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May 17, 2010

Headnote

Multilateral Instrument 11-102 *Passport System* and National Policy 11-203
Process for Exemptive Relief Applications in Multiple Jurisdictions –

National Instrument 51-102, s. 13.1 *Continuous Disclosure Obligations* -
Information circular - An issuer wants relief from the requirement to include prospectus-level disclosure in an information circular to be circulated in connection with an arrangement, reorganization, acquisition or amalgamation - The issuer is only internally restructuring, not adding or removing any assets or changing the shareholders' proportionate interest in the issuer's operations; the issuer will provide sufficient information about the transaction for shareholders to understand the restructuring

National Instrument 44-101, s. 8.1 *Short Form Prospectus Distributions* -
Qualification - An issuer wants relief from the qualification criteria in NI 44-101 so it can file a short form prospectus - The issuer is a new reporting issuer that is the continuation of an existing business; the issuer satisfies all the criteria for the exemption in s. 2.7 except that the audited comparative annual financial statements incorporated in its final prospectus are not its own, but are the financial statements of the existing business

National Instrument 44-101, s. 8.1 *Short Form Prospectus Distributions*. - 10 day notice - The filer wants to file its short form prospectus less than 10 days after it files its notice of intention to file a short form prospectus - The issuer is a successor issuer resulting from the conversion of an income fund under a plan of arrangement; the issuer would be entitled to rely on the exemption for successor issuers in s. 2.7(2) except that the financial statements incorporated into the information circular are not its own but are those of the existing business; the issuer is otherwise qualified to file a short form prospectus; the existing business is not required to file a notice of intention by virtue of s. 2.8(4); the relevant continuous disclosure for investors under the offering is the continuous disclosure of the fund, which will be incorporated by reference into the short form prospectus

Applicable British Columbia Provisions

National Instrument 51-102, s. 13.1 *Continuous Disclosure Obligations* -
Information circular

National Instrument 44-101, s. 8.1 *Short Form Prospectus Distributions* -
Qualification

National Instrument 44-101, s. 8.1 *Short Form Prospectus Distributions* – 10 day notice

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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
Sterling Shoes Income Fund (the Fund)
and Sterling Shoes Inc. (NewSterling)
(together, the Applicants)

Decision

Background

- ¶ 1 The securities regulatory authority or regulator in each of the Jurisdictions (the Decision Maker) has received an application from the Applicants for a decision under the securities legislation of the Jurisdictions (the Legislation):
- (a) exempting the Fund from the requirement under Item 14.2 of Form 51-102F5 Information Circular (the Circular Form) of the Legislation to include in the management information circular (Information Circular) to be prepared by the Fund and delivered to the holders (Securityholders) of trust units (Units) and special voting units (Special Voting Units) in connection with a special meeting (Meeting) of Securityholders expected to be held in June 2010 for the purposes of considering a plan of arrangement under the *Canada Business Corporations Act* (the CBCA) resulting in the internal reorganization of the the Fund's trust structure into a corporate structure (the Conversion Transaction): (a) the financial statements of Sterling Shoes Limited Partnership (Partnership) for the financial years ended December 31, 2009, December 31, 2008 and December 31, 2007; (b) the corresponding management's discussion and analysis for the financial years ended December 31, 2009 and December 31, 2008; and (c) certain comparative statements of the Partnership and of NewSterling, the resulting entity of the proposed conversion, including (i) a comparative income statement, a statement of retained earnings, and a cash flow statements of NewSterling for the most recent interim period

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ended more than 45 days before the date of the Information Circular and (ii) a balance sheet of NewSterling as at the end of the most recent interim period ended more than 45 days before the date of the Circular (the Circular Relief);

- (b) exempting NewSterling from the qualification criteria for short form prospectus eligibility contained in Subsection 2.2(d) of National Instrument 44-101 Short Form Prospectus Distributions (NI 44-101) following completion of the Conversion Transaction until the earlier of: (a) March 31, 2011; and (b) the date upon which NewSterling has filed both its annual financial statements and annual information form for the year ended December 31, 2010 pursuant to NI 51-102 Continuous Disclosure Obligations (NI 51-102) (the Qualification Relief); and
- (c) exempting NewSterling from the requirement to file a notice declaring its intention to be qualified to file a short form prospectus at least 10 business days prior to the filing of its first preliminary short form prospectus after the notice (the Prospectus 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 Applicants have provided notice that Subsection 4.7(1) of Multilateral Instrument 11-102 Passport System (MI 11-102) is intended to be relied upon in Alberta, Saskatchewan, Manitoba, Quebec, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland and Labrador; 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 defined in National Instrument 14-101 *Definitions* 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 Applicants:

