

Headnote

Multilateral Instrument 11-102 *Passport System* and National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions*

Securities Act, s. 84 – exemption from prospectus delivery requirement - A registered dealer wants relief from the requirement to deliver a prospectus - The issuer is conducting an at-the-market distribution using the shelf procedures in Part 9 of National Instrument 44-102 *Shelf Distributions* and on the conditions specified in the order; the issuer will issue a news release announcing the ATM distribution and file the distribution agreement on SEDAR; the news release will indicate that the shelf prospectus and supplement have been filed and will specify where and how purchasers may obtain a copy

National Instrument 44-101 *Short Form Prospectus Distributions*, s. 8.1 - Disclosure - An issuer wants relief from the requirement to include in the prospectus a statement of purchasers' statutory rights in the prescribed form. The issuer is conducting an at-the-market distribution using the shelf procedures in Part 9 of National Instrument 44-102 *Shelf Distributions* and on the conditions specified in the order. The issuer will provide an amended statement of rights in the prospectus or prospectus supplement so that the prospectus properly describes applicable rights and purchasers are not misled.

National Instrument 44-102 *Shelf Distributions*, s. 11.1 – exemption from shelf distribution form requirements - An issuer wants relief from the requirement to include certain disclosure in the base shelf prospectus and an issuer's and underwriter's certificate in the required form - the issuer is conducting an at-the-market distribution using the shelf procedures in Part 9 and on the conditions specified in the order; the issuer has obtained exemptive relief from the prospectus delivery requirement and will include in the prospectus an amended certificate stating that the prospectus constitutes full, true and plain disclosure as of the date of each distribution of the securities.

Securities Act, ss. 11 and 169 – *Confidentiality* - An applicant wants to keep an application and order confidential for a limited amount of time after the order is granted - The record provides intimate financial, personal or other information. The disclosure of the information before a specific transaction would be detrimental to the person affected; the information will be made available after a specific date

Applicable Legislative Provisions

Securities Act, ss. 11, 84 and 169

National Instrument 44-101 s.8.1; 44-102, s. 11.1

March 22, 2019

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
MedMen Enterprises Inc.
(the Issuer)

and

Canaccord Genuity Corp.
(the Agent, together with the Issuer, the Filers)

Decision

Background

- ¶ 1 The securities regulatory authority or regulator in each of the Jurisdictions (the Decision Maker) has received an application from the Filers for a decision under the securities legislation of the Jurisdictions (the Legislation) for the following relief (the Exemption Sought):
- (a) that the requirement that a dealer, not acting as agent of the purchaser, who receives an order or subscription for a security offered in a distribution to which the prospectus requirement applies, send or deliver to the purchaser or its agent the latest prospectus (including the applicable prospectus supplement(s) in the case of a base shelf prospectus) and any amendment to the prospectus (the Delivery Requirement) does not apply to the Agent or any other registered investment dealer acting on behalf of the Agent as a selling agent (each, a Selling Agent) in connection with the at-the-market distribution of Class B Subordinate Voting Shares (Class B Shares) of the Issuer under an equity distribution agreement (the Equity Distribution Agreement) to be entered into by the Filers (the ATM Distribution); and
 - (b) that the requirements to include the statements specified in items 2 and 3 of section 5.5 of National Instrument 44-102 – *Shelf Distributions* (NI 44-102) in a base shelf prospectus do not apply to the Shelf Prospectus (as defined below), and the requirements to include

in a prospectus supplement or in any amendment to a prospectus supplement, each of the following:

- (i) a forward-looking issuer certificate in the form specified in section 2.1 of Appendix A to NI 44-102;
- (ii) a forward-looking underwriter certificate in the form specified in section 2.2 of Appendix A to NI 44-102; and
- (iii) a statement respecting purchasers' statutory rights of withdrawal and remedies for rescission or damages in substantially the form prescribed in Item 20 of Form 44-101F1 *Short Form Prospectus*,

do not apply to the Prospectus Supplement (as defined below) or to any amendment to the Prospectus Supplement to be filed in respect of the sale of Class B Shares under ATM Distributions.

