

2011 BCSECCOM 168

January 19, 2011

Headnote

National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* - Securities Act, s.88 - Cease to be a reporting issuer - The securities of the issuer are beneficially owned by not more than 50 persons and are not traded through any exchange or market - The issuer falls within the definition of “closely held reporting issuer” contained in BC Instrument 11-502 *Voluntary Surrender of Reporting Issuer Status* as the securities of the issuer are beneficially owned by not more than 50 persons and are not traded through any exchange or market

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, s. 88

In the Matter of
the Securities Legislation of
Ontario, British Columbia, Alberta, Saskatchewan, Manitoba, Québec, New
Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador,
Northwest Territories, Yukon and Nunavut (the Jurisdictions)

and

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

and

In the Matter of
Drive Products Income Fund (the Filer)

Decision

Background

The securities regulatory authority or regulator in each of the Jurisdictions (the Decision Maker) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) that the Filer is not a reporting issuer in each of the Jurisdictions (the Exemption Sought).

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

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- (a) the Ontario Securities Commission 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

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

Representations

This decision is based on the following facts represented by the Filer:

1. The Filer is an unincorporated, open-ended, limited purpose trust formed under the laws of the Province of Ontario pursuant to a declaration of trust dated May 1, 2006 (as amended and restated on August 25, 2006 and on November 15, 2010). The Filer's head office is located at 1665 Shawson Drive, Mississauga, Ontario L4W 1T7. The Filer is a reporting issuer in each of the Jurisdictions. The Filer is authorized to issue:
 - (a) an unlimited number of trust units (the Units); and
 - (b) an unlimited number of special voting units (the Special Voting Units and, together with the Units, the Voting Units). Special Voting Units may only be issued to holders of Class B LP Units (defined below) for the purpose of providing voting rights with respect to the Filer to the holders of such securities. Special Voting Units are attached to the Class B LP Units to which they relate and are not transferable separately from such Class B LP Units.
2. Drive Products Limited Partnership, a subsidiary of the Filer, is authorized to issue an unlimited number of Class B limited partnership units (the Class B LP Units). The Class B LP Units are indirectly exchangeable into Units on a one-for-one basis and are non-transferable, except in connection with an exchange for Units.
3. As at November 17, 2010, there were issued and outstanding 6,889,365 Units, 6,360,418 Special Voting Units and 6,360,418 Class B LP Units, all of which are now owned by the Offeror.
4. 2256479 Ontario Inc. (the Offeror) was incorporated under the laws of the Province of Ontario on September 10, 2010 and is controlled by Gregory Edmonds, Chief Executive Officer of the Filer, and Russell Bilyk, President of

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Drive Products, a general partnership governed by the laws of the Province of Ontario and the operating partnership owned by the Filer (collectively, the Insiders). The Offeror is not a reporting issuer in any of the provinces or territories of Canada. The registered office of the Offeror is 1665 Shawson Drive, Mississauga, Ontario L4W 1T7. The Offeror is not in default of securities legislation in any jurisdiction.

5. On November 15, 2010, the Offeror completed a take-over bid (the Offer) and a compulsory acquisition, whereby, among other things, the Offeror acquired all of the Units, at a price of \$2.50 cash per Unit, other than Units owned directly or indirectly by the Offeror, its affiliates, the Insiders, and Michael Edmonds, Robert Edmonds, 1257727 Alberta Ltd. (a company controlled by Russell Bilyk), Daniel Bostrom, Falynn Bostrom and Ryan Bilyk (collectively, the Excluded Parties). On November 15, 2010, the Units held by the Insiders and the Excluded Parties and all of the outstanding Class B LP Units were exchanged for Class B common shares of the Offeror on a tax deferred basis under Section 85(1) of the *Income Tax Act* (Canada) (the Roll-Over Transactions). The Offer, compulsory acquisition and Roll-Over Transactions resulted in the Offeror acquiring 100% of the outstanding Voting Units.
6. The Units were listed and posted for trading on the Toronto Stock Exchange (the TSX) under the trading symbol "DPI.UN" and were delisted from trading on the TSX effective as of the close of business on November 17, 2010.
7. The outstanding securities of the Filer, including debt securities, are beneficially owned, directly or indirectly, by fewer than 15 security holders in each of the jurisdictions in Canada and fewer than 51 security holders in total in Canada.
8. No securities of the Filer are traded on a marketplace as defined in National Instrument 21-101 – *Marketplace Operation*.
9. The Filer has no intention of seeking public financing by way of an offering of securities in Canada.
10. The Filer is not in default of any of its obligations under the Legislation as a reporting issuer, except that it did not file its interim financial statements and related management's discussion and analysis for the interim period ended September 30, 2010, as required under National Instrument 51-102 *Continuous Disclosure Obligations*, and the certificates of interim filings as required under National Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings*.

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11. The Filer did not surrender its status as a reporting issuer in British Columbia pursuant to BC Instrument 11-502 – *Voluntary Surrender of Reporting Issuer Status* (the BC Instrument) in order to avoid the 10-day waiting period under the BC Instrument.
12. As the Filer is in default of certain filing obligations under the Legislation, as described in paragraph 10, and is a reporting issuer in British Columbia, the Filer is not eligible to use the simplified procedure under CSA Staff Notice 12-307 – *Applications for a Decision that an Issuer is not a Reporting Issuer*.
13. The Filer is applying for a decision that it is not a reporting issuer in each of the Jurisdictions.
14. Upon the granting of the Exemption Sought, the Filer will not be a reporting issuer or the equivalent in any jurisdiction in Canada.

Decision

Each of the Decision Makers is satisfied that the decision meets the test contained in the Legislation for the Decision Makers to make the decision.

The decision of the Decision Makers under the Legislation is that the Exemption Sought is granted.

Margot C. Howard
Commissioner
Ontario Securities Commission

James D. Carnwath
Commissioner
Ontario Securities Commission