

2010 BCSECCOM 225

April 27, 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* – requirement to file audited annual financial statements for a particular period in connection with a reverse takeover - An issuer wants relief from the requirement to file audited annual financial statements for a particular period in connection with a reverse takeover transaction - Audit Exemption - The issuer has completed a reverse takeover; the annual financial statements of the reverse takeover acquirer for the third year back have not been audited; the most recent audited financial statements of the reverse takeover acquirer are for a period of less than 12 months; the reverse takeover acquirer would be a junior issuer under NI 41-101 if it were to file a preliminary prospectus; the issuer will provide annual financial statements of the reverse takeover acquirer for the second year back that have been audited and for the third year back that have been reviewed in accordance with the standards set out in the Handbook for a review by a public accountant

National Instrument 52-107, s. 9.1 *Acceptable Accounting Principles, Auditing Standards and Reporting Currency* – requirement that an auditor's report does 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 - Reservation Exemption - 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 51-102, s. 13.1 *Continuous Disclosure Obligations*

National Instrument 52-107, s. 9.1 *Acceptable Accounting Principles, Auditing Standards and Reporting Currency*

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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
Darford International Inc. (Darford) and Darford Industries Inc.
(the Reverse Takeover Acquirer)
(together, the Filers)

Decision

Background

¶ 1 The principal regulator in the Jurisdiction has received an application from the Filers for a decision under the securities legislation of the Jurisdiction of the principal regulator (the Legislation) that:

- (a) the requirement that annual financial statements must be audited does not apply to the Reverse Takeover Acquirer's financial statements for the financial year ended May 31, 2007 (the Audit Exemption); and
- (b) the requirement that an auditor's report must not contain a reservation does not apply to the Reverse Takeover Acquirer's audited financial statements for the financial year ended May 31, 2008, (the Reservation Exemption).

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

- (a) the British Columbia Securities Commission is the principal regulator for this application, and
- (b) the Filers have 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.

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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 Filers:
1. the Filers selected the British Columbia Securities Commission to act as principal regulator since the head offices of the Filers are located in British Columbia;
 2. Darford is a “reporting issuer” within the meaning of applicable securities legislation in British Columbia and Alberta; Darford’s common shares are listed on the TSX Venture Exchange (the TSXV);
 3. the Reverse Takeover Acquirer is not a “reporting issuer” within the meaning of applicable securities legislation in any jurisdiction of Canada; the Reverse Takeover Acquirer’s common shares are not listed on any stock exchange or quotation system;
 4. on January 26, 2010, Darford closed its qualifying transaction under the policies of the TSXV pursuant to which it acquired 100% of the issued and outstanding common shares of the Reverse Takeover Acquirer by means of a reverse takeover (the Transaction); on February 3, 2010 it received final TSXV acceptance of the Transaction;
 5. in connection with the Transaction, Darford filed and disseminated to its shareholders an information circular dated November 23, 2009 (the Circular) containing the disclosure required under TSXV policies; the Circular included audited financial statements of the Reverse Takeover Acquirer for the years ended March 31, 2009 and May 31, 2008;
 6. under the TSXV policies, the Darford shareholders were not required to approve the Transaction, therefore, a filing statement instead of an information circular was required; Darford had an upcoming annual general meeting and decided to seek approval of certain special business related to the Transaction, but not the Transaction itself, at this meeting; with the consent of the TSXV, Darford included the disclosure required in a filing statement in the Circular;
 7. Darford received exemptions from the policies of TSXV that would have otherwise required the inclusion in the Circular of: (a) an income statement, statements of retained earnings and cash flows of the Reverse Takeover Acquirer for the financial year ended May 31, 2007; and (b) an unqualified

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auditor's report with respect to the Reverse Takeover Acquirer's audited financial statements for the financial year ended May 31, 2008;

8. completion of the Transaction triggered the requirements of section 4.10(2)(a)(ii) of National Instrument 51-102 *Continuous Disclosure Obligations*, which requires Darford to file financial statements of the Reverse Takeover Acquirer as required in the form of prospectus that the Reverse Takeover Acquirer would have been eligible to use prior to the Transaction; the applicable form of prospectus for the Reverse Takeover Acquirer is Form 41-101F1 *Information Required in a Prospectus* (Form 41-101F1);
9. Form 41-101F1 contains an exemption from the audit requirement for the second and third most recently completed financial years provided the issuer is a junior issuer and the financial statements for the most recently completed financial year is not less than 12 months in length (the Junior Issuer Exemption);
10. if the Reverse Takeover Acquirer were to file a preliminary prospectus, it would meet the definition of "junior issuer" in National Instrument 41-101 *General Prospectus Requirements*;
11. the Reverse Takeover Acquirer changed its year end from May 31 to March 31 during its 2009 financial year; the Reverse Takeover Acquirer cannot rely on the Junior Issuer Exemption because its most recently completed financial year, for the period ended March 31, 2009, is only ten months instead of 12 months in length;
12. Grant Thornton LLP (the Auditor) was appointed as auditor of the Reverse Takeover Acquirer during its 2009 financial year and was not able to observe the counting of physical inventories as at any date prior to March 31, 2009; the Auditor was able to satisfy itself concerning inventory balances at May 31, 2008 through alternative means; the Auditor was unable to satisfy itself concerning inventory balances at May 31, 2007 through observation or through alternative means;
13. because the Auditor was unable to satisfy itself concerning inventory balances at May 31, 2007, it was unable to determine whether adjustments to the cost of sales, income taxes, net income and cash flows from operations for the year ended May 31, 2008 might be necessary or whether adjustments to retained earnings at June 1, 2007 might also be necessary; the Auditor has opined that, except for the adjustments, if any, which might have been determined to be necessary had it been able to examine inventory quantities as at May 31, 2007, the financial statements for the financial year ended May 31, 2008 present

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fairly, in all material respects, the financial position of the Reverse Takeover Acquirer as at May 31, 2008 and the results of its operations and its cash flows for the year ended May 31, 2008 in accordance with Canadian GAAP;

14. the Reverse Takeover Acquirer is not in default of securities legislation in any jurisdiction in Canada; and
15. Darford is not in default of securities legislation in any jurisdiction in Canada except that it has not filed audited financial statements of the Reverse Takeover Acquirer for the financial year ended May 31, 2007 or an unqualified auditor's report for the Reverse Takeover Acquirer's audited financial statements for the financial year ended May 31, 2008.

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:

- (a) the Audit Exemption is granted provided that Darford files financial statements of the Reverse Takeover Acquirer for the financial year ended May 31, 2007 that have been reviewed in accordance with the relevant standards set out in the Handbook for a review of financial statements by a public accountant; and
- (b) the Reservation Exemption is granted provided that Darford files audited financial statements of the Reverse Takeover Acquirer for a period of at least six months subsequent to May 31, 2008 together with an auditor's report that does not contain a reservation.

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