

2003 BCSECCOM 657

Headnote

Relief from the registration and prospectus requirements to allow issuer to issue shares in exchange for assets with fair value of not less than \$100,000 – asset purchase exemption is not available because the issuer will not be purchasing the assets directly, and the assets will be purchased from more than one vendor

Exemption Order

The Boyd Group Inc. and Boyd Group Income Fund

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

Background

- ¶ 1 The Boyd Group Inc. (BGI) and Boyd Group Income Fund (the Fund) applied for an exemption from the requirements to be registered to trade and to file and obtain receipts for a preliminary prospectus and prospectus in sections 34 (1)(a) and 61 of the Act (the registration and prospectus requirements) for certain intended trades.

Representations

- ¶ 2 BGI and the Fund represent that:
1. BGI is a corporation amalgamated on February 28, 2003 pursuant to a plan of arrangement under the laws of the Province of Manitoba, with its head office in Winnipeg, Manitoba;
 2. BGI owns and operates, either directly or through subsidiaries, automotive collision repair centres in Canada and the United States;
 3. BGI is not a reporting issuer or the equivalent thereof in any of the provinces or territories of Canada;
 4. BGI's authorized capital consists of an unlimited number of Class I Shares, an unlimited number of Class II Shares and an unlimited number of Class III Shares;
 5. as of August 31, 2003, all of the Class I Shares are owned by the Fund and all of the Class II shares are owned by Boyd Group Holdings Inc.; there are presently no issued and outstanding Class III Shares;

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6. the Fund is an unincorporated open-ended investment trust governed by the laws of the Province of Manitoba created pursuant to a declaration of trust dated as of December 16, 2002; the head office of the Fund is located in Winnipeg, Manitoba;
7. the Fund was established for the purposes of, among other things, investing in securities of BGI;
8. as of July 31, 2003, the Fund directly held approximately 62.9% of the voting equity securities of BGI;
9. the Fund has been a reporting issuer or the equivalent under the securities legislation of Ontario, Manitoba, Saskatchewan, Alberta and British Columbia (the Legislation) since February 17, 2003 and is not in default of any requirements of the Legislation;
10. the Fund is not a “mutual fund” under the Legislation as the holders of Units are not entitled to receive on demand an amount computed by reference to the value of a proportionate interest in the whole or in part of the net assets of the Fund, as contemplated by the definition of “mutual fund” in the Legislation;
11. the Fund is authorized to issue an unlimited number of transferable Units, each of which represents an equal fractional undivided beneficial interest in any distributions from the Fund and in any net assets of the Fund in the event of termination or winding-up of the Fund;
12. the Units are listed and posted for trading on the Toronto Stock Exchange (the TSX);
13. BGI has entered into a purchase agreement (the Purchase Agreement) with Nick Kanavaros and Nicoletta Kanavaros (together the Equipment Vendors) and Autotek Collision Repairs (Downtown) Ltd. (Autotek) pursuant to which:
 - (a) certain assets used in the business of Autotek will be acquired by BGI in exchange for \$150,000, subject to adjustment, and
 - (b) a paint booth and related equipment (the Equipment) will be acquired by BGI from the Equipment Vendors in exchange for Units (the Equipment Units) having a value of \$75,000 (rounded to the nearest whole Unit) calculated using the weighted average trading price of the Units on the TSX for the five trading days preceding the fifth calendar day prior to the date of transfer of the Equipment;

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14. BGI has, or will, assign all of its rights and obligations under the Purchase Agreement to a wholly-owned subsidiary of BGI, 469006 B.C. Ltd. (the BC Subsidiary);
15. BGI will also obtain a non-competition covenant from Nick Kanavaros, being the sole shareholder of Autotek, in its favour in exchange for Units (the Non-Compete Units) having a value of \$25,000, such value to be calculated in accordance with the method described in paragraph 13 above (the Equipment Units and the Non-Compete Units are hereinafter collectively the Fund Issued Units); and
16. the distribution of the Fund Issued Units by the Fund to the Equipment Vendors would be exempt from the registration and prospectus requirements by virtue of sections 45(2)(6) and 74(2)(5) of the Act if the Fund, rather than the BGI Subsidiary, was acquiring the Equipment and other assets; the fair value of the assets to be acquired by the BGI Subsidiary in connection with the Purchase Agreement is equal to \$225,000.

Order

- ¶ 3 Because it is not prejudicial to the public interest, the Executive Director orders:
- (a) under sections 48 and 76 of the Act that the registration and prospectus requirements shall not apply to the issuance of the Fund Issued Units by the Fund to the Equipment Vendors, provided that the Fund files a Form 45-103F4 and pays the required fee within 10 days of distributing the Fund Issued Units; and
 - (b) under section 76 of the Act, any trade in the Fund Issued Units acquired by the Equipment Vendors under this order is deemed a distribution unless the conditions in subsections (2) or (3) of section 2.5 of Multilateral Instrument 45-102 *Resale of Securities* are satisfied.

- ¶ 4 September 30, 2003.

Derek E. Patterson
Manager