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March 23, 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* - BAR – An issuer requires relief from the requirement to include certain financial statements in a business acquisition report - The issuer intends to acquire numerous holding companies that own 100% of certain operating companies that comprise a business that is a significant acquisition for the issuer; at the time the significant acquisition is completed, the holding companies will not hold any material liabilities, business operations or other investments, other than interests in the operating companies, and the holding companies will be amalgamated into two holding companies; the financial statements of the holding companies contain information about previous business operations that is not relevant to the significant acquisition; the business acquisition report will contain audited combined financial statements of the operating companies and sufficient alternative information about the significant acquisition

National Instrument 51-102, s. 13.1 *Continuous Disclosure Obligations* – Information Circular – An issuer requires relief from the requirement to include certain financial statements in an information circular - The issuer intends to acquire one or more holding companies that own 100% of certain operating companies that comprise a business that is a significant acquisition for the issuer; at the time the significant acquisition is completed, the holding companies will not hold any material liabilities, business operations or other investments, other than interests in the operating companies, and the holding companies will be amalgamated into two holding companies; the financial statements of the holding companies contain information about previous business operations that is not relevant to the significant acquisition; the information circular will contain audited combined financial statements of the operating companies and sufficient alternative information about the significant acquisition

Securities Act s. 169, *Confidentiality* – An applicant wants to keep an application and order confidential for a limited amount of time after the order is granted - The record provides intimate financial, personal or other information; the disclosure of the information before a specific transaction would be detrimental to the person affected; the information will be made available after a specific date

## **Applicable British Columbia Provisions**

National Instrument 51-102, s. 13.1 *Continuous Disclosure Obligations* - BAR

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National Instrument 51-102, s. 13.1 *Continuous Disclosure Obligations* –  
Information Circular  
*Securities Act*, R.S.B.C. 1996, c. 418, s. s. 169 *Confidentiality*

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

and

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

and

In the Matter of  
Canaccord Financial Inc.  
(the Filer)

## Decision

### **Background**

- ¶ 1 The securities regulatory authority or regulator in each of the Jurisdictions (Decision Maker) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) that the Filer be exempt from the requirements under:
- (a) Item 14.2 of Form 51-102F5 – *Information Circular* (Form 51-102F5) for the Filer to include the Partner Holdco Financial Statements, and GFG Holdpar Financial Statements (as such terms are defined below) and *pro forma* financial statements of the Filer that give effect to the acquisition of the Partner Holdcos and GFG Holdpar (as such terms are defined below) in the information circular (Information Circular) that the Filer will deliver to shareholders of the Filer (Shareholders) in connection with the contemplated Shareholder meeting at which Shareholders will vote on the issuance of common shares of the Filer in partial consideration for the indirect acquisition (the Proposed Acquisition) by the Filer of the business of Genuity Capital Markets (GCM) and certain of its affiliates (Information Circular Requested Relief); and
  - (b) Item 8.4 of NI 51-102 for the Filer to include the Partner Holdco Financial Statements, GFG Holdpar Financial Statements and *pro forma* financial statements of the Filer that give effect to the acquisition of the Partner

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Holdcos and GFG Holdpar in the business acquisition report (BAR) that the Filer will be required to file in connection with the closing of the Proposed Acquisition (BAR Requested Relief).

Furthermore, the Decision Makers have received a request from the Filer that this decision and the application (collectively, the Confidential Material) be kept confidential and not be made public until the earlier of:

- (i) the date on which the Filer mails the Information Circular;
- (ii) the date the Filer advises the Decision Makers that there is no longer any need for the Confidential Material to remain confidential; and
- (iii) the date that is 30 days after the date of this decision (the Confidentiality Sought).

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

- (a) the British Columbia Securities Commission is the principal regulator for this application;
- (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, Saskatchewan, Manitoba, Québec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, Yukon, Northwest Territories and Nunavut; and
- (c) the decision is the decision of the principal regulator and evidences the decision of the securities regulatory authority or regulator in Ontario.

