

Headnote

Trades in securities of an issuer to employees, their family trusts and holding companies, of a related business - the issuer's primary business is to hold an interest in the business operation of a separate holding company; purchasers of the issuer's securities are limited to active employees (and certain family trusts) of that business operation; the issuer was formed as an indirect investment vehicle for the employees of the business operation to take advantage of tax credits associated under the *Employment Investment Act* (British Columbia), and to ensure the employees retain a constant interest in the business operation; relief is limited to employees of the operation who can no longer take advantage of the tax credits; the value of the securities is directly linked to the value of the business operation

May 5, 2014

Exemption Order

Harmac Employee Ownership Group (EVCC) Ltd.

Sections 76 of the *Securities Act*, R.S.B.C. 1996, c.418

Background

- ¶ 1 Harmac Employee Ownership Group (EVCC) Ltd. (the Filer) applied for a decision under section 76(1) of the *Securities Act* (British Columbia) (the Act) that additional distributions of securities for the Final Subscriptions (defined below) to the Remaining Subscribers (defined below) be exempt from the prospectus requirements (the Requested Relief), subject to certain terms and conditions.

Representations

- ¶ 2 This decision is based on the following facts represented by the Filer:
1. the Filer was incorporated under the *Business Corporations Act* (British Columbia) on July 29, 2008 under the name Harmac Employee Ownership Group Ltd.;
 2. the Filer was incorporated to act as an investment vehicle for employees of the Harmac Pulp Mill, located in Nanaimo, British Columbia (the Harmac Mill); the Filer is not in the business of trading or advising in securities;
 3. the Harmac Mill was previously owned and operated by Pope & Talbot Ltd.; in 2007, a Receiver was appointed to manage and sell the Pope & Talbot Ltd. assets under the *Companies Creditors Arrangement Act* (British Columbia); as a result of Pope &

Talbot Ltd.'s insolvency, the Harmac Mill was shut down in May 2008 and approximately 530 employees of the Harmac Mill were laid off;

4. in June 2008, Nanaimo Forest Products Limited (NFP) was formed with the sole purpose of acquiring the Harmac Mill; NFP is owned 25% by the Filer with the remaining 75% owned by other private investors; each original shareholder of NFP agreed to contribute \$7.0 million to acquire equity in NFP and therefore fund the purchase price to take over the Harmac Mill and re-start its operations; this structure ensures the continuous holding of 25% of the Harmac Mill by the employees of the Harmac Mill, and the remaining 75% held by other private investors;
5. the Supreme Court of British Columbia approved the purchase of the Harmac Mill by NFP for a purchase price of \$13.2 million on July 29, 2008; the purchase and sale completed on August 29, 2008;
6. in order to fund its contribution to NFP, the Filer sought equity commitments of \$25,000 (to be paid in tranches) from employees of the Harmac Mill;
7. through the Filer's securities, employees of the Harmac Mill hold an interest in NFP, which in turn controls the Harmac Mill;
8. most employees of the Harmac Mill have completed all tranches of subscription of the Filer's securities, while a small number of other employees have not yet completed all tranches of subscription (the Remaining Subscribers);
9. the Remaining Subscribers purchased securities (the Initial Subscriptions) of the Filer before, and are existing shareholders of the Filer;
10. on April 2, 2009 the Filer was registered as an employee venture capital corporation (an EVCC) under the *Employee Investment Act* (British Columbia) (the EIA); registration as an EVCC offered potential tax advantages to the Filer's shareholders; as required by the EIA, the Filer's name was changed to Harmac Employee Ownership Group (EVCC) Ltd.;
11. as a result of registration as an EVCC, the Filer was required to adopt an Employee Venture Capital Plan and amend its constating documents to restrict it from carrying on any business other than:
 - (a) acquiring equity securities of NFP and its affiliates (as defined in the EIA),
 - (b) providing business expertise, managerial expertise, or financial support to NFP and its affiliates,

- (c) providing information to and educating employees as to the role of capital in business, the value of equity investments to an employee and the rights and obligations of corporations and their shareholders, and
 - (d) such other business as a company with a restricted constitution (as defined in the EIA) may conduct in accordance with the EIA;
12. since registration as an EVCC, the Filer has relied on the prospectus exemption in BC Instrument 45-514 *The Employee Investment Act* (BCI 45-514) to distribute securities under its Employee Venture Capital Plan to the employees of the Harmac Mill;
 13. the Filer has reached the limit on how much it can invest in NFP (the Contract Limit); if any funds raised by the Filer through the distribution of securities are not re-invested in NFP, such distribution will not be considered to have been made under the Employee Venture Capital Plan; as a result, there are no further tax credits available to it under the EIA;
 14. in order to use the prospectus exemption in BCI 45-514 the Filer must distribute its securities under the Employee Venture Capital Plan;
 15. the Filer is not able to rely on the prospectus exemption in BCI 45-514 to distribute additional securities (the Final Subscriptions) to the Remaining Subscribers because the Final Subscriptions cannot be made under the Employee Venture Capital Plan; had the Remaining Subscribers been able to invest directly in NFP, NFP would have been able to distribute its securities to them under the employee, executive officer, director and consultant exemption in section 2.24 of National Instrument 45-106 *Prospectus and Registration Exemptions*;
 16. the Filer is not and has no intention of becoming a reporting issuer in the Province of British Columbia or any other province or territory of Canada; and
 17. transfer of the Filer's securities is restricted under the terms of its constating documents and its Employee Venture Capital Plan, and as such, no market has developed or will develop for the Filer's securities.

Order

¶ 3 Because it would not be prejudicial to the public interest, the Executive Director orders that the Requested Relief is granted, provided that:

- (a) the Filer discloses to the Remaining Subscribers all material differences between the Initial Subscriptions and the Final Subscriptions, including a plain language summary that explains, unlike the Initial Subscriptions:

- (i) the funds from the Final Subscriptions will not be re-invested in NFP,
 - (ii) there will be no tax credits associated with the Final Subscriptions,
 - (iii) funds from the Final Subscriptions may be used by the Filer for redemption purposes, and
 - (iv) the Remaining Subscribers may lose their entire investments with the Final Subscriptions;
- (b) the Remaining Subscribers can, with no costs or penalties, withdraw from the Final Subscriptions after their review of the disclosure under (a);
- (c) the Filer continues to be restricted by the Contract Limit;
- (d) the first trade in securities distributed by the Filer under this order is subject to section 2.6 of National Instrument 45-102 *Resale of Securities*; and
- (e) any certificate for securities issued in reliance of the Requested Relief must contain a legend stating all applicable transfer restrictions, and the Filer must notify the Remaining Subscribers of all such transfer restrictions prior to the distribution.

Peter Brady
Director, Corporate Finance
British Columbia Securities Commission