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September 24, 2010

Headnote

National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* - Securities Act s. 88 *Cease to be a reporting issuer in BC* – 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
British Columbia and Ontario
(the Jurisdictions)

and

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

and

In the Matter of
Clearly Canadian Beverage Corporation
(the Filer)

Decision

Background

- ¶ 1 The securities regulatory authority or regulator in each of the Jurisdictions (the Decision Maker) has received an application (the Application) from the Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) that the Filer be deemed to have ceased to be a reporting issuer under the Legislation (the Exemptive Relief Sought).

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

- (a) the British Columbia 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

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

Representations

- ¶ 3 This decision is based on the following facts represented by the Filer:
1. the Filer is a British Columbia company under the *Business Corporations Act* (British Columbia) and was incorporated on March 18, 1981;
 2. the head office of the Filer is located at Unit 11/12, 220 Viceroy Road, Vaughan, Ontario; prior to March 2008 the Filer's head office was located at 2267 West 10th Avenue, Vancouver, British Columbia;
 3. the Filer is a reporting issuer in Ontario and British Columbia;
 4. the Filer is in the business of selling sparkling flavoured water, packaged dried fruits and nuts, and organic baby food;
 5. the Filer's shares have been publicly traded on various exchanges in North America since the 1980's; most recently, the Filer's limited voting common shares (the Limited Voting Shares) were quoted for trading in the United States on the Pink Sheets under the trading symbol "CCBEF.PK";
 6. the securities of the Filer are currently subject to a cease trade order dated May 25, 2009 (the OSC Cease Trade Order) made under paragraph 2 and paragraph 2.1 of subsection 127(1) of the *Securities Act*, R.S.O. 1990, c.S.5, as amended (the Ontario Act) by the Director of the Ontario Securities Commission (the OSC) directing that all trading in and acquisitions of the securities of the Filer, whether direct or indirect, shall cease until further order by the Director of the OSC;
 7. the OSC Cease Trade Order was made because the Filer failed to file its audited annual financial statements for the year ended December 31, 2008 and

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its management's discussion and analysis relating to the audited annual financial statements for the year ended December 31, 2008;

8. the securities of the Filer are also currently subject to a cease trade order dated May 11, 2009 (the BC Cease Trade Order) made under subsection 164(1) of the *Securities Act*, R.S.B.C., 1996, c. 418 (the BC Act) by the Executive Director of the British Columbia Securities Commission (the BCSC) directing that all trading in the securities of the Filer cease until it files the required records and the Executive Director of the BCSC revokes the BC Cease Trade Order;
9. the BC Cease Trade Order was issued because the Filer had not filed a comparative financial statement for its financial year ended December 31, 2008, as required under Part 4 of National Instrument 51-102 *Continuous Disclosure Obligations* (NI 51-102), and had not filed Form 51-102F1 *Management's Discussion and Analysis* for the period ended December 31, 2008, as required under Part 5 of NI 51-102;
10. on March 17, 2010, while experiencing severe cash flow problems, and with its debts being significantly greater than its assets, the Filer filed a proposal under the *Bankruptcy and Insolvency Act* (Canada) with its creditors (the Proposal);
11. the Filer issued a press release on March 18, 2010, and filed a material change report in Canada and a Form 6-K in the United States on March 19, 2010, announcing the filing of the Proposal;
12. on April 1, 2010, the Proposal was accepted by the creditors of the Filer;
13. the Proposal contemplated, amongst other things:
 - (a) the reorganization of the share capital of the Filer by the Filer:
 - (i) creating an unlimited number of new common shares (the New Common Shares);
 - (ii) issuing the New Common Shares to the Filer's creditors who, under the Proposal, elected to accept the issuance of the New Common Shares in full payment of the amount outstanding on their claims against the Filer;