## **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:

### ***The Filer***

1. the Filer was incorporated as Canaccord Holdings Ltd. on February 14, 1997 by the filing of a memorandum and articles with the Registrar of Companies for British Columbia under the *Company Act* (British Columbia) and continues

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in existence under the *Business Corporations Act* (British Columbia); on June 21, 2004, the Filer changed its name to Canaccord Capital Inc.; the Filer was amalgamated in a short-form vertical amalgamation with its wholly-owned subsidiary 0719880 B.C. Ltd. on April 1, 2007; on December 1, 2009 the Filer changed its name to Canaccord Financial Inc.;

2. the Filer's head office is located at 2200 – 609 Granville Street, Vancouver, British Columbia, V7Y 1H2; the Filer's registered office is located at 1000 – 840 Howe Street, Vancouver, British Columbia, V6Z 2M1;
3. the Filer is a reporting issuer (or the equivalent thereof) in each of the jurisdictions of Canada; it is currently not in default of any applicable requirements under the securities legislation in any jurisdiction of Canada;
4. the authorized capital of the Filer consists of an unlimited number of common shares, without nominal or par value, and an unlimited number of preferred shares, issuable in series, of which 55,588,311 common shares and no preferred shares were issued and outstanding as of March 5, 2010;
5. the common shares of the Filer are listed on the TSX under the symbol "CF"; the common shares of the Filer are also listed on AIM, a market operated by the London Stock Exchange, under the symbol "CF";
6. the Filer's financial year end is March 31;

### *Genuity*

7. GCM is a general partnership formed under the laws of Ontario; the sole partners of GCM are the Partner Holdcos and GFG Holdpar (as such terms are defined below); GCM's financial year end is January 31;
8. Genuity Financial Group (GFG Holdpar) is a general partnership formed under the laws of Ontario; the sole partners of GFG Holdpar are the Partner Holdcos; GFG Holdpar's financial year end is January 1;
9. Genuity Limited Partnership (GLP) is a limited partnership formed under the laws of Ontario; the limited partnership interests of GLP are held, directly or indirectly, by family trusts established for the benefit of the family members and friends of principals of GCM and by Partner Holdcos (as defined below); the general partnership interest of GLP is held by Genuity GP Inc. (Genuity GP); GLP's financial year end is December 31;

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10. Genuity GP is a corporation formed under the laws of Ontario; Genuity GP was created to act as general partner of GLP and is a wholly-owned subsidiary of GFG Holdpar; Genuity GP's financial year end is December 31;
11. 2054386 Ontario Inc. (2054386) is a corporation formed under the laws of Ontario; 2054386 is a wholly-owned subsidiary of GFG Holdpar; 2054386's financial year end is December 31;
12. Genuity Capital Markets USA Corp. (Genuity USA) is a corporation formed under the laws of Ontario; Genuity USA is a wholly-owned subsidiary of GCM. Genuity USA's financial year end is January 31;
13. Genuity Fund Management Inc. (GFMI) is the mutual fund manager of Genuity Fund Corp., a mutual fund corporation offering redeemable, non-voting, participating shares in different classes and series on a private placement basis to accredited investors; prior to the announcement of the Proposed Acquisition and unrelated to the Proposed Acquisition, an application dated February 10, 2010 was filed with the Ontario Securities Commission requesting approval for the sale of GFMI to an entity 50% owned by Genuity Financial Group II Limited Partnership (GFG II LP) and a letter of no-objection to the sale was received from the Ontario Securities Commission on March 12, 2010; GFMI will be sold by GFG Holdpar on or about March 31, 2010, prior to the closing of the Proposed Acquisition;
14. the registered and head office of each of GCM, GFG Holdpar, GLP, Genuity GP, 2054386 and Genuity USA is located at Scotia Plaza, Suite 4900, 40 King Street West, Toronto, Ontario M5H 3Y2;
15. Genuity is not a reporting issuer (or the equivalent thereof) in any jurisdiction and none of its securities are listed for trading on any stock exchange or other market;
16. GCM is the principal operating entity of the Genuity Entities; Genuity USA conducts the Genuity Entities' U.S. business operations, with certain ancillary operations conducted through 2054386 and GLP (for which Genuity GP acts as general partner); together, GCM, Genuity USA, 2054386, GLP and Genuity GP (the Genuity Opcos) conduct all the business and operations of the Genuity Entities being acquired by the Filer;
17. GFG Holdpar's sole current purpose is to hold direct and indirect equity interests of the Genuity Opcos, and pending regulatory approval of a transfer to be completed prior to closing of the Proposed Acquisition, an interest in