The Decision Makers have also received a request from the Filers for a decision that the application and this decision be kept confidential and not made public until the earliest of (i) the date the Filers enter into the Equity Distribution Agreement, (ii) the date on which the Issuer advises the Decision Makers that there is no longer any need to hold the application and this decision in confidence, and (iii) the date that is 90 days after the date of this decision (the Confidentiality Relief).

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 (the Principal Regulator);
- (b) the Filers have provided notice that section 4.7 of Multilateral Instrument 11-102 – *Passport System* (MI 11-102) is intended to be relied upon in Alberta, Saskatchewan, Manitoba, Québec, Newfoundland and Labrador, New Brunswick, Nova Scotia, Prince Edward Island, Yukon, Northwest Territories and Nunavut; 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*, MI 11-102, National Instrument 21-101 – *Marketplace Operation* and National Instrument 13-101 – *System for Electronic Document Analysis and Retrieval (SEDAR)* have the same meaning if used in this decision, unless otherwise defined in this decision.

Representations

- ¶ 3 This decision is based on the following facts represented by the Filers:

Background

MedMen Enterprises Inc.

1. the Issuer is a corporation incorporated under the *Business Corporations Act* (British Columbia); the head office of the Issuer is located at 10115 Jefferson Blvd., Culver City, California 90232 and its registered office is located at Suite 2200, HSBC Building, 885 West George Street, Vancouver, British Columbia V6C 3E8;
2. the Class B Shares are listed on the Canadian Securities Exchange (CSE) and are also listed on the OTCQX Best Market (OTCQX);
3. the Issuer is a reporting issuer in each province of Canada other than Québec, and it is contemplated that upon filing and being receipted for the Shelf Prospectus, the Issuer will be a reporting issuer in each province and territory of Canada; the Issuer is not in default of securities legislation in any such jurisdiction of Canada;

Canaccord Genuity Corp.

4. the Agent is a corporation incorporated under the laws of Ontario with its head office in Vancouver, British Columbia;
5. the Agent is registered as an investment dealer under the securities legislation in each province and territory of Canada, is a member of the Investment Industry Regulatory Organization of Canada, and is a participating organization of the CSE; the Agent is not in default of securities legislation in any jurisdiction of Canada;

Proposed ATM Distribution

6. the Issuer has filed a preliminary short form base shelf prospectus in each province and territory of Canada and an amended and restated preliminary short form base shelf prospectus in each province and territory of Canada, other than Québec;
7. subject to mutual agreement on terms and conditions, the Filers propose to enter into an equity distribution agreement (the Equity Distribution Agreement) providing for the sale from time to time by the Issuer through the Agent, as agent, of Class B Shares under the shelf procedures prescribed by Part 9 of NI 44-102;
8. prior to making any ATM Distributions, the Issuer will have filed in each province and territory of Canada (a) a final short form base shelf prospectus (the Shelf Prospectus) providing for distribution from time to time of securities of the Issuer; and (b) a prospectus supplement describing the terms of an ATM Distribution and the Equity Distribution Agreement and otherwise supplementing the disclosure in the Shelf Prospectus (the Prospectus Supplement);
9. upon entering into the Equity Distribution Agreement, the Issuer will immediately:

