

Headnote

Multilateral Instrument 11-102 *Passport System* and National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* – National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*, s. 3.3(1)(a) - An issuer requires relief from the requirement that financial statements required by securities legislation to be audited must be accompanied by an auditor's report that expresses an unmodified opinion - The auditors were not in attendance at the physical inventory taking and not able to satisfy themselves by other auditing procedures as to the opening inventory quantities; the inventory reservation relates to the financial statements of a non-reporting issuer whose business is not seasonal; the issuer is providing a subsequent audited period of at least six months for which the auditor's report expresses an unmodified opinion; the qualification is not imposed by, and could not reasonably be eliminated by management; the qualification will not recur in future; the auditor's report will be unmodified except for the qualification related to opening inventory and, since inventory affects the calculation of financial performance and cash flows, the net cash flows from operating activities.

Applicable Legislative Provisions

National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*, section 3.3(1)(a)

November 21, 2019

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
Waterfront Capital Corporation
(the Filer)

and

Whistler Water Inc.
(the Target and post-Acquisition, the Resulting Issuer)

Order

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 that financial statements required by the Legislation to be audited must be accompanied by an auditor's report that expresses an unmodified opinion does not apply to the auditor's reports that accompany the following financial statements of the Target:

(a) the audited financial statements of the Target for the financial years ended December 31, 2018 and 2017 (the Modification Relief); and

(b) the audited financial statements of the Resulting Issuer for the financial year ended December 31, 2019 (the Comparative Year Modification Relief).

(the Requested Relief)

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.

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 order is based on the following facts represented by the Filer:

1. the Filer was incorporated in the province of Alberta pursuant to the *Alberta Business Corporations Act* on August 17, 1987 and continued into British Columbia pursuant to the former *Company Act* (British Columbia) on December 12, 2000;
2. the Filer's head office is located in British Columbia;
3. the Target was incorporated on February 4, 2016 pursuant to the laws of Canada; the Target manufactures and sells water products to local and international customers; the Target's business is not seasonal;
4. the Filer is a reporting issuer in the Provinces of British Columbia and Alberta; the common shares of the Filer are listed for trading on the NEX board of the TSX Venture Exchange (TSXV) under the symbol "WFG.H";
5. the Target has never been a reporting issuer and its common shares are not listed or quoted for trading on any stock exchange or quotation system;

6. the Filer and Target are not in default of any securities legislation of any jurisdiction of Canada;
7. the Filer has agreed to acquire all the issued and outstanding securities of the Target (the Acquisition);
8. upon completion of the Acquisition, the Target will become a subsidiary of the Filer and the Filer will continue to carry on its business through the Target;
9. the Acquisition will be accounted for as a “reverse takeover” as defined in National Instrument 51-102 *Continuous Disclosure Obligations* (NI 51-102);
10. the completion of the Acquisition is subject to, among other things, approval of the TSXV;
11. in connection with the Acquisition, the Filer must file a Filing Statement (as defined in TSXV policies) with the TSXV and with the securities regulatory authorities in British Columbia and Alberta once the TSXV approves the Filing Statement in its final form;
12. the Filing Statement will include audited financial statements of the Target for the financial years ended December 31, 2018 and 2017 and audited financial statements for the nine-month period ended September 30, 2019;
13. in addition, the completion of the Acquisition will trigger the requirements of section 4.10(2) of NI 51-102, that the Filer file financial statements of the Target as required by the form of prospectus that the Target would have been eligible to use prior to the closing of the Acquisition;
14. the applicable form of prospectus for the Target is Form 41-101F1 *Information Required in a Prospectus*;
15. Crowe MacKay LLP (the Auditors) were not appointed as auditors of the Target until after December 31, 2017 and were not able to observe the counting of physical inventories of the Target at December 31, 2017 and 2016; the Auditors were unable to satisfy themselves by alternative means concerning inventory quantities held at December 31, 2017 and 2016;
16. since opening inventories enter into the determination of the results of financial performance and cash flows, the Auditors were not able to determine whether adjustments to the results of consolidated financial performance and consolidated cash flows might be necessary for the financial years ended December 31, 2018 and December 31, 2017, nor whether adjustments might be necessary to the carrying value of inventory as reported at, December 31, 2017;
17. as a result, the Auditors expressed a qualified opinion relating to inventory on the Target Financial Statements for the financial years ended December 31, 2018 (opening inventory only) and 2017 (the Inventory Modification);
18. a qualified opinion is contrary to subsection 3.3(1) of National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards* (NI 52-107);

19. due to the Inventory Modification, the Filer will not be able to obtain TSXV approval of the Acquisition or comply with the requirements of section 4.10(2) of NI 51-102 unless the Requested Relief is granted;
20. paragraph 5.8(2) of Companion Policy 41-101CP to National Instrument 41-101 *General Prospectus Requirements* contemplates that relief may be granted to non-reporting issuers in appropriate circumstances to permit the auditor's report on financial statements to contain a qualified opinion relating to opening inventory if there is a subsequent audited period of at least six months on which the auditor's report expresses an unmodified opinion and the business is not seasonal; and
21. the Resulting Issuer proposes, upon completion of the Acquisition, to file the following financial statements (the Proposed Financial Statements):
 - (a) audited financial statements of the Target for the nine month period ended September 30, 2019 accompanied by an unmodified audit opinion;
 - (b) audited financial statements with respect to the Target's financial year ended December 31, 2018 accompanied by an auditor's report that is qualified with respect to opening inventory, cost of sales, cash flows and net income; and
 - (c) audited financial statements with respect to the Target's financial year ended December 31, 2017 accompanied by an auditor's report that is qualified with respect to opening inventory, closing inventory, cost of sales, cash flows and net income.

Order

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

The decision of the principal regulator under the Legislation is that the Requested Relief is granted, provided that:

- (a) the Resulting Issuer files the Proposed Financial Statements within the period prescribed under section 4.10(2) of NI 51-102; and
- (b) the only modification in the auditors' report on the financial statements of the Target for the years ended December 31, 2018 and 2017 is the Inventory Modification.

John Hinze
Director, Corporate Finance
British Columbia Securities Commission