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GFMI, and it does not have any operations or carry on any business other than the holding of such interests;

18. prior to September 30, 2009, GFG Holdpar also held limited partnership interests in certain limited partnerships that made private equity investments (the Private Equity Business); GFG Holdpar owned the general partners and the manager of the entities that made the private equity investments for the Private Equity Business; GFG Holdpar, together with certain principals of the Genuity business held 5% of the limited partnership interests in the Private Equity Business, and an outside investor owned and continues to own 95% of the limited partnership interests of the Private Equity Business; on September 30, 2009, GFG Holdpar sold its ownership interests in the Private Equity Business to GFG II LP and received limited partnership units of GFG II LP as consideration for the sale; GFG Holdpar distributed all the units of GFG II LP held by it to the partners of GFG Holdpar (each a Partner Holdco, as defined below); each of the Partner Holdcos have either transferred such units of GFG II LP to an affiliated entity or will, prior to the amalgamations as described in paragraph 24, transfer such units to an affiliated entity;
19. GFG II LP and its subsidiaries, including GFMI (once the transfer of the shares of this regulated entity from GFG to a subsidiary of GFG II LP is completed on or about March 31, 2010, prior to the closing of the Acquisition), are not being acquired as a part of the Proposed Acquisition, and will continue to be held by the holding companies affiliated with the Partner Holdcos referenced in the immediately preceding paragraph;
20. at all relevant times, the Genuity Opcos were under common control or management;
21. Thomas Briant Holdings Inc., Zambezi Capital Corp., Kassie Capital Corporation, Evershed Capital Corporation, Daviau Capital Corporation, R5 Capital Corporation, Merkur Capital Investment Corporation, SMB Capital Corporation, BIG Capital Corporation, Jasa Capital Corporation, Epistle Capital Corporation, Artha Capital Corporation, Alan Polak Capital Corp, Sachin Capital Corporation, Levin Capital Corporation, Fedrock Capital Corporation, Fredette Capital Corporation, Eggertson Capital Corporation, Hirst Capital Corporation, Yip Capital Corporation, Loria Capital Corporation, Shanti Corp, Ashmount Capital Corporation, Melbourne Capital Corporation, SR MacDonald Capital Corporation, Robco Capital Corporation, Wylie Capital Corporation, Darren Hunter Capital Corporation, McBride Capital Corporation, Minas Capital Corporation, Katsiyianis Capital Corporation, Michel Capital Corporation, Bruni Capital Corporation, MacDougall Capital Corporation, Lindner Capital Corporation, Ridpath Capital ULC, Sandmark

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Capital Corporation, L.O.W. Capital ULC, Mendonca Capital Corporation, Ghose Capital Corporation, Skolnick Capital Corp., Rothschild Capital Corporation, Kristjansen Capital Corporation, Lesiak Capital Corporation, D. Chopra Capital Corporation, Tyerman Capital Corporation, Dechaine Capital Corporation, Payne Investment Corporation, and Bederman Investment Corporation (collectively, together with any holding corporation established to hold individual partner interests in Genuity Opcos prior to closing of the Proposed Acquisition, the Partner Holdcos) were established for the sole purpose of carrying on, as partners, the business of GCM and GFG Holdpar; each individual partner of GCM established such a Partner Holdco;