- (a) issue and file a news release announcing the Equity Distribution Agreement and indicating that the Shelf Prospectus and the Prospectus Supplement have been filed on SEDAR and specifying where and how purchasers under an ATM Distribution may obtain copies; and
 - (b) file the Equity Distribution Agreement on SEDAR;
- 10. the Issuer will not, during the period that the final receipt for the Shelf Prospectus is effective, distribute by way of one or more ATM Distributions a total market value of Class B Shares that exceeds 10% of the aggregate market value of Class B Shares, such aggregate market value calculated in accordance with section 9.2 of NI 44-102 and as at the last trading day of the month before the month in which the first ATM Distribution is made;
- 11. the Issuer will conduct ATM Distributions only through the Agent, as agent, directly or through another registered investment dealer acting as a Selling Agent, and only through the CSE or any other recognized Canadian “marketplace” within the meaning of National Instrument 21-101 – *Marketplace Operation* upon which the Class B Shares are listed or quoted or otherwise traded (a Marketplace);
- 12. the aggregate number of Class B Shares sold on all Marketplaces under an ATM Distribution on any trading day will not exceed 25% of the trading volume of the Class B Shares on all Marketplaces on that day;
- 13. the Agent will act as the sole underwriter on behalf of the Issuer in connection with the sale of Class B Shares on a Marketplace under the Equity Distribution Agreement, and will be the sole entity paid an underwriting fee or commission by the Issuer in connection with such sales; the Agent will sign an underwriter’s certificate in the Prospectus Supplement;
- 14. the Agent will effect ATM Distributions on a Marketplace either itself or through a Selling Agent; if sales are effected through a Selling Agent, the Selling Agent will be paid a customary seller’s commission for effecting the trades; a purchaser’s rights and remedies under the Legislation against the Agent, as underwriter of an ATM Distribution through a Marketplace, will not be affected by a decision to effect the sale directly or through a Selling Agent;
- 15. the Equity Distribution Agreement will provide that, at the time of each sale of Class B Shares under an ATM Distribution, the Issuer will represent to the Agent that the Shelf Prospectus, as supplemented by the Prospectus Supplement, including the documents incorporated by reference in the Shelf Prospectus (which shall include any news release that has been designated and filed as a Designated News Release as defined and outlined below) and any applicable amendment or supplement to the Shelf Prospectus or the Prospectus Supplement (together, the Prospectus), contains full, true and plain disclosure of all material facts relating to the Issuer and the Class B Shares being distributed; the Issuer will therefore be unable to proceed with sales under an ATM Distribution when it is in possession of undisclosed information that would constitute a material fact or a material change in respect of the Issuer or the Class B Shares;

16. after the date of the Prospectus Supplement and before the termination of any ATM Distribution, if the Issuer disseminates a news release disclosing information that, in the Issuer's determination, constitutes a "material fact" (as defined in the Legislation), the Issuer will identify such news release as a "designated news release" for the purposes of the Prospectus; this designation will be made on the face page of the version of such news release filed on SEDAR (any such news release, a Designated News Release); the Prospectus Supplement will provide that any such Designated News Release will be deemed to be incorporated by reference into the Shelf Prospectus; a Designated News Release will not be used to update disclosure in the Prospectus by the Issuer in the event of a "material change" (as defined in the Legislation);
17. if, after the Issuer delivers a notice to the Agent directing the Agent to sell Class B Shares on the Issuer's behalf under the Equity Distribution Agreement (a Sell Notice), the sale of the Class B Shares specified in the Sell Notice, taking into consideration prior sales under all previous ATM Distributions, would constitute a material fact or material change, the Issuer would be required to suspend sales under the Equity Distribution Agreement until either (i) it had filed a material change report or amended the Prospectus, or (ii) circumstances had changed so that the sales would no longer constitute a material fact or material change;
18. in determining whether the sale of the number of Class B Shares specified in a Sell Notice would constitute a material fact or material change, the Issuer will take into account a number of factors, including, without limitation (i) the parameters of the Sell Notice, including the number of Class B Shares proposed to be sold and any price or timing restrictions that the Issuer may impose with respect to the particular ATM Distribution, (ii) the percentage of outstanding Class B Shares represented by the number of Class B Shares proposed to be sold under the Sell Notice, (iii) sales under earlier Sell Notices, (iv) trading volume and volatility of Class B Shares, (v) recent developments in the business, affairs and capital structure of the Issuer, and (vi) prevailing market conditions generally;
19. it is in the interest of the Filers to minimize the market impact of sales under an ATM Distribution; the Agent will monitor closely the market's reaction to trades made on Marketplaces under an ATM Distribution in order to evaluate the likely market impact of future trades; the Agent has experience and expertise in managing sell orders to limit downward pressure on trading prices; if the Agent has concerns as to whether a particular sell order placed by the Issuer may have a significant effect on the market price of the Class B Shares, the Agent will recommend against effecting the trade at that time;