The Sterling Entities and SSI

1. the Fund is an unincorporated, open-ended, limited purpose trust established under the laws of the Province of British Columbia pursuant to a trust indenture dated as of July 11, 2005;
2. the Fund is a reporting issuer (or the equivalent thereof) in each of the Jurisdictions and, to its knowledge, is currently not in default of any applicable requirements under the securities legislation thereunder;
3. the Fund is authorized to issue an unlimited number of Units and an unlimited number of Special Voting Units; as at May 3, 2010, the Fund had 5,313,488 Units and 1,328,372 Special Voting Units issued and outstanding; each Special Voting Unit entitles the holder thereof to a number of votes at any meeting of holders of Units equal to the number of Units which may be obtained upon the exchange of corresponding Class D limited partner units (Exchangeable Units) of the Partnership;
4. the Units are listed and posted for trading on the Toronto Stock Exchange (TSX) under the trading symbol “SSI.UN”;
5. the Fund has \$25,000,000 principal amount of 6.50% convertible unsecured subordinated debentures outstanding (Debentures); the Debentures are listed on the TSX under the symbol “SSI.DB”;
6. the Fund has filed an “AIF” and has “current financial statements” (as such terms are defined in NI 44-101) for the financial year ended December 31, 2009;
7. SSI Investments Inc. (SSI) holds all of the Special Voting Units; the Special Voting Units are not listed or posted for trading on any exchange or quotation and trade reporting system;
8. the Fund holds all of trust units and trust notes of SS Holdings Trust (Trust), an unincorporated, open-ended, limited purpose trust established under the laws of the Province of British Columbia pursuant to a trust indenture dated as of June 17, 2005, and all of the outstanding special voting common shares of Sterling Shoes GP Inc. (Sterling GP);
9. the Trust holds all of the Class C and Class E limited partner units of the Partnership and SSI holds all of the Exchangeable Units and Class A and B limited partner units of the Partnership; Exchangeable Units are exchangeable

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into Units on a one for one basis in accordance with the terms of the limited partnership agreement of the Partnership dated June 29, 2005 and the exchange agreement between the Fund, the Trust, the Partnership, Sterling GP and SSI dated June 12, 2005;

10. the Partnership is not a reporting issuer in any jurisdiction and its units, including the Exchangeable Units, are not listed or posted for trading on any exchange or quotation and trade reporting system;
11. the Fund does not carry on an active business, but holds, through the Class C and Class E limited partner units of the Partnership held by the Trust, an approximate 80% interest in the Partnership that carries on the speciality retail footwear business (the Business); the Exchangeable Units held by SSI represent approximately a 20% interest in the Partnership;
12. NewSterling is an indirect wholly-owned subsidiary of the Fund and will have conducted no business prior to the effective date (the Effective Date) of the Conversion Transaction;
13. prior to the Effective Date, NewSterling will not be a reporting issuer in any jurisdiction and its shares will not be listed or posted for trading on any exchange or quotation and trade reporting system;

Conversion Transaction

14. as part of the Conversion Transaction: (i) the Units, Special Voting Units and Exchangeable Units will be cancelled; (ii) common shares of NewSterling (Sterling Shares) will be distributed to holders of Units and Exchangeable Units on a one-for-one basis; (iii) NewSterling will assume all obligations of the Fund under the debenture indenture that governs the Debentures; (iv) the Fund and the Trust will be dissolved into NewSterling; (v) the Partnership will continue to carry on the Business it presently carries out on behalf of the Fund, and (vi) NewSterling will own, directly or indirectly, all of the existing assets and assume all of the existing liabilities of the Fund (including the Fund's outstanding Debentures) and the Trust, effectively resulting in the internal reorganization of the Fund's trust structure into a corporate structure;
15. following the completion of the Conversion Transaction: (i) the sole business of NewSterling will be the current business of the Fund; (ii) all equity holders of the Fund will own Sterling Shares, rather than Units now held by unitholders and Special Voting Units, Exchangeable Units and Class A and Class B limited partner units now held by SSI; (iii) NewSterling will be a reporting issuer or the equivalent under the securities legislation in all of the

