

Headnote

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

National Instrument 62-104, Part 6 Take-Over Bids - Exemption from the formal take-over bid requirements - An issuer wants relief so that the take-over bid thresholds are calculated based on the aggregate number of common shares outstanding, rather than for each class of common shares - The issuer is subject to foreign ownership restrictions in its governing federal legislation; the issuer implemented a dual class share structure solely for compliance with foreign ownership restrictions in the aviation industry; both classes of shares are freely tradable, have identical economic attributes and are automatically and mandatorily inter-convertible based on the shareholder's Canadian or non-Canadian status; shareholders will calculate their ownership position by combining the outstanding classes of shares for the purposes of determining whether take-over bid requirements are triggered

National Instrument 62-104, Part 6 Take-Over Bids - Early warning relief - An issuer wants relief so that the early warning thresholds are calculated based on the aggregate number of common shares outstanding, rather than for each class of common shares - The issuer is subject to foreign ownership restrictions in its governing federal legislation; the issuer implemented a dual class share structure solely for compliance with foreign ownership restrictions in the aviation industry; both classes of shares are freely tradable, have identical economic attributes and are automatically and mandatorily inter-convertible based on the shareholder's Canadian or non-Canadian status; shareholders will calculate their ownership position by combining the outstanding classes of shares for the purposes of determining whether early warning requirements are triggered

National Instrument 62-104, Part 6 Take-Over Bids - Exemption from the formal take-over bid requirements - News release relief - An issuer wants relief so that the threshold triggering the requirement on an acquiror to file a news release during a take-over bid or an issuer bid is calculated based on the aggregate number of common shares outstanding, rather than for each class of common shares - The issuer is subject to foreign ownership restrictions in its governing federal legislation; the issuer implemented a dual class share structure solely for compliance with foreign ownership restrictions in the aviation industry; both classes of shares are freely tradable, have identical economic attributes and are automatically and mandatorily inter-convertible based on the shareholder's Canadian or non-Canadian status; acquirors will calculate their ownership position by combining the outstanding classes of shares for the purposes of determining whether the requirement to file a news release during a take-over bid or issuer bid is triggered

National Instrument 51-102, s. 13.1 - Continuous Disclosure Obligations - Continuous disclosure relief - An issuer wants relief so that it can provide disclosure on significant shareholders in its information circular on a combined basis, rather than for each class of common shares - The issuer is subject to foreign ownership restrictions in its governing federal legislation; the issuer implemented a dual class share structure solely for compliance with foreign ownership restrictions in the aviation industry; both classes of shares are freely tradable, have identical

economic attributes and are automatically and mandatorily inter-convertible based on the shareholder's Canadian or non-Canadian status; the issuer will provide disclosure on holders of its voting securities on a combined basis in its information circular

Applicable Legislative Provisions

National Instrument 62-104 *Take-Over Bids and Issuer Bids*, Part 2, ss. 5.2, 5.4 and 6.1

National Instrument 51-102 *Continuous Disclosure Obligations*, s. 13.1

November 12, 2021

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
Canada Jetlines Operations Ltd.
(the Filer)

Decision

Background

¶1 The securities regulatory authority or principal regulator in the Jurisdictions (each a Decision Maker) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) that:

- (a) an offer to acquire either outstanding common voting shares of the Filer (the Common Shares) or variable voting shares of the Filer (the Variable Voting Shares, and together with the Common Shares, the Shares) which, in either case, would constitute a take-over bid under the Legislation as a result of the securities subject to the offer to acquire, together with the offeror's securities of that class, representing in the aggregate 20% or more of the outstanding Common Shares or Variable Voting Shares, as the case may be, at the date of the offer to acquire, be exempt from the requirements in Part 2 of National Instrument 62-104 *Take-Over Bids and Issuer Bids* (NI 62-104) applicable to take-over bids (the TOB Relief);
- (b) an acquiror who triggers the disclosure and filing obligations pursuant to the early warning requirements in section 5.2 of NI 62-104 with respect to either the Common Shares or Variable Voting Shares, as the case may be, be exempt from those requirements (the Early Warning Relief);

- (c) an acquiror who acquires, during a take-over bid or an issuer bid, beneficial ownership of, or control or direction over, either Common Shares or Variable Voting Shares that, together with the acquiror's securities of that class, would constitute 5% or more of the outstanding Common Shares or Variable Voting Shares, as the case may be, be exempt from the requirement to issue and file a news release in section 5.4 of NI 62-104 (the News Release Relief); and
- (d) the Filer be exempt from the disclosure requirements in Item 6.5 of Form 51-102F5 *Information Circular* (Form 51-102F5) (the Alternative Disclosure Relief, and collectively with the TOB Relief, the Early Warning Relief, and the News Release Relief, the Exemption Sought).

