

**Headnote**

Multilateral Instrument 11-102 *Passport System* and National Policy NP 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions – Securities Act*, s. 76 – Prospectus Requirements - Distributions by an issuer to its shareholders in securities of another company that it owns (e.g. spin-off transactions) - The issuer will distribute the shares of the other company as a dividend to the issuer's shareholders; the other company is not a reporting issuer; the issuer has a de minimis connection to Canada; as a result of the transfer, the shareholders of the issuer will hold their interests in the subsidiary directly as opposed to indirectly through their shareholdings of the issuer

**Applicable Legislative Provisions**

*Securities Act*, R.S.B.C. 1996, c. 418, ss. 61 and 76

December 18, 2018

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  
Netgear, Inc.  
(the Filer)

Decision

**Background**

- ¶ 1 The securities regulatory authority or regulator in each of the Jurisdictions (the Decision Maker) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) for an exemption (the Exemption Sought) from the prospectus requirement in the Legislation in connection with the proposed distribution (the Spin-Off) by the Filer of the common stock of Arlo Technologies Inc. (Arlo), a subsidiary of the Filer, by way of a dividend in specie to common stock shareholders of the Filer resident in Canada (Canadian Shareholders).

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; 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 each of the other provinces and territories of Canada other than Ontario; and
- (c) the decision is the decision of the principal regulator and evidences the decision of the securities regulatory authority or regulator in Ontario.

### **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 incorporated in Delaware with principal executive offices in San Jose, California, U.S.A.; the Filer is a global networking company that delivers innovative products to consumers, businesses and service providers;
  2. the Filer is not a reporting issuer, and currently has no intention of becoming a reporting issuer, under the securities laws of any jurisdiction of Canada;
  3. the authorized capital stock of the Filer consists of 200 million shares of common stock (Netgear Shares), U.S.\$0.001 par value per share, and 5 million shares of preferred stock, U.S.\$0.001 par value per share; as of October 26, 2018, there were 31,585,939 Netgear Shares and no preferred shares issued and outstanding;
  4. the Netgear Shares are listed on the Nasdaq Stock Market (NASDAQ) and trade under the symbol "NTGR"; other than the foregoing listing on NASDAQ, no securities of the Filer are listed or posted for trading on any exchange or market in Canada or outside of Canada; the Filer has no present intention of listing its securities on any Canadian stock exchange;
  5. the Filer is subject to the 1934 Act;
  6. based on a geographic breakdown snapshot of registered holders prepared for the Filer by the Filer's transfer agent, Computershare Trust Company, N.A., as of September 30, 2018 there were no registered Canadian Shareholders, so 0% of the outstanding Netgear Shares were held by registered Canadian Shareholders; the Filer does not expect this percentage to have materially changed since that date;
  7. based on a geographic analysis of beneficial shareholders prepared for the Filer by Broadridge Financial Solutions, Inc., as of October 22, 2018, there were 160 beneficial Canadian Shareholders, representing approximately 0.76% of the beneficial holders of

Netgear Shares worldwide, holding approximately 551,043 Netgear Shares, representing approximately 1.7% of the outstanding Netgear Shares; the Filer does not expect these numbers to have materially changed since that date;