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provinces of Canada; and (iv) the Sterling Shares and the Debentures will, subject to approval by the TSX, be listed on the TSX;

16. the Conversion Transaction will not result in a change in beneficial ownership of the assets and liabilities of the Fund and NewSterling will continue to carry on the Business through the Partnership following the Conversion Transaction; the Conversion Transaction will be an internal reorganization undertaken without dilution to the Securityholders; the Securityholders will, following completion of the Conversion Transaction, be the shareholders of NewSterling;
17. SSI and the former holders of Units will respectively hold approximately 20% and 80% of the Sterling Shares issued on the Effective Date;
18. pursuant to the Fund's constating documents, the CBCA and applicable securities laws, the Securityholders will be required to approve the Conversion Transaction at the Meeting; the Conversion Transaction must be approved by not less than two-thirds of the votes cast by Securityholders at the Meeting; the Meeting is anticipated to take place on June 24, 2010 and the Circular is expected to be mailed on or around May 25, 2010;
19. the Conversion Transaction will be accounted for on a continuity of interest basis and accordingly, following the Conversion Transaction, the comparative consolidated financial statements for NewSterling prior to the Conversion Transaction will reflect the financial position, and results of operation of cash flows as if NewSterling had always carried on the business formerly carried on by the Fund;
20. the Conversion Transaction will be a "restructuring transaction" under NI 51-102 in respect of the Fund and therefore will require compliance with Section 14.2 of the Circular Form;

Financial statements and MD&A disclosure in the Circular

21. Item 14.2 of the Circular Form requires, among other items, that the Circular contain the disclosure (including financial statements and management's discussion and analysis) prescribed under securities legislation and described in the form of prospectus that NewSterling would be eligible to use immediately prior to the sending and filing of the Circular for a distribution of its securities; therefore, the Circular must contain the disclosure in respect of NewSterling prescribed by Form 41-101F1 - *Information Required in a Prospectus* (the Prospectus Form) and by NI 41-101;

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22. as NewSterling will not have been in existence for three years on the date of the Information Circular, Item 32.1(a) of the Prospectus Form requires that the financial statements of the Partnership be included as it is the predecessor entity that will form the business of NewSterling;
23. Items 8.2(1)(a) and 8.2(2) of the Prospectus Form require the Fund to include management's discussion and analysis corresponding to each of the financial years ended December 31, 2009 and December 31, 2008 of the Partnership (the MD&A) in the Circular;
24. Item 32.2(1) of the Prospectus Form requires the Fund to include certain annual financial statements of the Partnership in the Circular, including: (i) statements of income, retained earnings and cash flows of the Partnership for each of the financial years ended December 31, 2009, December 31, 2008 and December 31, 2007; and (ii) a balance sheet of the Partnership as at the end of December 31, 2009 and December 31, 2008 (the Partnership Financial Statements); in addition, Item 32.3(1) of the Prospectus Form requires the Fund to include certain comparative statements of the Partnership and of NewSterling in the Circular (the Interim Financial Statements), including (a) a comparative income statement, a statement of retained earnings, and a cash flow statements of NewSterling for the most recent interim period ended more than 45 days before the date of the Circular and (b) a balance sheet of NewSterling as at the end of the most recent interim period ended more than 45 days before the date of the Circular (the Partnership Financial Statements and the Interim Financial Statements are referred to collectively as the Financial Statements);
25. subsection 4.2(1) of NI 41-101 requires that the Partnership Financial Statements required to be included in the Circular must be audited in accordance with National Instrument 52-107 - *Acceptable Accounting Principles, Auditing Standards and Reporting Currency* (NI 52-107);

Exemptions Sought

Circular Relief

26. NewSterling was established for the exclusive purpose of effecting the Conversion Transaction and will have no material assets (other than a nominal amount of cash) or business operations prior to the Effective Date;
27. the financial statements of the Fund are reported on a consolidated basis, which includes the financial results of the Partnership; the Partnership does not report its financial results independently from the consolidated financial