22. the Partner Holdcos have not historically generally been audited or subject to an auditor review;

### *The Proposed Acquisition*

23. on March 3, 2010, the Filer entered into a definitive agreement (the Acquisition Agreement) in respect of the Proposed Acquisition;
24. under the terms of the Acquisition Agreement, immediately prior to the closing of the Proposed Acquisition, GFG Holdpar will be dissolved and undivided interests in all of its assets (comprised entirely of the partnership units of GCM, shares of Genuity GP and shares of 2054386) will be distributed to the Partner Holdcos, pro rata based on their partnership interests; the Partner Holdcos that are not unlimited liabilities companies will then amalgamate, and the Partner Holdcos that are limited liability companies will amalgamate, resulting in the holding companies Amalco 1 and Amalco 2, respectively;
25. the Proposed Acquisition will be completed, in part, by the Filer acquiring all of the shares of Amalco 1 and Amalco 2 (the Amalco Shares) in consideration for cash and the issuance of 26,500,000 common shares (the Consideration Shares) of the Filer, as well as a subsidiary of the Filer acquiring substantially all of the assets of GLP for cash and the assumption of substantially all of the liabilities of GLP, other than debt owed to its partners; immediately following the closing of the Proposed Acquisition, Amalco 1 and Amalco 2 will be the only holders of partnership units of GCM, shares of Genuity GP and shares of 2054386, providing Filer with 100% direct or indirect ownership of the business of the Genuity Opcos;
26. the steps described in paragraphs 24 and 25 will be undertaken to accommodate a share sale, with the Filer's objective being to indirectly acquire the Genuity Opcos, and it is a condition of closing in favour of the Filer that if any Partner Holdco has any assets other than direct or indirect

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interests in the Genuity Opcos, such assets must be transferred prior to closing such that its assets will comprise only these interests on closing and will not form a part of the Proposed Acquisition or the individual partner must establish a new Partner Holdco and transfer its interests in the Genuity Opcos to such Partner Holdco;

### *Financial Statements for Information Circular and BAR*

27. the issuance of the Consideration Shares in connection with the Proposed Acquisition will require Shareholder approval and the preparation of the Information Circular;
28. the Proposed Acquisition will constitute a “significant acquisition” of the Filer for the purposes of NI 51-102, as determined in accordance with the tests prescribed by Part 8 of NI 51-102; the Filer will therefore be required to file the BAR under Section 8.2(1) of NI 51-102 in the prescribed form with respect to the Proposed Acquisition;
29. pursuant to Item 14.2 of Form 51-102F5 mandated by Part 9 of NI 51-102, because the Proposed Acquisition will constitute a significant acquisition under which the Consideration Shares will be issued, the Filer will be required to include in the Information Circular, among other things, disclosure (including financial statements) prescribed under securities legislation and described in the form of prospectus “that the entity would be eligible to use prior to sending and filing of the information circular in respect of the significant acquisition”;
30. at the time of the closing of the Proposed Acquisition, neither Amalco 1 nor Amalco 2 will hold any assets, except for direct or indirect ownership interests in the Genuity Opcos; further, the Partner Holdcos comprising Amalco 1 and Amalco 2 were established for the sole purpose of carrying on, as partners, the business of Holdpar and GCM and they have no other material assets or business operations, no material expenses or liabilities (except those associated with general administrative matters and the earning of the Partner Holdco’s Genuity Opco income; it is a condition of closing in favour of the Filer that all Partner Holdcos must not hold any assets other than direct and indirect interests in the Genuity Opcos, and to the extent any Partner Holdcos currently holds any other such assets, such Partner Holdco may be required to incorporate a new company and transfer its direct and indirect interests in the Genuity Opcos and treat such new company as the Partner Holdco for the purposes of the Proposed Transaction from thereon or transfer such assets from the Partner Holdco prior to closing of the Proposed Acquisition;