Disclosure of Class B Shares Sold

20. the Issuer will disclose the number and average price of Class B Shares sold under ATM Distributions in accordance with the Prospectus, as well as gross proceeds, commission and net proceeds, in its annual and interim financial statements or management discussion and analysis filed on SEDAR;

Prospectus Delivery Requirement

21. pursuant to the Delivery Requirement, a dealer effecting a trade of Class B Shares offered under a prospectus is required to deliver a copy of the prospectus (including the applicable prospectus supplement(s) in the case of a base shelf prospectus) to the purchaser within prescribed time limits;
22. delivery of a prospectus is not practicable in the circumstances of an ATM Distribution as neither the Agent nor the Selling Agent, as applicable, effecting the trade will know the purchaser's identity;
23. although purchasers under an ATM Distribution would not physically receive a printed prospectus, the Prospectus (together with all documents incorporated by reference) will be filed and readily available to all purchasers electronically via SEDAR; in addition, the Issuer will issue a news release that specifies where and how copies of the Shelf Prospectus and the Prospectus Supplement can be obtained;
24. the liability of an issuer or an underwriter (and others) for misrepresentation in a prospectus under the civil liability provisions of the Legislation will not be affected by the grant of an exemption from the Delivery Requirement, because purchasers of the securities offered by a prospectus during the period of distribution have a right of action for damages or rescission without regard as to whether the purchaser relied on the misrepresentation or in fact received a copy of the prospectus;

Withdrawal Right and Right of Action for Non-Delivery

25. pursuant to the Legislation, an agreement to purchase securities in respect of a distribution to which the prospectus requirement applies is not binding on the purchaser if a dealer receives, not later than midnight on the second day exclusive of Saturdays, Sundays and holidays, after receipt by the purchaser of the latest prospectus or any amendment to the prospectus, a notice in writing that the purchaser does not intend to be bound by the agreement of purchase (the Withdrawal Right);
26. pursuant to the Legislation, a purchaser of a security to whom a prospectus was required to be sent or delivered in compliance with the Delivery Requirement, but was not so sent or delivered, has a right of action for rescission or damages against the dealer who did not comply with the Delivery Requirement (the Right of Action for Non-Delivery);
27. neither the Withdrawal Right nor the Right of Action for Non-Delivery is workable in the context of an ATM Distribution because of the impracticability of delivering the Prospectus to a purchaser of Class B Shares;

Prospectus Form Requirements

28. to reflect the fact that an ATM Distribution is a continuous distribution, the Prospectus Supplement and any amendment thereto will include the following forward-looking issuer certificate (with appropriate modifications in respect of the filing of an amendment prescribed by section 2.4 of Appendix A to NI 44-102), such issuer certificate to supersede

and replace any issuer certificate included in the Shelf Prospectus solely with regard to ATM Distributions:

The short form prospectus, together with the documents incorporated in the prospectus by reference, as supplemented by the foregoing, as of the date of a particular distribution of securities offered by the prospectus, will, as of that date, constitute full, true and plain disclosure of all material facts relating to the securities offered by the prospectus and this supplement, as required by the securities legislation of each of the provinces and territories of Canada.;

29. to reflect the fact that an ATM Distribution is a continuous distribution, the Prospectus Supplement and any amendment thereto will include the following forward-looking underwriter certificate (with appropriate modifications in respect of the filing of an amendment prescribed by section 2.4 of Appendix A to NI 44-102), such underwriter certificate to supersede and replace any underwriter certificate included in the Shelf Prospectus solely with regard to ATM Distributions:

