

2007 BCSECCOM 228

April 5, 2007

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - *Securities Act*, ss. 48 and 76 – registration and prospectus requirements - Trades in securities of an organization that promotes the interests of a particular industry or cause - The securities are issued by a trade association to its members; the purpose of the issuance of the securities is to facilitate a commercial/administrative relationship between the trade association and its members; the acquisition of the securities by the member does not represent an investment decision on the part of the member; there is no market for the securities and none is expected to develop

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss. 34(1)(a), 48, 61 and 76

In the Matter of
the Securities Legislation Of
Ontario, Manitoba, Saskatchewan, Alberta
British Columbia, Quebec, New Brunswick, Nova Scotia
Prince Edward Island, Newfoundland and Labrador
(the “Jurisdictions”)

and

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

and

In the Matter of
Franchisee Extreme Buying Group Inc.
(the Filer)

MRRS Decision Document

Background

The local securities regulatory authority or regulator (the Decision Maker) in each of the Jurisdictions has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) that the proposed issuance of:

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- 1) Class A common shares (Class A Shares) and class B common shares (Class B Shares) of the Filer to Canadian Franchisees (defined below); and
- 2) Class A Shares, class Ab common shares (Class Ab Shares) and class C common shares (Class C Shares) of the Filer to the Canadian Franchisor (defined below)

(collectively the Common Shares)

be exempt from the dealer registration requirement and the prospectus requirement (the Requested Relief).

Under the Mutual Reliance Review System for Exemptive Relief Applications

- (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

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

1. The Filer was incorporated pursuant to the *Ontario Business Corporations Act* on July 13, 2006 and its principal and registered office is located at 8200 Jane Street, Concord, Ontario.
2. The Filer is not and has no current intention of becoming a reporting issuer in any Jurisdiction.
3. The authorized capital of the Filer consists of:
 - (a) an unlimited number of Class A Shares to be issued at \$2,500 each;
 - (b) an unlimited number of Class Ab Shares to be issued at \$2,500 each;
 - (c) an unlimited number of Class B Shares to be issued at \$0.01 each; and

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- (d) an unlimited number of Class C Shares to be issued at \$1.00 each.
4. There is no market for the Common Shares and the Common Shares are not traded on any marketplace as defined in National Instrument 21-101 *Marketplace Operation*.
 5. As of the date of the Requested Relief, the Filer has commenced its operations.
 6. The Filer's business is to act as a buying group for its shareholders. The initial shareholders of the Filer will be Buck or Two Extreme Retail Inc. (the "Canadian Franchisor") and franchisees in the Canadian Franchisor's franchise system (the "Canadian Franchisees"). The Canadian Franchisor and a large number of Canadian Franchisees have agreed to finance the incorporation of the Filer to buy inventory items for stores directly from offshore and domestic suppliers rather than domestic distributors so as to benefit from the more advantageous pricing Canadian Franchisees would enjoy if the Filer purchased inventory items directly from manufacturers.
 7. The Canadian Franchisor, and the Canadian Franchisees that subscribe for Common Shares, will execute a unanimous shareholders' agreement (the "Shareholders' Agreement") that will govern the operations of the Filer and set out the terms for the mandatory redemption of any Common Shares of the Filer held by a Canadian Franchisee when it ceases to be a franchisee of the Filer.
 8. New Canadian Franchisees or current Canadian Franchisees renewing their franchise agreements will be required to subscribe for Class A Shares whether purchasing a new franchise, renewing an existing franchise agreement or buying an existing franchise from a current Canadian Franchisee. Current Canadian Franchisees, however, are not required to subscribe for Common Shares unless they are required to renew their franchise agreement.
 9. The Shareholders' Agreement provides that only the Canadian Franchisor or a Canadian Franchisee may hold Common Shares. Shareholders of the Filer may in no way sell, encumber or otherwise transfer the Common Shares to any party other than the Filer itself upon the termination of the Shareholders' Agreement or, with the approval of the Filer, another Canadian Franchisee.
 10. Each certificate representing a Common Share will bear a legend stating that the Common Share represented by the certificate and the right to transfer the Common Share is subject to restrictions on transfer contained in the Filer's by-laws and in the Shareholders' Agreement.

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11. No Canadian Franchisee is known to be, or is expected to be at the time it acquires a Common Share, an “accredited investor” as defined in Section 1.1 of National Instrument 45-106 *Prospectus and Registration Exemptions* (NI 45-106).
12. The Canadian Franchisor is not, nor is it expected to be at the time it acquires a Common Share, an “accredited investor” as defined in NI 45-106.

Decision

Each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Maker with the jurisdiction to make the decision has been met.

The decision of the Decision Makers under the Legislation is that the Requested Relief is granted provided that:

- a) before the issuance of a Common Share to the Canadian Franchisor or a Canadian Franchisee as permitted by the decision, the Filer delivers to either, as applicable, a copy of
 - i) the articles and by-laws of the Filer, the Shareholders’ Agreement and all amendments thereto;
 - ii) initially a pro forma balance sheet and after completion of its first fiscal year audited financial statements of the Filer;
 - iii) this decision; and
 - iv) a statement to the effect that as a consequence of this decision, certain protections, rights and remedies provided by the Legislation, including statutory rights of rescission or damages will not be available to the Canadian Franchisor or any Canadian Franchisee and that certain restrictions are imposed on the subsequent disposition of Common Shares.
- b) All share certificates representing the Common Shares bear a legend stating that the right to transfer the Common Shares is subject to restrictions contained in the bylaws of the Filer and the Shareholders’ Agreement;
- c) The exemptions contained in this decision cease to be effective if any one of the provisions of the articles or by-laws of the Filer or of any franchise

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agreement or the Shareholders' Agreement relevant to the exemptions granted herein are amended in any material respect without written notice to, and consent by, the Decision Makers;

- d) The Filer prepares and sends audited financial statements to the Canadian Franchisor and each Canadian Franchisee on an annual basis;
- e) The Filer conducts annual shareholder meetings; and
- f) The first trade in any Common Share to a person or company other than the Filer upon the redemption of the Common Shares or to a Canadian Franchisee is deemed to be a distribution or primary distribution to the public.

Wendell S. Wigle
Commissioner
Ontario Securities Commission

David L. Knight
Commissioner
Ontario Securities Commission