

2002 BCSECCOM 1020

Headnote

Relief granted from the registration and prospectus requirements to permit trades in securities to dealer-owners who enter into license agreements with the issuer

Exemption Order

RONA Inc.

Sections 48 and 76 of the *Securities Act*, R.S.B.C. 1996, c. 418

Background

- ¶ 1 RONA applied for an exemption from the requirement to be registered to trade in a security and to file and obtain receipts for a preliminary prospectus and prospectus in sections 34(1)(a) and 61(1) of the Act (the registration and prospectus requirements) for trades by RONA of common shares to Dealer-Owners (as defined below).

Representations

- ¶ 2 RONA represents that:
1. it exists under the *Companies Act* (Québec) and has its head office in Québec;
 2. it has been a reporting issuer in Québec since October 24, 1984 and became a reporting issuer in all the other provinces of Canada when its common shares were offered to the public by prospectus dated October 25, 2002;
 3. it is not in default of any requirement of the Act or the *Securities Rules*, B.C. Reg. 194/97;
 4. its authorized share capital consists of:
 - (a) an unlimited number of Class A preferred shares, issuable in series of which one series, designated as an unlimited number of Class A preferred shares, series 5 is currently authorized,
 - (b) an unlimited number of Class B preferred shares,
 - (c) an unlimited number of Class C preferred shares, issuable in series of which one series, designated as an unlimited number of Class C preferred shares, series 1 is currently authorized,

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- (d) an unlimited number of Class D preferred shares,
 - (e) and an unlimited number of common shares;
5. as at October 25, 2002, it had 4,085,051 series 5 Class A preferred shares, 1,306 series 1 Class C preferred shares, 10,000,000 Class D preferred shares and 48,168,248 common shares outstanding;
 6. its common shares are listed on The Toronto Stock Exchange;
 7. RONA stores are operated under various collective trade-marks known as “banners” and they are either owned by RONA, by dealers (Dealer-Owners) or jointly by RONA and dealers;
 8. upon joining RONA, each Dealer-Owner is required to execute a commercial license agreement;
 9. subject to certain limitations, under a license agreement, Dealer-Owners are typically required to purchase \$10,000 worth of common shares, based on the market price of the common shares, when they begin operating a store under a RONA banner (which is reduced to \$5,000 for stores with estimated annual purchases from RONA equal to or less than \$1 million), and to contribute an amount equal to 2% of their annual purchases from RONA to a subscription fund created and maintained by RONA (the fund) on an annual basis, except Dealer-Owners operating under the RONA L’entrepôt and RONA Le Régional banners who have the obligation to contribute a fixed amount annually;
 10. the contributions made to the fund in a given year are used to purchase additional common shares that are issued to the Dealer-Owners the following year;
 11. all Dealer-Owners’ contributions to the fund are capped at three levels:
 - (a) the annual maximum: in any given year, a Dealer-Owner may not contribute more than the annual maximum applicable to its store category,
 - (b) the cumulative subscription maximum: subject to the terms of the pledge maximum set out below, a Dealer-Owner’s contributions will cease when its total contributions to the fund, from time to time, reach a level equal to the lesser of the applicable percentage of its annual purchases for the previous calendar year or the fixed maximum threshold applicable to its

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store category, except in the case of Dealer-Owners operating under the RONA L'entrepôt and RONA Le Régional banners who will have the obligation to contribute a fixed amount,

- (c) the pledge maximum: a Dealer-Owner's contributions will be suspended for a given year if the aggregate value of the common shares held by the Dealer-Owner, as determined each year on a date set by the board of directors of RONA (an adjustment date), is greater than the pledge maximum applicable to its store category; the total value of the common shares held by a Dealer-Owner on an adjustment date will correspond to the amount obtained by multiplying the number of such shares by 75% of the market value of a common share;

12. the annual maximum, the cumulative subscription maximum and the pledge maximum will vary with the different store categories in the manner set out below:

| Store Category | Annual Maximum | Cumulative Subscription Maximum (lesser of) | | Pledge Maximum (lesser of) | |
|---|----------------|---|-------------------|----------------------------|-------------------|
| | | Annual Purchase Percentage | Maximum Threshold | Annual Purchase Percentage | Maximum Threshold |
| Stores with annual purchases of: | | | | | |
| - Between \$0 and \$1,000,000 | \$10,000 | 12% | \$100,000 | 20% | \$200,000 |
| - Between \$1,000,001 and \$2,500,000 | \$20,000 | 12% | \$150,000 | 20% | \$400,000 |
| - Between \$2,500,001 and \$5,000,000 | \$25,000 | 12% | \$175,000 | 20% | \$600,000 |
| - Between \$5,000,001 and \$10,000,000 | \$30,000 | 12% | \$200,000 | 20% | \$800,000 |
| - More than \$10,000,000 | \$35,000 | 12% | \$225,000 | 20% | \$1,000,000 |
| RONA Le Régional | \$35,000 | - | \$225,000 | - | \$1,000,000 |
| RONA L'entrepôt | \$75,000 | - | \$450,000 | - | \$1,200,000 |

13. if, on any adjustment date, the value of the common shares held by a Dealer-Owner is greater than its pledge maximum on that date, RONA will have to, at the Dealer-Owner's request and subject to the following conditions, refund such Dealer-Owner the balance of its contributions made to the fund and release from the pledge and return to the Dealer-Owner the portion of its common shares in excess of the pledge maximum (excess common shares);
14. the release of any excess common shares is conditional, among other things, on the Dealer-Owner (i) complying with certain of its undertakings toward RONA under its license agreement and the related commercial arrangements,

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and (ii) not receiving any direct or indirect financial assistance from RONA except for the amount customarily extended by RONA to such category of Dealer-Owner by way of line of credit or advance;

15. a Dealer-Owner whose aggregate value of common shares held by it falls below its pledge maximum at any given subsequent adjustment date will have to resume its contributions to the fund if its cumulative subscription maximum has not yet been reached;
16. the underlying commercial objective in offering common shares to Dealer-Owners is to provide RONA with capital and to encourage Dealer-Owners, by virtue of their position as shareholders of RONA, to utilize the volume purchasing services of RONA, which furthers economies of scale in RONA's purchasing activities and benefits Dealer-Owners through the use of a collective purchasing power that would otherwise be unavailable to them; and
17. each Dealer-Owner is required to grant RONA a security interest in all the shares of RONA held by it as continuing security for the performance of its obligation towards RONA; such shares will generally be released only in the manner described above, therefore limiting the resale of shares by the Dealer-Owner.

Order

¶ 3 Because it is not prejudicial to the public interest, the Executive Director orders:

1. under sections 48 and 76 of the Act, that trades by RONA in common shares to Dealer-Owners in British Columbia are exempt from the registration and prospectus requirements provided that:
 - (a) each purchaser of common shares has been approved by RONA as a Dealer-Owner; and
 - (b) prior to the first issuance of any common shares to a Dealer-Owner, RONA provides such Dealer-Owner with:
 - (i) a copy of this order, and
 - (ii) a statement that, as a consequence of this order, certain protections, rights and remedies provided by the Act, including statutory rights of rescission or damages, will not be available to Dealer-Owners;

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2. under section 76 of the Act, that the first trade in Common Shares by the Dealer-Owners is deemed to be a distribution unless the conditions in subsection (3) or (4) of Section 2.6 of Multilateral Instrument 45-102 *Resale of Securities* are satisfied.

¶ 4 December 13, 2002

Brenda Leong
Director