

2003 BCSECCOM 815

Headnote

Relief from registration and prospectus requirements for trades of units to holders of exchangeable securities

Exemption Order

MDC Corporation Inc.

Sections 48 and 76 of the *Securities Act*, R.S.B.C. 1996, c. 418

Background

- ¶ 1 MDC Corporation Inc. (MDC) applied for an exemption from the requirements to be registered to trade and to file and obtain receipts for a preliminary prospectus and prospectus in sections 34(1)(a) and 61 of the Act (the registration and prospectus requirements) for certain intended trades.

Representations

- ¶ 2 MDC represents that:
1. MDC is a corporation incorporated under the laws of Ontario, is a reporting issuer (or the equivalent thereof) in each of the Provinces of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland and Labrador, and is not in default of any requirement of the Act, the *Securities Rules*, B.C. Reg. 194/97, or of any of the requirements of the applicable securities legislation in the other named Provinces;
 2. Custom Direct Income Fund (the Fund) is an open-ended, limited purpose trust established under the laws of the Province of Ontario; the Fund was established to acquire, indirectly, 80% of the common shares of Custom Direct, Inc. (Custom Direct) from MDC pursuant to an initial public offering of 11,000,000 Units under a prospectus dated May 15, 2003;
 3. MDC is proposing an offering of adjustable rate exchangeable securities (the Exchangeable Securities) which are a series of direct, unsecured debentures of MDC pursuant to a short form prospectus (the Offering); the Exchangeable Securities pay interest at an adjustable monthly rate based upon the actual monthly distributions paid on Units, but in no case less than 0.25% (being 3% per annum);

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4. MDC filed and received receipts for a short form prospectus (the Prospectus) in each of the Provinces of Canada on December 1, 2003 for the Offering;
5. the Exchangeable Securities are, subject to certain conditions being met, exchangeable for units (the Units) of the Fund;
6. MDC currently holds common and preferred shares of Custom Direct (the Custom Direct Shares) which are effectively exchangeable into Units upon the occurrence of certain prescribed events (the Exchange Event);
7. after an Exchange Event occurs, MDC will issue a press release advising holders of the Exchangeable Securities that they are entitled to exercise their exchange right; each Exchangeable Security will be exchangeable at the option of the holder for one Unit, subject to certain adjustments (the Exchange Trades);
8. at any time subsequent to the occurrence of the Exchange Event, each Exchangeable Security is redeemable by MDC for one Unit, subject to certain adjustments (the Redemption Trades);
9. MDC may also transfer Units to a holder of Exchangeable Securities if there is an event of default in respect of the Exchangeable Securities and the requisite number of holders demand repayment of the principal amount of, and accrued but unpaid interest on, the Exchangeable Securities; in that event, MDC is entitled to pay the default amount by delivery of a number of Units with an aggregate value equal to the default amount (the Default Trades);
10. on December 31, 2028 (the Maturity Date), MDC will repay the Exchangeable Securities at their principal amount (the Maturity Value), plus accrued but unpaid interest;
11. at the option of MDC, the Maturity Value may be satisfied in respect of each Exchangeable Security by delivery of a number of Units with a value, based on a current market price per Unit on the Maturity Date, equal to the Maturity Value (the Maturity Trades);
12. the Exchange Trades, Redemption Trades, Default Trades and Maturity Trades are collectively referred to as the “MDC Custom Unit Trades”; and
13. the Prospectus filed in respect of the Offering contains prospectus level disclosure about the Fund and the Units and detailed information on what

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constitutes an Exchange Event and the circumstances in which MDC Custom Unit Trades will occur.

Order

¶ 3 Because it is not prejudicial to the public interest, the Executive Director orders:

- (a) under sections 48 and 76 of the Act that the MDC Custom Unit Trades are exempt from the registration and prospectus requirements, provided that no commission or other remuneration is paid or given to any person in respect of such trades except for administrative or professional services or for services performed by a registered dealer; and
- (b) under section 76 of the Act that any trade in Units acquired under this order is deemed to be a distribution unless the conditions in section 2.10 or subsections (3) or (4) of section 2.6 of Multilateral Instrument 45-102 *Resale of Securities* are satisfied.

¶ 4 December 5, 2003

Derek E. Patterson
Manager