

# 2010 BCSECCOM 88

February 1, 2010

## **Headnote**

Multilateral Instrument 11-102 *Passport System* and National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* – National Instrument 52-107 *Acceptable Accounting Principles, Auditing Standards and Reporting Currency*, sections 3.2(a) and 9.1 – requirement that auditor's report must not contain a reservation - 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; the issuer has been in default since filing the inventory reservation; the issuer acknowledges that any rights of action are not terminated as a result of the relief

## **Applicable British Columbia Provisions**

National Instrument 52-107 *Acceptable Accounting Principles, Auditing Standards and Reporting Currency*, sections 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  
HSF Capital Corporation  
(the Filer)

Decision

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### 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 an exemption from the requirement that financial statements filed by the Filer for the financial years of the Target (defined below) ended April 30, 2009, 2008 and 2007, must be accompanied by an auditor's report without a reservation (the Requested Relief).

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 tended 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 Richmond, 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 NEX Board of the TSXV under the symbol "HSF.H";
  - 4. the Filer was incorporated under the *Business Corporations Act* (British Columbia) on July 26, 2005;
  - 5. the Filer entered into an acquisition agreement on November 11, 2009, with Creative Grace Limited (the Target) and its shareholders, to purchase all of the issued and outstanding shares of the Target (the Acquisition), which will be the Filer's qualifying transaction on the TSX Venture Exchange (TSXV);
  - 6. the Target is a private Hong Kong corporation that was incorporated in December 2008 as a holding company owning all of the issued and

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outstanding shares of an operating entity and a related variable interest entity whose only business is to purchase and process raw materials for the operating entity;

7. Lo Porter Hetu (the Auditors) were appointed the auditors of the Target in 2009;
8. the Auditors were not able to observe the counting of physical inventories as at April 30, 2007, or satisfy themselves concerning the inventory quantities 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 April 30, 2007 and 2008 might have been necessary (the Reservation);
10. the Auditors' report with respect to the balance sheet of the Target as at April 30, 2008 and April, 30, 2009, and for the financial year ended April 30, 2009, does not contain a reservation;
11. on December 9, 2009 (the Default Date), the Filer filed its information circular in respect of the Acquisition, which included, among other things, the Auditor's report containing the Reservation;
12. the Filer has filed a draft Filing Statement with the TSXV which, among other things, includes the Auditor's report containing the Reservation;
13. under the policies of the TSXV, the Filing Statement must be filed on SEDAR once the TSXV approves the Filing Statement in final form; the TSXV has made it a condition of its approval of the qualifying transaction that the Filer obtain the Requested Relief;
14. due to the Reservation, the Filer cannot complete its qualifying transaction as proposed unless the Requested Relief is granted;
15. the Filer is currently, and has been since the Default Date, in default of securities legislation due to the inclusion of the Auditor's report containing the Reservation, in its information circular;
16. Except for the default noted above, the Filer is not in default of securities legislation in any jurisdiction in which it is a reporting issuer; and

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17. the Filer acknowledges that any right of action, remedy, penalty, or sanction available to any person or securities regulatory authority against the Filer from the Default Date until the date of this decision document is not terminated or altered as a result of such decision.

### **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 Requested Relief is granted.

Martin Eady, CA  
Acting Executive Director  
British Columbia Securities Commission