

2010 BCSECCOM 588

October 7, 2010

Headnote

Multilateral Instrument 11-102 *Passport System* and National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* – National Instrument 51-102 *Continuous Disclosure Obligations*, section 13.1 – An issuer wants relief from the requirement to include prospectus-level disclosure in an information circular to be circulated in connection with an arrangement, reorganization, acquisition or amalgamation - The issuer will acquire or has acquired a business and required quarterly financial information about the acquired business is not available; alternate financial information about the acquired business will be provided; sufficient information will be provided about the parties to the transaction to enable shareholders to assess it as a whole

Applicable British Columbia Provisions

National Instrument 51-102 *Continuous Disclosure Obligations*, s. 13.1

In the Matter of
the Securities Legislation of
British Columbia
(the Jurisdiction)

and

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

and

In the Matter of
Terra Nova Royalty Corporation
(the Filer)

Decision

Background

- ¶ 1 The principal regulator in the Jurisdiction has received an application from the Filer for a decision under the securities legislation of the Jurisdiction of the principal regulator (the Legislation) that the requirement in Item 14.2 of Form 51-

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102F5 – *Information Circular* (Form 51-102F5) to provide Quarterly Financial Statements and Quarterly MD&A (each as defined below) for Mass Financial Corp. (the Target) in the Terra Nova Circular (as defined below) does not apply (the Exemption Sought).

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

- (a) the British Columbia Securities Commission is the principal regulator for this application; and
- (b) the Filer has provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (MI 11-102) is intended to be relied upon in Alberta and Québec (Passport Jurisdictions).

Interpretation

- ¶ 2 Terms defined in National Instrument 14-101 *Definitions* and MI 11-102 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 organized under the laws of British Columbia; the head office of the Filer is in Vancouver, British Columbia;
 2. the Filer is a reporting issuer in British Columbia, Alberta and Quebec; the Filer's common shares are listed and posted for trading on the New York Stock Exchange (the NYSE) under the trading symbol TTT and its shares are not listed on any stock exchange in Canada;
 3. the Filer is not in default of securities legislation in any jurisdiction in Canada;
 4. the Target is a company organized under the laws of Barbados; the Target is listed on the Third Market of the Vienna Stock Exchange (the Vienna Exchange); the Target is not a “reporting issuer” within the meaning of applicable securities legislation in any jurisdiction of Canada or the United States;
 5. the Filer, TTT Acquisition Corp. (Terra Nova Subco), a wholly-owned subsidiary of the Filer, and the Target entered into a Support and Merger Agreement dated September 24, 2010 (the Agreement); under the Agreement, upon certain conditions being met, Terra Nova and Terra Nova Subco will make an offer (the Offer) to the shareholders of the Target for all of the

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outstanding Target Shares; if the Filer acquires 100% of the outstanding Target Shares pursuant to the Offer, the Filer expects to issue up to approximately 25 million common shares (the Share Issuance); upon the successful completion of the Offer and the Share Issuance, and the satisfaction of certain conditions set out in the Agreement, Terra Nova Subco and the Target will amalgamate;

6. the parties to the Agreement expect that the Offer will be completed on or around November 15, 2010;
7. because the number of common shares to be issued pursuant to the Share Issuance exceeds 20% of the total number of common shares of the Filer outstanding prior to such issuance, the Filer is required under NYSE rules to obtain shareholder approval for issuing these common shares (the Shareholder Approval);
8. under section 9.1 of National Instrument 51-102 *Continuous Disclosure Obligations*, the Filer must send an information circular (the Terra Nova Circular) that complies with Form 51-102F5 to the holders of its common shares;
9. section 14.2 of Form 51-102F5 requires that the Terra Nova Circular include disclosure (including financial statements) prescribed under securities legislation and described in the form of a prospectus that the Target would be eligible to use immediately prior to sending and filing of the information circular;
10. the appropriate prospectus form for the Target is Form 41-101F1 *Information Required in a Prospectus* (Form 41-101F1); Item 32 of Form 41-101F1 requires the Filer to include interim financial statements of the Target including interim periods other than the first interim period in a current financial year, an income statement and a cash flow statement, for the three month period ending on the last day of the interim period and comparative financial information for the corresponding period in the preceding financial year, if any (the Quarterly Financial Statements);
11. in addition under Item 8 of Form 41-101F1, the Filer would be required to provide management's discussion and analysis (MD&A) for the Target; for the purposes of Item 8, MD&A means a completed Form 51-102F1 *Management's Discussion & Analysis* (Form 51-102F1); Form 51-102F1 would require, among other things:

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- (a) a summary of quarterly information of the Target for each of the eight most recently completed quarters, and
- (b) an update of the Target's annual MD&A for all disclosure required by Item 1 of Form 51-102F1 (except section 1.3) on a current quarter basis and on the basis of the fourth quarter of the last fiscal year, including a comparison of results of operations and cash flows to the corresponding periods in the previous year

(collectively, the Quarterly MD&A);

12. neither the rules of the Vienna Exchange nor any applicable securities laws or regulations governing the Target require the Target to prepare or publish financial statements on a quarterly basis; the Target has not prepared or published the Quarterly Financial Statements or Quarterly MD&A; however, as a matter of general corporate disclosure, the Target prepares and publishes unaudited interim semi-annual financial statements; the Target's most recently prepared interim financial statements are for the half-year ended June 30, 2010, which in accordance with applicable laws and the rules and the policies of the Vienna Exchange do not include any results for the quarter then ended;

13. the Terra Nova Circular will include, among other things, the following consolidated financial statements respecting the Target:

- (a) audited balance sheets as at December 31, 2009 and 2008;
- (b) audited statements of operations, comprehensive income, changes in equity and cash flows for each of the years ended December 31, 2009, 2008 and 2007;
- (c) unaudited balance sheets as at June 30, 2010 and 2009; and
- (d) unaudited statements of operations, comprehensive income, changes in equity and cash flows for the six months ended June 30, 2010 and 2009

(collectively, the Target Financial Statements).

Decision

- ¶ 4 The principal regulator is satisfied that the decision meets the test set out in the Legislation of the principal regulator to make the decision.

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The decision of the principal regulator under the Legislation is that the Exemption Sought is granted, provided that the Terra Nova Circular is filed prior to November 15, 2010 and includes:

- (a) the Target Financial Statements; and
- (b) disclosure of all material changes in the affairs of the Target since June 30, 2010, which is the the date of the unaudited consolidated interim financial statements of the Target, to the date of the Terra Nova Circular.

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