

# 2010 BCSECCOM 226

April 27, 2010

## **Headnote**

Multilateral Instrument 11-102 *Passport System* and National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* – An issuer wants relief from the requirement that financial statements required by securities legislation to be audited must be accompanied by an auditor’s report that does not contain a reservation - The auditors were not in attendance at the physical inventory taking and not able to satisfy themselves by other auditing procedures as to the opening inventory quantities; the issuer’s most recent financial statements will include balance sheet and statements of operations and retained earnings and cash flows as comparatives and the audit report will not contain a reservation

## **Applicable British Columbia Provisions**

National Instrument 52-107, ss 3.2(a) and 9.1

In the Matter of  
the Securities Legislation of  
British Columbia (the Jurisdiction)

and

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

and

In the Matter of  
Osia Ventures Ltd. (the Filer)

## Decision

## **Background**

- ¶ 1 The principal regulator in the Jurisdiction has received an application from the Filer for a decision under the securities legislation of the Jurisdiction of the principal regulator (the Legislation) for exemptive relief from the requirement that an auditor’s report must not contain a reservation with respect to the Target’s (defined below) audited financial statements for the financial years ended December 31, 2008 and 2007 (the Exemption Sought).

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Under the Process for Exemptive Relief Application in Multiple Jurisdictions (for a passport application):

- (a) the British Columbia Securities Commission is the principal regulator for this application, and
- (b) the Filer has provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (MI 11-102) is intended to be relied upon in Alberta.

### **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 Filer:
1. the head office of the Filer is located in Vancouver, British Columbia;
  2. the Filer is a reporting issuer in the provinces of British Columbia and Alberta;
  3. the common shares of the Filer are listed for trading on the TSX Venture Exchange (TSXV) under the symbol “OSA.P”;
  4. the Filer was incorporated under the *Business Corporations Act* (British Columbia) on May 28, 2009;
  5. the Filer entered into a letter agreement on March 5, 2010 with Sunscape (Hong Kong) Limited (the Target) and its shareholders, to acquire all of the issued and outstanding shares of the Target from its shareholders; the acquisition would constitute the Filer’s qualifying transaction (Qualifying Transaction);
  6. the Target is a private Hong Kong corporation that was incorporated in August 2007 as a holding company owning all of the issued and outstanding shares of an operating entity and a related variable interest entity whose business is to engage in the production and sales of bio-feed products;
  7. Manning Elliott LLP (the Auditors) was appointed the auditors of the Target in 2009;

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8. the Auditors were not able to observe the counting of physical inventories of the Target as at January 1, 2008 and January 1, 2007, nor satisfy themselves concerning those inventory balances by alternative means;
9. since opening and closing inventories enter into the determination of the results of operations and cash flows, the Auditors were not able to determine whether adjustments to cost of sales, income taxes, net income, and cash provided from operations for the years ended December 31, 2007 and 2008 might have been necessary (the Audit Reservation);
10. after the financial year ended December 31, 2008, the Target changed its financial year end to September 30;
11. the Auditors' report with respect to the financial statements for the financial year ended September 30, 2009 does not contain a reservation;
12. the Target was not a reporting issuer as at December 31, 2007 or December 31, 2008 in any jurisdiction;
13. the Target's business is not seasonal;
14. the Filer will file a draft Filing Statement with the TSXV, which among other things, will include financial statements of the Target accompanied by the Auditors' report containing the Audit Reservation;
15. under the policies of the TSXV, the Filing Statement must be filed on SEDAR once the TSXV approves the Filing Statement in its final form; the TSXV routinely makes it a condition that, prior to its approval of the Qualifying Transaction the Filer obtains the Exemption Sought;
16. due to the Audit Reservation, the Filer will not be able to complete its Qualifying Transaction as proposed unless the Exemption Sought is granted; and
17. the Filer is not in default of securities legislation in any jurisdiction.

### **Decision**

- ¶ 4 The principal regulator is satisfied that the decision meets the test set out in the Legislation for the principal regulator to make the decision.

The decision of the principal regulator under the Legislation is that the Exemption Sought is granted, provided that the Filer files audited financial statements of the

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Target for a period of at least six months subsequent to December 31, 2008 together with an auditor's report that does not contain a reservation.

Martin Eady, CA  
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British Columbia Securities Commission