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31. GFG Holdpar does not hold any assets, except for direct or indirect ownership interests in the Genuity Opcos and GFMI; GFG Holdpar holds certain interests in the entities carrying on the business and operations of the Genuity business and has no material assets or business operations, no material expenses and no material liabilities other than its interests in GCM, 2054386 and Genuity GP and, pending regulatory approval of a transfer to be completed prior to the closing of the Proposed Acquisition, an interest in GFMI;
32. financial statements of GFG Holdpar and the Partner Holdcos would reflect financial results of GFG II LP and the Private Equity Business (which are not being acquired, directly or indirectly, by the Filer) for the period until its transfer in 2009;
33. all revenue producing and operational activities, except (a) those activities specifically attributable to the Private Equity Business and (b) related party activities between GFG Holdpar and Genuity Opcos, occurred within the Genuity Opcos; as a result, the only financial statements that will be of relevance for investors are the financial statements of the Genuity Opcos and the Filer's *pro forma* financial statements after giving effect to the Proposed Acquisition prepared based upon the financial statements of the Filer and the Genuity Opcos, and not the Partner Holdco Financial Statements or GFG Holdpar Financial Statements; such financial statements of the Genuity Opcos and the Filer's *pro forma* financial statements after giving effect the Acquisition will provide investors with all necessary disclosure regarding the Filer and the Proposed Acquisition;
34. the Filer proposes that the Information Circular only contain the following financial statements (the Circular Financial Statements):
  - (a) audited combined financial statements for the Genuity Opcos, including combined statements of income, retained earnings and cash flows for the 12 months ended January 31, 2008, January 31, 2009 and January 31, 2010, together with a combined balance sheet for the Genuity Opcos as at January 31, 2009 and January 31, 2010;
  - (b) *pro forma* income statements of the Filer for (i) the 12 months ended March 31, 2009 (based on the audited combined income statement of the Genuity Opcos for the 12 months ended January 31, 2009 and audited income statement of the Filer for the 12 months ended March 31, 2009), and (ii) the nine months ended December 31, 2009 (based on the financial results of the Genuity Opcos for the 9 months ended October 31, 2009 and financial results of the Filer for the 9 months ended December 31, 2009) (plus *pro forma* earnings per share for such periods), as well as a *pro*

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*forma* balance sheet as at December 31, 2009 (based on the balance sheet of the Filer as at December 31, 2009 and the balance sheet of the Genuity Opcos as at October 31, 2009); and

35. the Filer proposes that the BAR only contain the following financial statements (the BAR Financial Statements):
- (a) audited combined financial statements for the Genuity Opcos, including combined statements of income, retained earnings and cash flows for the 12 months ended January 31, 2009 and January 31, 2010, together with a combined balance sheet for the Genuity Opcos as at January 31, 2009 and January 31, 2010;
  - (b) *pro forma* income statements of the Filer for (i) the 12 months ended March 31, 2009 (based on the audited income statement of the Genuity Opcos for the 12 months ended January 31, 2009 and audited income statement of the Filer for the 12 months ended March 31, 2009), and (ii) the nine months ended December 31, 2009 (based on the financial results of the Genuity Opcos for the 9 months ended October 31, 2009 and financial results of the Filer for the 9 months ended December 31, 2009) (plus *pro forma* earnings per share for such periods), as well as a *pro forma* balance sheet as at December 31, 2009 (based on the balance sheet of the Filer as at December 31, 2009 and the balance sheet of the Genuity Opcos as at October 31, 2009).

### **Decision**

- ¶ 4 Each of the Decision Makers is satisfied that the decision meets the test set out in the Legislation for the Decision Maker to make this decision.

The decision of the Decision Makers under the Legislation is that:

- (a) the Information Circular Requested Relief is granted provided that the Information Circular includes the Circular Financial Statements, and
- (b) the BAR Requested Relief is granted provided that the BAR includes the BAR Financial Statements.

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Furthermore, the decision of the Decision Makers is that the Confidentiality Sought is granted.

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