

2009 BCSECCOM 547

September 30, 2009

Headnote

National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* – National Instrument 21-101 *Marketplace Operation* s. 15.1 and 1996 Securities Act s. 33 Exchange – Exemption from National Instrument 21-101 *Marketplace Operation* s. 3.2(1) requirement to file an amended Form 21-101F1 at least 45 days before implementing a significant change – An exchange wants to implement fee changes without having to wait at least 45 days after they file an amended Form 21-101F1 – The filer requires the relief to retain its competitive position; the filer will provide advance notice of the fee changes; the proposed changes do not require at least 45 days for Commission staff to review and consider; Commission staff do not object to the proposed fee changes

Applicable British Columbia Provisions

National Instrument 21-101 *Marketplace Operation* s. 3.2(1) and 15.1
Form 21-101F1 *Information Statement – Exchange or Quotation and Trade Reporting System*, Exhibit N
Securities Act, R.S.B.C. 1996, c. 418, ss. 33

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

and

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

and

In the Matter of
TSX Venture Exchange 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) for exemptive relief from the requirement to file an amendment to the information previously provided

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in Form 21-101F1 (the Form) regarding Exhibit N (fees) 45 days before implementation of the fee change (Exemptive Relief Sought).

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

- (a) the British Columbia Securities Commission (BCSC) is the principal regulator for this application, and
- (b) the decision is the decision of the principal regulator and evidences the decision of each other Decision Maker.

Interpretation

- ¶ 2 Terms defined in National Instrument 14-101 *Definitions* have the same meaning if used in this decision, unless otherwise defined in this decision.

Representations

- ¶ 3 This decision is based on the following facts represented by the Filer:
- (a) the Filer operates the TSX Venture Exchange, and is recognized as an exchange in British Columbia and Alberta;
 - (b) pursuant to the letter by BCSC and Alberta Securities Commission, dated November 26, 1999 regarding the joint regulatory oversight of TSXV (formerly CDNX), BCSC is the functional regulator for TSXV in matters relating to trading;
 - (c) the current multi-market trading environment requires frequent changes to fees and the fee model to remain competitive, which requires a shorter period than the 45 day filing requirement;
 - (d) the policy rationale behind the 45 day filing requirement, which the Filer understands is to provide regulators with an opportunity to analyze the changes and determine if any objections should be raised prior to implementation, can be met in a shorter period;
 - (e) the Filer has filed with the Jurisdictions an updated Form on September 17, 2009, describing the fee change and the implementation date of such fee change (the Fee Change);
 - (f) the Filer intends to provide advance notice to the industry at least five days prior to implementing the Fee Change; and

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(g) the Filer is not in default of the Legislation.

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 the decision.

The decision of the Decision Makers under the Legislation is that the Exemptive Relief Sought is granted with respect to the Fee Change.

Sandra Jakab
Director, Capital Markets Regulations
British Columbia Securities Commission