8. based on the information above, the number of registered and beneficial Canadian Shareholders and the proportion of Netgear Shares held by such shareholders are de minimis;
9. the Filer separated its security camera business (the Arlo Business) from the rest of its global networking business into its wholly-owned subsidiary, Arlo through a series of restructuring steps prior to Arlo's initial public offering (IPO);
10. Arlo is a corporation incorporated in Delaware with principal executive offices in San Jose, California, U.S.A.; the majority of its executive officers or directors ordinarily reside outside of Canada; it holds directly and through its subsidiaries the Arlo Business;
11. Arlo's authorized capital stock is 500 million shares of common stock (Arlo Shares), par value U.S.\$0.001 per share and 50 thousand shares of preferred stock, par value \$0.001 per share; as of October 19, 2018, it has 74,247,250 issued and outstanding Arlo Shares, of which 62,500,000 Arlo Shares or approximately 84.2% are held directly by the Filer;
12. under its IPO, Arlo distributed 11,747,250 Arlo Shares to the public; the IPO closed on August 7, 2018; the Filer owns 62,500,000 Arlo Shares or approximately 84.2% of the outstanding Arlo Shares; the Filer is proposing to Spin-Off, pro rata to its shareholders, all of the Arlo Shares held by the Filer;
13. the distribution agent will distribute to each holder of Netgear Shares entitled to Arlo Shares, in connection with the Spin-Off, the number of whole Arlo Shares to which the holder is entitled in the form of a book-entry authorization; no fractional Arlo Shares will be issued; instead, the distribution agent will aggregate fractional shares into whole shares, sell such whole shares in the open market at prevailing market prices and distribute the aggregate net cash proceeds (less applicable taxes, costs and expenses, including brokers fees and commissions) pro rata to each holder of Netgear Shares who would otherwise have been entitled to receive fractional shares; interest will not be paid on the amounts of payment made in lieu of fractional Arlo Shares;
14. holders of Netgear Shares will not be required to pay any consideration for the Arlo Shares, or to surrender or exchange Netgear Shares or take any other action to receive their Arlo Shares; the Spin-Off will occur automatically and without any investment decision on the part of holders of Netgear Shares;
15. subject to the satisfaction of certain conditions, it is currently anticipated that the Spin-Off will become effective on or about December 31, 2018; following the Spin-Off, Arlo will cease to be a subsidiary of the Filer;

16. the Arlo Shares to be distributed pursuant to the Spin-Off are listed on the New York Stock Exchange (the NYSE); Arlo is subject to the requirements of the 1934 Act and the rules and regulations of the NYSE;
17. after the completion of the Spin-Off, the Arlo Shares will continue to be listed and traded on the NYSE;
18. Arlo is not a reporting issuer in any jurisdiction of Canada nor are its securities listed on any stock exchange in Canada; Arlo has no present intention to become a reporting issuer in any jurisdiction of Canada or to list its securities on any stock exchange in Canada after the completion of the Spin-Off;
19. the Spin-Off will be effected under the laws of the State of Delaware;
20. because the Spin-Off will be effected by way of a dividend of Arlo Shares to holders of Netgear Shares, no shareholder approval of the Spin-Off is required (or being sought) under Delaware law;
21. in connection with the Spin-Off, Arlo will file with the SEC an information statement under the 1934 Act, detailing the proposed Spin-Off (the Information Statement);
22. after the Information Statement has been filed with the SEC, holders of Netgear Shares will receive a notice of internet availability of the Information Statement detailing the terms and conditions of the Spin-Off; all materials relating to the Spin-Off sent by or on behalf of the Filer and Arlo in the United States (including relating to the Information Statement) will be sent concurrently to Canadian Shareholders;
23. the Information Statement will contain prospectus level disclosure about Arlo;
24. Canadian Shareholders who receive Arlo Shares pursuant to the Spin-Off will have the benefit of the same rights and remedies in respect of the disclosure documentation received in connection with the Spin-Off that are available to holders of Netgear Shares resident in the United States;
25. Arlo will send concurrently to holders of Arlo Shares resident in Canada the same disclosure materials required to be sent under applicable United States securities laws to holders of Arlo Shares resident in the United States;
26. there will be no active trading market for the Arlo Shares in Canada following the Spin-Off and none is expected to develop; consequently, it is expected that any resale of Arlo Shares distributed in connection with the Spin-Off will occur through the facilities of NYSE or any other exchange or market outside of Canada on which Arlo Shares may be quoted or listed at the time that the trade occurs or to a person or company outside of Canada;
27. the Spin-Off to Canadian Shareholders would be exempt from the prospectus requirement pursuant to section 2.31(2) of National Instrument 45-106 *Prospectus Exemptions* but for the

fact that Arlo is not a reporting issuer under the securities legislation of any jurisdiction in Canada; and

28. neither the Filer nor Arlo is in default of any securities legislation in any jurisdiction of Canada.

**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 Exemption Sought is granted provided that the first trade in the Arlo Shares acquired pursuant to the Spin-Off is deemed to be a distribution subject to section 2.6 of National Instrument 45-102 *Resale of Securities*.

John Hinze  
Director, Corporate Finance  
British Columbia Securities Commission