

2007 BCSECCOM 603

September 25, 2007

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - National Instrument 51-102 *Continuous Disclosure Obligations*, s. 13.1 – relief from BAR requirements - BAR – An issuer requires relief from the requirement to include certain financial statements in a business acquisition report - The issuer made a significant acquisition of an interest in a company; prior to the acquisition, the issuer filed historical annual and interim financial statements of the company and itself on SEDAR; pro forma financial statements would not contain any substantive adjustment to the existing historical financial statements of the issuer and the company, other than certain information disclosed previously in a prospectus to the investors

Applicable British Columbia Provisions

NI 51-102, ss. 8.4 and 13.1

In the Matter of
the Securities Legislation of
British Columbia, Alberta, Saskatchewan, Manitoba
Ontario, Québec, Nova Scotia, New Brunswick,
Newfoundland and Labrador, Nunavut and Yukon
(the “Jurisdictions”)

and

In the Matter of
the Mutual Reliance Review System for Exemptive Relief Applications

and

In the Matter of
New Flyer Industries Inc. and
New Flyer Industries Canada ULC
(the “Filers”)

MRRS Decision Document

Background

The local securities regulatory authority or regulator (the “Decision Maker”) in each of the Jurisdictions has received an application on behalf of the Filers for a decision under the securities legislation of the Jurisdictions (the “Legislation”)

2007 BCSECCOM 603

that the Filers will not be required to include financial statement disclosure required under section 8.4 of National Instrument 51-102 - Continuous Disclosure Obligations (“NI 51-102”) in the Business Acquisition Report (the “BAR”) of the Filers relating to the Acquisition (as defined herein) (the “Requested Relief”). Under the Mutual Reliance Review System for Exemptive Relief Applications (the “MRRS”):

- (a) the Ontario Securities Commission is the principal regulator for this application, and
- (b) this MRRS decision document evidences the decision of each Decision Maker.

Interpretation

Defined terms contained in National Instrument 14-101 – *Definitions* have the same meaning in this decision unless they are defined in this decision.

Representations

The decision is based on the following facts represented by the Filers:

1. The initial public offering of the Filers (the “IPO”) closed on August 19, 2005. The net proceeds of the IPO were used by New Flyer Industries Inc. (“NFI”) to acquire an approximate 36.9% economic interest and a 51% voting interest in New Flyer Holdings, Inc. (the “Company”) through ownership of Class A Shares of the Company. The remaining approximate 63.1% economic interest and 49% voting interest in the Company was held indirectly by the former owners of the underlying business through New Flyer Transit, L.P. and New Flyer LLC (the “Retained Interest Holders”), in the form of Class B and Class C Shares of the Company. As described in detail in the Filers’ IPO prospectus, the agreements entered into in connection with the IPO granted the Retained Interest Holders the right, in certain circumstances, to require the Company to use its best efforts to obtain a financing commitment to allow it to acquire or purchase for cancellation all or part of such shares (the “Liquidity Right”), most likely through the issuance of additional income deposit securities (“IDSs”).
2. The Filers’ IDSs are listed and traded on the Toronto Stock Exchange. The Filers are reporting issuers in each of the Jurisdictions and Filers are not in default of their obligations as reporting issuers (or equivalent status) in any Jurisdiction.
3. NFI holds no material investments other than its interest in the Company.

2007 BCSECCOM 603

4. The Filers filed a BAR relating to the acquisition of the underlying business of the Company on October 27, 2005.
5. For a period of two years since the IPO, the Filers have filed separate annual and interim financial statements for NFI on the one hand, and the Company and its consolidated subsidiaries on the other. Under the applicable variable interest entity accounting rules NFI was not permitted to file consolidated financial statements including the financial information of the Company and its subsidiaries because NFI was deemed not to hold the “majority economic interest” in the Company.
6. On July 12, 2007, the Filers issued 9,410,000 IDSs (the “2007 Offering”) for aggregate proceeds of approximately C\$110 million pursuant to a short form prospectus in connection with an exercise of the Liquidity Right by the Retained Interest Holders.
7. The net proceeds of the 2007 Offering were used by NFI to purchase additional Class A Shares of the Company and to permit the purchase for cancellation of approximately 10,413,660 Class C Shares of the Company (collectively, the “Acquisition”).
8. As a result of the 2007 Offering and related Acquisition, the economic and voting interest of NFI in the Company increased to approximately 55.3% and the economic and voting interest of the Retained Interest Holders decreased to approximately 44.7%.
9. The Filers are required to file a BAR because the increase in NFI’s ownership interest in the Company constituted a “significant acquisition” for the purposes of NI 51-102. Under section 8.4 of NI 51-102, the Filers are required to include historical and pro forma financial statements in the BAR.
10. The inclusion of the financial statements required under section 8.4 of NI 51-102 would not provide investors with any incremental material information relating to the financial performance of the Filers or their underlying business that is not already otherwise publicly available. This is because (i) the historical annual and interim financial statements of the Company have already been filed on SEDAR and provided to investors, and (ii) aside from the impact of the reduction in the number of outstanding Class C Shares of the Company and the corresponding increase in the number of outstanding IDSs, as described in the prospectus for the 2007 Offering, the pro forma financial statements would not contain any material substantive adjustments to the existing historical financial statements of NFI and the Company.

2007 BCSECCOM 603

Decision

Each of the Decision Makers being satisfied that they have jurisdiction to make this decision and that the relevant test contained under the Legislation has been met, the Requested Relief is granted.

Erez Blumberger
Manager, Corporate Finance
Ontario Securities Commission