

2009 BCSECCOM 729

December 15, 2009

Headnote

Multilateral Instrument 11-102 *Passport System* and National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* – Securities Act s. 76 Prospectus Requirements - Business Associates – Professional organization wants to distribute securities of a trust or limited partnership to partners, professionals and executives, and their family trusts, professional corporations, and family members – The distributions are of securities of entities related to a business; the distributions will only be to professionals working for the business, and their spouses, professional corporations and family trusts; the distributions are structured to permit professionals to finance the business on a tax advantaged basis

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, s. 76

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
Borden Ladner Gervais LLP (BLG) and the BLG Income Fund (the Trust)
(collectively the Filers)

Decision

Background

- ¶ 1 The securities regulatory authority or regulator in each of the Jurisdictions (Decision Maker) has received an application from the Filers, for a decision under the securities legislation of the Jurisdictions (the Legislation) that the distribution of Trust Units (as defined below) by the Trust to Specified Investors (as defined below) will not be subject to the prospectus requirement (the Requested Relief).

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

- (a) the British Columbia Securities Commission is the principal regulator for this application;
- (b) the Filers have provided notice that Section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (MI 11-102) is intended to be relied on in Alberta and Québec; and
- (c) this decision is the decision of the principal regulator and evidences the decision of the securities regulatory authority or regulator in Ontario.

Interpretation

- ¶ 2 Defined terms contained in NI 14-101 *Definitions* and MI 11-102 have the same meaning in this decision, unless otherwise defined.

Representations

- ¶ 3 This decision is based on the following facts represented by the Filers:
- 1. BLG is a limited liability partnership formed for the practice of law with one office in Vancouver, British Columbia, one office in Calgary, Alberta, one office in Montreal, Quebec and three offices (Toronto, Ottawa and Waterloo) in Ontario;
 - 2. the equity partners of BLG (BLG Partners) are approximately 300 lawyers or their Professional Corporations (as defined below);
 - 3. a Professional Corporation is a corporation incorporated or continued under the laws of one of the provinces of Canada in which an individual practices, which holds, where required, a valid permit or licence to practice its profession in such province; any applicable Professional Corporation will be controlled by an individual lawyer (who would otherwise be a BLG Partner but for the installation of the Professional Corporation), acting as sole director and holding all voting securities of such of such Professional Corporation; family members of such individual lawyer may own securities of a Professional Corporation, but such securities, if any, are non-voting securities;
 - 4. currently there exist five limited partnerships (the LPs) that provide secretarial, accounting and administrative services to the various offices of BLG;

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5. none of the LPs are reporting issuers, and none of the LPs are in default of securities legislation in any Canadian jurisdiction;
6. BLG has no head office, but BLG has a significant connection with British Columbia as its national Chief Operating Officer is located in BLG's Vancouver office, while the remainder of its management, assets, operations and partners are spread out across its offices;
7. BLG Partners propose to create an investment structure for the LPs in order to accommodate retirement planning and credit proofing opportunities for BLG Partners;
8. under the proposal (the Trust Proposal), BLG established the Trust, called the BLG Income Fund; the Trust is a "mutual fund trust" as defined for tax purposes;
9. the Trust is not and does not have any intention of becoming a reporting issuer in any jurisdiction;
10. the Trust is not in default of securities legislation in any jurisdiction;
11. the capital of the Trust will consist of A units (A Units), and 5 classes of additional units (representing certain of the BLG offices) (together, the Trust Units); through a series of transactions,
 - (a) Specified Investors (as defined below) will contribute what is expected to be \$1,000 to subscribe for Trust Units; and
 - (b) the Trust will use those subscription funds to subscribe for limited partnership units of the LPs;
12. A Units will be issued to all BLG Partners (or, in limited circumstances, Other Approved Persons, as defined below) or one or more of their related Specified Investors, and some of the income of the Trust is expected to be distributed on the A Units; the remaining Trust Units will be issued to BLG Partners (or, in limited circumstances, Other Approved Persons) in each of the BLG offices to which the class relates or to one or more of their related Specified Investors, and will be used to make annual adjustments to ensure that the Trust's income that is derived from the LP that corresponds to a BLG office is distributed solely to BLG Partners in that BLG office, or their related Specified Investors;
13. the Trust Units will not be transferable; the Trust Units will be redeemable by the Trust and retractable by Trust Unit holders for the original subscription

