

# 2005 BCSECCOM 742

December 16, 2005

## Headnote

Mutual Reliance Review System for Exemptive Relief Applications - National Instrument 51-102, s. 13.1 - Continuous Disclosure Obligations - BAR – An issuer requires relief from the requirement to include certain financial statements in a business acquisition report - The issuer filed a prospectus that included the financial information for the acquisition as a probable significant acquisition; the financial information in the prospectus is for a period that ended not more than one interim period before the financial information that would be required under Part 8 of NI 51-102; the issuer will include the financial information that was in the prospectus in the BAR; a reasonable investor would not consider the acquired business to be the issuer's primary business; the issuer will not account for the acquired business as continuity of interests

## Applicable British Columbia Provisions

National Instrument 51-102, ss. 8.4 and 13.1

In the Matter of  
the Securities Legislation of  
British Columbia and Ontario (the Jurisdictions)

and

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

and

In the Matter of  
Great Canadian Gaming Corporation (the Filer)

## MRRS Decision Document

## Background

- ¶ 1 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) exempting the Filer from the requirement that certain financial statements prescribed by Section 8.4 of National Instrument 51-102 *Continuous Disclosure obligations* (NI 51-102) be filed with the business acquisition report to be prepared by the Filer in connection with the Filer's acquisition of Flamboro Downs Limited (Flamboro) (the Requested Relief).

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### **Application of Principal Regulator System**

- ¶ 2 Under Multilateral Instrument 11-101 *Principal Regulator System* (MI 11-101) and the Mutual Reliance Review System for Exemptive Relief Applications
- (a) the British Columbia Securities Commission is the principal regulator for the Filer,
  - (b) the Filer is relying on the exemption in Part 3 of MI 11-101 in Alberta, Saskatchewan, Manitoba, Québec, New Brunswick, Nova Scotia, Newfoundland and Labrador (the MI 11-101 Jurisdictions), and
  - (c) this MRRS decision document evidences the decision of each Decision Maker.

### **Interpretation**

- ¶ 3 Defined terms contained in National Instrument 14-101 *Definitions* have the same meaning in this decision unless they are defined in this decision.

In this decision,

- (a) *Acquisition* means the purchase by the Filer of the issued and outstanding shares of Flamboro for a purchase price of approximately CDN\$50 million and US\$23.6 million,
- (b) *Equity Offering* means the offering of 3,703,704 special warrants for a total gross proceeds of CDN\$75,000,006, and
- (c) *NI 44-101* means National Instrument 44-101 *Short Form Prospectus Distributions*.

### **Representations**

- ¶ 4 This decision is based on the following facts represented by the Filer:
- 1. the Filer was incorporated under the predecessor legislation to the British Columbia *Business Corporations Act*;
  - 2. the Filer's head office is in Richmond, British Columbia;
  - 3. the Filer is a reporting issuer, or the equivalent, in each of the Jurisdictions and in the MI 11-101 Jurisdictions and, to the best of its knowledge, is currently not in default of any applicable requirements under the securities legislation in those jurisdictions;

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4. on August 16, 2005, the shareholders of Ontario Racing Inc. (ORI), which amalgamated with Flamboro before the closing of the Acquisition, and the Filer agreed to complete the Acquisition;
5. on August 3, 2005, the Filer closed the Equity Offering;
6. on August 31, 2005, the Filer filed its final short form prospectus in British Columbia, Alberta, Saskatchewan, Ontario and Québec in connection with the Equity Offering;
7. proceeds from the Equity Offering were used to partially satisfy the purchase price for the Acquisition;
8. the Acquisition closed October 19, 2005;
9. NI 44-101 sets out the financial statements required to be included or incorporated by reference in a short form prospectus, including financial statements relating to "significant acquisitions";
10. under NI 44-101, the Filer's prospectus included the following financial statements:
  - (a) the unaudited *pro forma* consolidated balance sheet of the Filer as at June 30, 2005,
  - (b) the unaudited *pro forma* consolidated statement of income of the Filer for the six-month period ended June 30, 2005,
  - (c) the unaudited *pro forma* consolidated statement of income of the Filer for the year ended December 31, 2004,
  - (d) the compilation report on the unaudited *pro forma* consolidated financial statements of the Filer,
  - (e) the audited financial statements of ORI for the years ended December 31, 2004 and 2003,
  - (f) the unaudited financial statements of ORI for the six-month periods ended June 30, 2005 and 2004, and
  - (g) the audit report on the audited financial statements of ORI for the years ended December 31, 2004 and 2003,

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(the Prospectus Financial Statements);

11. the *pro forma* Prospectus Financial Statements reflect the consolidated results for both ORI and Flamboro;
12. the Acquisition is a "significant acquisition" for the Filer for the purposes of NI 51-102, so the Filer must file a business acquisition report by January 2, 2006;
13. the business acquisition report must include the following financial statements:
  - (a) the unaudited *pro forma* balance sheet of the Filer as at September 30, 2005,
  - (b) the unaudited *pro forma* statement of income of the Filer for the nine-month period ended September 30, 2005,
  - (c) the unaudited *pro forma* statement of income of the Filer for the year ended December 31, 2004,
  - (d) the compilation report on the unaudited *pro forma* financial statements of the Filer,
  - (e) the audited financial statements of ORI for the years ended December 31, 2004 and 2003,
  - (f) the unaudited financial statements of ORI for the nine-month periods ended September 30, 2005 and 2004, and
  - (g) the audit report on the audited financial statements of ORI for the years ended December 31, 2004 and 2003,

(the BAR Financial Statements);

14. the BAR Financial Statements would not be materially different from the Prospectus Financial Statements;
15. ORI is a private company and as a wholly-owned subsidiary of Magna Entertainment Corp., interim and annual financial statements prepared in accordance with Canadian Generally Accepted Accounting Principles are not prepared for its operations as a matter of course;

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16. a reasonable investor would not consider the Filer's primary business to be the Flamboro business;

17. the Filer is not accounting for the Acquisition as continuity of interests.

### **Decision**

¶ 5 The Decision Makers being satisfied that each has the jurisdiction to make this decision and that the relevant test under the Legislation has been met.

The Requested Relief is granted provided that the Filer includes the Prospectus Financial Statements in its business acquisition report.

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