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- (iii) cancelling all issued common shares (being the Limited Voting Shares and the variable multiple voting shares) and preferred shares of the Filer;
 - (iv) cancelling all warrants, options, rights to purchase shares, share subscription rights and conversion rights of the Filer; and
 - (v) issuing a cash payment, expected to equate to \$0.25 on the dollar, to the Filer's creditors who, under the Proposal, elected to accept such cash payment in full payment of the amount outstanding on their claims against the Filer;
- (b) the approval of the Supreme Court of British Columbia (the Court); and
- (c) the Filer applying to cease to be a reporting issuer in British Columbia and Ontario;
14. the Proposal was approved by the Court on April 26, 2010 (the Court Order);
15. the Filer was granted on May 3, 2010 a partial revocation of the BC Cease Trade Order under section 171 of the BC Act to effect the transactions contemplated by the Proposal;
16. the Filer was granted on May 4, 2010 a partial revocation of the OSC Cease Trade Order under section 144 of the Ontario Act to effect the transactions contemplated by the Proposal;
17. all of the former non-trade creditors of the Filer elected to receive New Common Shares in full payment of the amount outstanding on their claims against the Filer;
18. the closing of the transactions contemplated by the Proposal has taken place in accordance with the Court Order and, effective May 26, 2010, the outstanding securities of the Filer are now held by 12 persons;
19. the Filer issued a press release on July 6, 2010, and filed a material change report in Canada and a Form 6-K in the United States on July 6, 2010, announcing that its Limited Voting Shares issued and outstanding as of May 26, 2010, are cancelled and the common shareholders of record of the Company as of May 26, 2010 are no longer shareholders of the Company;

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20. the outstanding securities of the Filer are beneficially owned, directly or indirectly, by fewer than 15 security holders in each of the jurisdictions in Canada and less than 51 security holders in total in Canada;
21. the Filer's only outstanding securities are the New Common Shares;
22. the quotation of the Filer's Limited Voting Shares on the Pink Sheets ceased on August 13, 2010;
23. the Filer filed BC Form 51-509F1 on August 17, 2010 to give notice that it is no longer an OTC reporting issuer under BC Instrument 51-509 *Issuers Quoted in the U.S. Over-the-Counter Markets*;
24. no securities of the Filer are listed, traded or quoted for trading on any "marketplace" in Canada or elsewhere (as defined in National Instrument 21-101 *Marketplace Operation*), and the Filer does not currently intend to have any of its securities listed, traded or quoted on such a marketplace in Canada or any other jurisdiction;
25. the defaults in failing to file the required continuous disclosure that led to the issuance of the Ontario Cease Trade Order and the BC Cease Trade Order remain;
26. the Filer is also in default of the requirements to file all other continuous disclosure, including any financial statements and management's discussion and analysis as required by NI 51-102, and any related certifications, since the issuance of the Ontario Cease Trade Order and the BC Cease Trade Order;
27. except for the defaults described in representations 25 and 26, the Filer has complied with applicable securities legislation, regulations and instruments;
28. the Filer has no current intention to seek public financing by way of offering of securities;
29. the Filer did not voluntarily surrender its status as a reporting issuer in British Columbia pursuant to BC Instrument 11-102 *Voluntary Surrender of Reporting Issuer Status* (the BC Instrument) in order to avoid the 10-day waiting period under the BC Instrument;
30. the Filer is not be eligible to use the simplified procedure under CSA Staff Notice 12-307 *Applications for a decision that an Issuer is not a Reporting Issuer* because it is a reporting issuer in British Columbia and because it is in

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default of certain filing obligations under the Legislation as described in representations 25 and 26 above;

31. if the Exemptive Relief Sought is granted, the Filer will no longer be a reporting issuer or equivalent in any jurisdiction in Canada; and
32. the Filer has been advised by staff of the OSC that the Ontario Cease Trade will be revoked concurrently upon the grant of the Exemptive Relief Sought, and the Filer has been advised by staff of the BCSC that the BC Cease Trade Order will be revoked concurrently upon the grant of the Exemptive Relief Sought.

Decision

- ¶ 4 The Decision Maker is satisfied that the decision meets the test set out in the Legislation for the Decision Maker to make this decision.

The decision of the Decision Maker under the Legislation is that the Exemptive Relief Sought is granted.

Noreen Bent
Acting Director, Corporate Finance
British Columbia Securities Commission