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amount and otherwise in accordance with the terms of the Trust Units;
consequently no market will develop for the Trust Units;

14. under the Trust Proposal, Trust Units will be issued only to the following investors (each a Specified Investor):

- (a) a BLG Partner;
- (b) a Professional Corporation;
- (c) the spouse or common-law partner of a BLG Partner;
- (d) an RRSP or RRIF (each a Registered Plan) of which a BLG Partner (or his or her spouse or common-law partner) is the annuitant (each a Registered Plan Investor);
- (e) a trust (a Family Trust) established for the benefit of one or more of:
 - (i) a BLG Partner (or Other Approved Person);
 - (ii) a spouse of a BLG Partner (or Other Approved Person);
 - (iii) the living issue of a BLG Partner (or Other Approved Person) or his or her spouse;
 - (iv) the parents of a BLG Partner (or Other Approved Person) or his or her spouse;
 - (v) the grandparents of a BLG Partner (or Other Approved Person) or his or her spouse;
 - (vi) the siblings of a BLG Partner (or Other Approved Person) or his or her spouse; and
 - (vii) the nephews and nieces of a BLG Partner (or Other Approved Person) or his or her spouse;
- (f) any other person approved by the trustees of the Trust (an Other Approved Person);

15. the class of "Other Approved Person" will be restricted to persons who are any of the following:

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- (a) a retired BLG Partner or his or her spouse or common-law partner;
 - (b) an income partner, counsel or other special adviser (including trade mark agents and other similar professionals who are not BLG Partners) to BLG, or his or her spouse or common-law partner;
 - (c) a senior executive of BLG or his or her spouse or common-law partner; or
 - (d) an RRSP or RRIF the annuitant or beneficiary of which is an Other Approved Person;
16. except for a BLG Partner or Other Approved Person, or the spouse or common-law partner of the BLG Partner or Other Approved Person, who is both a trustee of and a beneficiary under a particular Family Trust, no beneficiary of a Family Trust will directly or indirectly contribute money to the Family Trust, be liable for any amount in respect of the Family Trust, or be involved in making any investment decisions by the Family Trust;
17. Specified Investors, other than BLG Partners, have not been required, and will not be induced, to purchase the Trust Units by expectation of status or continued status as a BLG Partner, or by expectation of employment or engagement or continued employment or engagement by any person;
18. Trust Unit holders will receive combined unaudited semi-annual and audited annual financial statements of the Trust and BLG (collectively, the “Combined Statements”); the financial statements of the LPs will be consolidated into and form part of the Combined Statements;
19. the primary purpose of the Trust Proposal is to facilitate retirement planning for BLG Partners by holding Trust Units in Registered Plans and to provide an opportunity for credit proofing; and
20. although a majority of Specified Investors are expected to be accredited investors, there are occasions when the exemptions in National Instrument 45-106 *Prospectus and Registration Exemptions* may not be available for the issue of Trust Units.

Decision

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

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

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- (a) before the issuance of the Trust Units to Specified Investors, the Trust will obtain a written statement from the Specified Investor (or, in the case of a Registered Plan Investor, from each annuitant of the applicable Registered Plan) acknowledging receipt of a copy of this decision document and further acknowledging the subscriber's understanding that the right to receive continuous disclosure is not available to the Specified Investor in respect of the Trust Units; and
- (b) the first trade of a Trust Unit will be a distribution under the Legislation of the Jurisdiction in which the trade takes place.

Martin Eady, CA
Director, Corporate Finance
British Columbia Securities Commission