

2007 BCSECCOM 209

November 8, 2006

Headnote

Mutual Reliance Review System for Exemptive Relief Applications

National Instrument 44-101 *Short Form Prospectus Distributions*, s. 8.1 – eligibility requirements - Qualification - An issuer wants relief from the qualification criteria in NI 44-101 so it can file a short form prospectus - The issuer is a new reporting issuer that is the continuation of an existing business; the issuer satisfies all the criteria for the exemption in s. 2.7 except that the audited comparative annual financial statements incorporated in its final prospectus are not its own, but the financial statements of the existing business

Securities Act, ss. 169(4)/11 - confidentiality - An applicant wants to keep an application and order confidential for a limited amount of time after the order is granted - The record provides intimate financial, personal or other information - The disclosure of the information before a specific transaction would be detrimental to the person affected; the information will be made available after a specific date

Applicable British Columbia Provisions

National Instrument 44-101, ss. 2.2 and 8.1

Securities Act, R.S.B.C. 1996, c. 418, ss. 11 and 169(4)

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

and

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

and

In the Matter of
Supremex Income Fund (the Filer)

MRRS Decision Document

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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) for:

- (a) an exemption from the requirement of the Legislation that an issuer has a current annual information form (AIF) and current annual financial statements, at least in one jurisdiction in which it is reporting issuer, in order to qualify to file a short form prospectus under the National Instrument 44-101 Short Form Prospectus Distributions (the Requested Relief); and
- (b) a decision in every Jurisdiction that the application for this decision and this decision be kept confidential until the earlier of:
 - (i) the date the Filer obtains a receipt for a preliminary short form prospectus; and
 - (ii) March 31, 2007 (the Confidential Treatment).

Under the Mutual Reliance Review System for Exemptive Relief Applications:

- (a) the Autorité des marchés financiers 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 principal office and head office of the Filer are located at 7213 Cordner, LaSalle, Québec, Canada H8N 2J7.
2. The Filer's financial year end is December 31.

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3. The Filer completed its initial public offering of 17,500,000 units on March 31, 2006 (the IPO). The Filer filed a final prospectus dated March 17, 2006 in order to qualify the distribution of those units (the Final Prospectus).
4. The Final Prospectus included the comparative financial statements of the operating entity, Supremex Inc., for its most recently completed financial year together with the Auditor's report accompanying those financial statements.
5. The Filer is, to the best of its knowledge, not in default of any requirement of Canadian securities law.
6. The Filer is an electronic filer under National Instrument 13-101 respecting the System for Electronic Documents Analysis and Retrieval (SEDAR).
7. The Filer is a reporting issuer in each of the Jurisdictions.
8. The Filer has filed with the securities regulatory authority in each of the jurisdictions in which it is a reporting issuer all periodic and timely disclosure documents that it is required to have filed in that jurisdiction under applicable securities legislation.
9. Existing units are currently listed on the Toronto Stock Exchange under the symbol "SXP.UN" and the Filer's operations have not ceased.
10. The Filer wishes to file a short form prospectus.
11. Except for not having a current AIF and current annual financial statements, at least in one jurisdiction in which it is reporting issuer, the Filer would already be qualified to file a prospectus in the form of a short form prospectus under the Legislation.
12. The Filer has not been exempted from the requirement of the applicable continuous disclosure rule (the CD rule) to file annual financial statements and the Filer has not yet been required under the applicable CD rule to file such financial statements.
13. An issuer that has filed and obtained a receipt for a final prospectus that included the issuer's comparative annual financial statements for its most recently completed financial year is exempted from having a current AIF and current annual financial statements in order to be entitled to file a short form prospectus (the New Reporting Issuer Exemption). However, the comparative annual financial statements included in the Final Prospectus of the Filer are

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not financial statements of the Filer, but rather those of Supremex Inc., now a wholly-owned subsidiary of the Filer.

14. The Filer is the continuation of an existing business, Supremex Inc., that was previously operated under a different legal form, a corporation. The change in legal form does not alter the substance of the business operations and therefore does not prevent the Filer from presenting comparative financial information for the underlying business, Supremex Inc., during its initial interim and annual periods.
15. The comparative financial statements of Supremex Inc. for its most recently completed financial year which were filed and included in the Final Prospectus should be considered as being the annual financial statements of the Filer and the Filer should therefore be entitled to rely on the New Reporting Issuer Exemption.

Confidential Treatment

16. The Filer, as part of the IPO, entered into a registration rights agreement with Cenveo Corporation (Cenveo) (Registration Rights Agreement). Pursuant to the terms and conditions of the Registration Rights Agreement, among other things, Cenveo Corporation has been granted three demand registration rights by the Filer that will enable it to require the Filer to file a prospectus and otherwise assist with public offerings of units subject to certain limitations.
17. Although Cenveo and the Filer have had discussions, Cenveo has not yet definitively exercised its right to have the Filer file a prospectus.
18. The Filer anticipates filing a preliminary short form prospectus upon the exercise by Cenveo of its right to have the Filer to file a prospectus.
19. The details of the proposed offering have not been publicly disclosed and the Filer does not anticipate disclosing such information prior to Cenveo exercising its right to have the Filer file a prospectus.
20. Should Cenveo exercise its right to have the Filer file a prospectus after March 31, 2007, the Filer will likely not have to rely on the Requested Relief to file a short form prospectus as at that date, the Filer is required to file an AIF and current financial statements, at least in one jurisdiction in which it is reporting issuer, under applicable CD rule.
21. In these circumstances, the request for confidentiality is reasonable and is not prejudicial to the public interest.

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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 pursuant to the Legislation is that the Requested Relief is granted provided that:

- the business of the Filer continues to be, in all material respect, the same as the business of Supremex Inc.

This decision is valid to the extent that the Filer is not exempt from the requirement in the applicable continuous disclosure rule to file annual financial statements within a prescribed period after its financial year end and the Filer has not yet been required under the applicable continuous disclosure rule to file annual financial statements.

Louis Auger
Manager of the Corporate
Financing Department
Autorité des marchés financiers

The further decision of the Decision Makers under the Legislation is that the request for Confidential Treatment is granted.

Anne-Marie Beaudoin
Director, Secretariat
Autorité des marchés financiers