To the best of our knowledge, information and belief, the short form prospectus, together with the documents incorporated in the prospectus by reference, as supplemented by the foregoing, as of the date of a particular distribution of securities offered by the prospectus, will, as of that date, constitute full, true and plain disclosure of all material facts relating to the securities offered by the prospectus and this supplement as required by the securities legislation of each of the provinces and territories of Canada.;

30. a different statement of purchasers' rights than that required by the Legislation is necessary in order to allow the Prospectus to accurately reflect the relief granted from the Delivery Requirement. Accordingly, the Prospectus Supplement will state the following, with the date reference completed:

Securities legislation in certain of the provinces and territories of Canada provides purchasers with the right to withdraw from an agreement to purchase securities and with remedies for rescission or, in some jurisdictions, revision of the price, or damages if the prospectus, prospectus supplements relating to securities purchased by a purchaser and any amendment are not delivered to the purchaser, provided that the remedies are exercised by the purchaser within the time limit prescribed by securities legislation. However, purchasers of Class B Shares under an at-the-market distribution by the Issuer will not have the right to withdraw from an agreement to purchase the Class B Shares and will not have remedies for rescission or, in some jurisdictions, revision of the price, or damages for non-delivery, because the prospectus, prospectus supplements relating to Class B Shares purchased by a purchaser and any amendment relating to Class B Shares purchased by such purchaser will not be delivered as permitted under a decision dated [●], 2019 and granted under National Policy 11-203 – Process for Exemptive Relief Applications in Multiple Jurisdictions.

Securities legislation in certain of the provinces and territories further provides a purchaser with remedies for rescission or, in some jurisdictions, revisions of the price or damages if the prospectus, the accompanying prospectus supplement and any amendment contains a misrepresentation, provided that the remedies are exercised by the purchaser within the time limit prescribed by the securities legislation. Any remedies under securities legislation that a purchaser of Class B Shares under an at-the-market distribution by the Issuer may have against the Issuer or the Agent for rescission or, in some jurisdictions, revisions of the price, or damages if the prospectus, prospectus supplements relating to securities purchased by a purchaser and any amendment contain a misrepresentation will remain unaffected by the non-delivery and the decision referred to above.

The purchaser should refer to the decision referred to above and any applicable provisions of the securities legislation of the purchaser's province or territory for the particulars of these rights or consult with a legal adviser.;

31. the Prospectus Supplement will disclose that, in respect of ATM Distributions under the Prospectus Supplement, the statement prescribed in paragraph 30 above supersedes and replaces the statement of purchasers' rights contained in the Shelf Prospectus; and
32. the statements required by items 2 and 3 of section 5.5 of NI 44-102 to be included in the Shelf Prospectus will be qualified by adding the following: “, except in cases where an exemption from such delivery requirements has been obtained.”

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:

- (a) during the 60-day period ending not earlier than 10 days prior to the commencement of an ATM Distribution, the Class B Shares have traded, in total, on one or more Marketplaces, as reported on a consolidated market display:
 - (A) an average of at least 100 times per trading day, and
 - (B) with an average trading value of at least \$1,000,000 per trading day;
- (b) the Issuer shall not, during the period that the final receipt for the Shelf Prospectus is effective, distribute by way of one or more ATM Distributions a total market value of Class B Shares that exceeds 10% of the aggregate market value of Class B Shares, such aggregate market value calculated in accordance with section 9.2 of NI 44-102 and as at the last trading day of the month before the month in which the first ATM Distribution is made;
- (c) the Issuer complies with the disclosure requirements set out in paragraphs 20, 28, 29, 30, 31 and 32 above; and

(d) the Filers respectively comply with the representations made in paragraphs 3, 5, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, and 19 above.

This decision will terminate 25 months from the date of the receipt for the Shelf Prospectus.

The further decision of the Decision Makers is that the Confidentiality Relief is granted.

John Hinze
Director, Corporate Finance
British Columbia Securities Commission