

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 - Trades 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

June 19, 2015

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
JDS Uniphase Corporation
(the Filer)

Decision

Background

- ¶ 1 The securities regulatory authority or regulator in each of the Jurisdictions (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 connection with the distribution (the Spin Off) by the Filer of shares of common stock of Lumentum Holdings Inc. (SpinCo), a wholly-owned subsidiary of the Filer, on a pro rata basis and by way of a dividend in specie, to the Filer's stockholders resident in Canada.

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 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 was incorporated as Uniphase Corporation in California in 1979, and reincorporated in Delaware in 1993;
2. the Filer's head office is located in Milpitas, California;
3. the Filer is a reporting issuer under the securities legislation of the provinces of British Columbia, Saskatchewan, Manitoba, Quebec, New Brunswick, Nova Scotia and Newfoundland and Labrador;
4. the Filer's authorized capital stock consists of 1,000,000,000 shares of common stock (Filer Common Stock) and 1,000,000 shares of preferred stock; as of May 20, 2015, 234,469,331 shares of Filer Common Stock were issued and outstanding, and one share of preferred stock was issued and outstanding;
5. shares of Filer Common Stock are listed on the NASDAQ Global Select Market (the NASDAQ) and trade under the symbol "JDSU"; shares of Filer Common Stock are not listed on any Canadian stock exchange and the Filer has no intention of listing its securities on any Canadian stock exchange;
6. the Filer is currently subject to the *U.S. Securities Exchange Act of 1934*, as amended, and the rules, regulations and orders promulgated thereunder;
7. as of May 20, 2015:
 - (a) there were 374 registered holders of Filer Common Stock in Canada holding 32,833 shares of Filer Common Stock, representing approximately 9.415% of the registered holders of Filer Common Stock worldwide and holdings of approximately 0.014% of the outstanding shares of Filer Common Stock; and

- (b) there were 20,716 beneficial holders of Filer Common Stock in Canada holding 6,771,747 shares of Filer Common Stock, representing approximately 6.62% of the beneficial holders of Filer Common Stock worldwide and holdings of approximately 2.88% of the outstanding shares of Filer Common Stock, and

these numbers are not expected to have materially changed from such date;

- 8. based on the information above, the number of registered and beneficial holders of the Filer and the proportion of Filer Common Stock held by such shareholders in Canada is de minimis;
- 9. SpinCo is currently a wholly-owned subsidiary of JDSU incorporated in Delaware on February 10, 2015;
- 10. SpinCo's head office will be located in Milpitas, California;
- 11. SpinCo's authorized capital stock consists of 1,000 shares of common stock (SpinCo Common Stock); as of May 20, 2015, 1,000 shares of SpinCo Common Stock were issued and outstanding; prior to completion of the Spin Off, SpinCo will increase its authorized share capital by increasing the authorized number of shares of SpinCo Common Stock and creating a class of preferred stock, issuable in series, the terms of which may be fixed by the board of directors of SpinCo in accordance with applicable law; no such preferred stock will be issued to Canadian resident investors in connection with the Spin Off;
- 12. neither the Filer nor SpinCo is in default of any of its obligations under the securities legislation of any jurisdiction of Canada;
- 13. the purpose of the Spin Off is to spin out the business carried on by the Filer's communications and commercial optical products segment into an independent public company;
- 14. the Spin Off will be effected by the following principal steps:
 - (a) by means of a stock distribution that is intended to be tax-free for United States federal income tax purposes, the Filer will distribute more than 80% of the outstanding shares of SpinCo Common Stock to holders of Filer Common Stock at a to-be-determined rate of shares of SpinCo Common Stock for each share of Filer Common Stock held;
 - (b) fractional shares of SpinCo Common Stock will not be issued to holders of Filer Common Stock in connection with the Spin Off; all fractional shares of SpinCo Common Stock will be aggregated into whole shares and sold in the U.S. public market by a distribution agent, and holders of Filer Common Stock who would otherwise be entitled to receive a fractional share of SpinCo Common Stock will receive their pro rata share of the proceeds of such sale in lieu of SpinCo Common Stock;

15. following completion of the Spin Off, SpinCo will cease to be a subsidiary of JDSU and is expected to become an independent publicly-traded company; the Filer anticipates retaining up to an approximately 20% interest in SpinCo;
16. it is expected that shares of the SpinCo Common Stock will be listed for trading on the NASDAQ under the symbol "LITE";
17. SpinCo is not a reporting issuer in any province or territory in Canada, nor are its securities listed on any stock exchange in Canada; by virtue of the Spin Off, SpinCo will become a reporting issuer under the Securities Act (Québec); SpinCo has no intention to become a reporting issuer in any other province or territory in Canada or to list its securities on any Canadian stock exchange;
18. the Spin Off will be effected under the laws of the State of Delaware;
19. because the Spin Off will be effected by way of a dividend to the holders of Filer Common Stock, no stockholder approval of the Spin Off is required (or being sought) under Delaware law;
20. on February 26, 2015, SpinCo filed a registration statement on Form 10 with the United States Securities and Exchange Commission (the SEC) detailing the planned Spin Off (the registration statement, as may be amended, the Registration Statement); SpinCo filed an amendment to the Registration Statement on April 23, 2015;
21. after the SEC has completed its review of the Registration Statement, holders of Filer Common Stock will receive a copy of the information statement (the Information Statement) comprising part of the Registration Statement; all materials relating to the Spin Off and the dividend sent by or on behalf of the Filer and SpinCo in the United States (including the Information Statement) will be sent concurrently to the holders of Filer Common Stock resident in Canada;
22. the Information Statement will contain prospectus level disclosure about SpinCo;
23. holders of Filer Common Stock resident in Canada who receive shares of SpinCo Common Stock as a dividend 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 Filer Common Stock resident in the United States;
24. following completion of the Spin Off, SpinCo will send concurrently to the holders of SpinCo Common Stock resident in Canada the same disclosure materials required to be sent under applicable United States laws to holders of SpinCo Common Stock resident in the United States;
25. the holders of Filer Common Stock will not be required to pay any consideration for shares of SpinCo Common Stock received in the Spin Off, or to surrender or exchange their shares of Filer Common Stock or take any other action to be entitled to receive shares of SpinCo

Common Stock; the Spin Off will occur automatically without any investment decision on the part of the holders of Filer Common Stock; and

26. the proposed distributions of SpinCo Common Stock to Canadian shareholders would be exempt from the prospectus requirements under subsection 2.31(2) of National Instrument 45-106 *Prospectus Exemptions* but for the fact that SpinCo is not a reporting issuer.

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 shares of SpinCo Common Stock issued in connection with the Spin-Off is deemed to be a distribution unless the conditions in section 2.6 or subsection 2.14(1) of National Instrument 45-102 *Resale of Securities* are satisfied.

Peter J. Brady
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British Columbia Securities Commission