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statements of the Fund; the Financial Statements and the MD&A, if prepared, would not include the accounts of the Fund; there are transactions between the Fund and the Partnership that would be eliminated when consolidation is performed; to present the Financial Statements and the MD&A in the Information Circular, which would exclude accounts of the Fund, would present the effects of only one side of the financing activities between the Fund and the Partnership; this would result in intra-group liabilities and intra-group interest expense being reflected in the Financial Statements;

28. the Financial Statements and the MD&A are not relevant to the Securityholders for the purposes of considering the Conversion Transaction; once the Conversion Transaction is completed, the financial statements and management's discussion and analysis of NewSterling will be substantially and materially the same as the consolidated financial statements of the Fund filed in accordance with Part 4 of NI 51-102 because the financial position of the entity that exists both before and after the Conversion Transaction is substantially the same;
29. the Circular will contain prospectus level disclosure in accordance with the Prospectus Form (other than the Financial Statements and MD&A) and will contain sufficient information to enable a reasonable Securityholder to form a reasoned judgement concerning the nature and effect of the Conversion Transaction and the nature of the resultant public entity and reporting issuer from the Conversion Transaction, being NewSterling;

Prospectus Relief

30. subsection 2.7(2) of NI 44-101 contains an exemption for successor issuers from the qualification criteria for short form prospectus eligibility contained in Subsection 2.2(d) of NI 44-101, if an information circular relating to the restructuring transaction that resulted in the successor issuer was filed by the successor issuer or an issuer that was a party to the restructuring transaction, and such information circular (i) complied with applicable securities legislation, and (ii) included disclosure in accordance with Item 14.2 or 14.5 of the Circular Form of the successor issuer; NewSterling cannot rely on this exemption because the Financial Statements and MD&A will not be included in the Information Circular if the Circular Relief is granted;

Prospectus filing following the Conversion Transaction

31. the Fund is qualified to file a prospectus in the form of a short form prospectus pursuant to Section 2.2 of NI 44-101 and is deemed to have filed a notice of

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intention to be qualified to file a short form prospectus under Section 2.8(4) of NI 44-101;

32. the Applicants anticipate that NewSterling may wish to file a preliminary short form prospectus following the completion of the Conversion Transaction, relating to the offering or potential offering of securities (including common shares, debt securities or subscription receipts) of NewSterling;
33. in anticipation of the filing of a preliminary short form prospectus, and assuming the Conversion Transaction has been completed, NewSterling intends to file a notice of intention to be qualified to file a short form prospectus (the Notice of Intention) following completion of the Conversion Transaction. In the absence of the Prospectus Relief, NewSterling will not be qualified to file a preliminary short form prospectus until 10 business days from the date upon which the Notice of Intention is filed;
34. pursuant to the qualification criteria set forth in Section 2.2 of NI 44-101 as modified in the Qualification Relief, following the Conversion Transaction, NewSterling will be qualified to file a short form prospectus pursuant to NI 44-101;
35. notwithstanding Section 2.2 of NI 44-101 as modified in the Qualification Relief, Section 2.8(1) of NI 44-101 provides that an issuer is not qualified to file a short form prospectus unless it has filed a notice declaring its intention to be qualified to file a short form prospectus at least 10 business days prior to the issuer filing its first preliminary short form prospectus;
36. the short form prospectus of NewSterling will incorporate by reference the documents that would be required to be incorporated by reference under Item 11 of Form 44-101 F1 in a short form prospectus of NewSterling, as modified by the Qualification Relief.

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:

- (a) the Circular Relief is granted provided that the Information Circular discloses that NewSterling is a newly incorporated entity that has no material assets, income or liabilities;

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- (b) the Qualification Relief is granted provided that any short form prospectus filed by NewSterling pursuant to NI 44-101 during the Qualification Relief specifically incorporates by reference:
 - (i) the Information Circular and any financial statements and related management's discussion and analysis of the Fund incorporated by reference into the Information Circular, and
 - (ii) any financial statements, management's discussion and analysis, material change reports or other documents that would have to be incorporated by reference in any short form prospectus filed by the Fund; and
- (c) the Prospectus Relief is granted provided that, at the time NewSterling files its Notice of Intention, NewSterling meets the requirements of Section 2.2 of NI 44-101, as modified by the Qualification Relief.

Martin Eady, CA
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British Columbia Securities Commission