, the Filer is no longer subject to reporting requirements under the Exchange Act or the Indenture, as amended, under which the Notes were issued.
19. The Filer is applying for relief to cease to be a reporting issuer in all of the jurisdictions in Canada in which it is currently a reporting issuer.
20. The Filer is not in default of any of its obligations under the Legislation as a reporting issuer. The Filer does not intend to file its annual filings that will become due on March 30, 2009.
21. The Filer does not intend to issue any securities either by way of public offering or an offering pursuant to an exemption from the registration and prospectus requirements in 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.

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The decision of the Decision Makers under the Legislation is that the Exemptive Relief Sought is granted.

James E. A. Turner
Vice Chair
Ontario Securities Commission

Wendell S. Wiggle
Commissioner
Ontario Securities Commission