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;
- (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, Saskatchewan, Manitoba, New Brunswick, Newfoundland and Labrador, the Northwest Territories, Nova Scotia, Prince Edward Island and the Yukon Territory; 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, NI 62-103 *The Early Warning System and Related Take-Over Bid and Insider Reporting Issues* (NI 62-103) and NI 62-104, including “offeror”, “offeror’s securities”, “offer to acquire”, “acquiror”, “acquiror’s securities”, “early warning requirements” and “eligible institutional investor” have the same meaning if used in this decision unless otherwise defined herein. For the purposes of this decision, the terms below have the following meanings:

“Canadian” has the meaning ascribed to that term in the CTA; and

“CTA” means *Canada Transportation Act*, as it may be amended from time to time.

Representations

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

1. the Filer is a corporation existing under the *Canada Business Corporations Act* and in good standing;

2. the Filer is a reporting issuer in all of the provinces and territories of Canada except for Quebec and Nunavut, and is not in default of the securities legislation in any of these jurisdictions;
3. the Filer's registered and executive office is located at 2400 – 1055 West Georgia Street, Vancouver, BC V6E 3P3;
4. the Filer's authorized share capital consists of: (a) an unlimited number of Common Shares and (b) an unlimited number of Variable Voting Shares; as of September 30, 2021, there were 50,388,474 Shares outstanding, of which 22,373,055 (or approximately 44.40%) were Variable Voting Shares, and 28,015,419 (or approximately 55.60%) were Common Shares; the Common Shares and the Variable Voting Shares are currently listed on the NEO Exchange Inc. (NEO) under the single ticker symbol "CJET"; the Filer is not in default of any of the requirements of the NEO Exchange Listing Manual;
5. the Filer has applied to the Canada Transportation Agency for a domestic license (as defined in the CTA) for the purposes of operating a charter airline in Canada;
6. the Filer is subject to the requirements of the CTA, which requires that air carriers which provide domestic services be controlled in fact by Canadians, and in addition:
 - (a) at all times, at least 51% of the voting interest of the Filer must be owned by Canadians;
 - (b) no single foreign investor or its affiliates can own more than a 25% voting interest in the Filer; and
 - (c) no non-Canadian owner authorized to provide air service or its affiliates can own more than a 25% voting interest in the Filer;
7. pursuant to the articles of the Filer (the Articles), the Common Shares may only be held, beneficially owned or controlled, directly or indirectly, by Canadians; an outstanding Common Share is converted into one Variable Voting Share, automatically and without any further act of the Filer or the holder, if such Common Share becomes held, beneficially owned or controlled, directly or indirectly, otherwise than by way of security only, by a person who is not a Canadian;
8. pursuant to the Articles, the Variable Voting Shares may only be held, beneficially owned or controlled, directly or indirectly, by persons who are not Canadians; an outstanding Variable Voting Share is converted into one Common Share, automatically and without any further act of the Filer or the holder, if such Variable Voting Share becomes held, beneficially owned or controlled, directly or indirectly, otherwise than by way of security only, by a Canadian;
9. each Common Share confers the right to one vote; each Variable Voting Share confers the right to one vote, subject to an automatic reduction of the voting rights attached to Variable Voting Shares in the event any of the applicable ownership limits set out in paragraph 6 are exceeded; in the event the applicable ownership limits are exceeded, the votes attributable to Variable Voting Shares will be affected as follows:

- (a) first, if required, a reduction of the voting rights of any single non-Canadian owner (inclusive of any single non-Canadian owner authorized to provide air service) or its affiliates carrying more than 25 per cent of the voting interest in the Filer (the Stage 1 Reduction) to ensure that such non-Canadian owners or their affiliates never carry more than 25 per cent of the voting interest that holders of Shares may cast at any meeting of shareholders;
 - (b) second, if required and after giving effect to the Stage 1 Reduction, a further proportional reduction of the voting rights of all non-Canadian owners authorized to provide an air service or their affiliates (the Stage 2 Reduction) to ensure that such non-Canadian owners authorized to provide an air service or their affiliates, in the aggregate, never carry more than 25 % of the voting interest that holders of Shares may cast at any meeting of shareholders; and
 - (c) third, if required and after giving effect to the Stage 1 Reduction and the Stage 2 Reduction, if any, a proportional reduction of the voting rights for all non-Canadian owners as a class (the Stage 3 Reduction) to ensure that non-Canadians never carry, in aggregate, more than 49 % of the voting interest that owners of Shares may cast at any meeting of shareholders;
10. aside from the differences in voting rights set out in paragraph 9, the Variable Voting Shares and Common Shares are the same in all other respects, including with regard to the right to receive dividends, if any, and the right to receive the property and assets of the Filer in the event of dissolution, liquidation or winding up of the Filer;
11. the Articles contain coattail provisions pursuant to which Variable Voting Shares may be converted into Common Shares in the event an offer is made to purchase Common Shares and the offer is one which is required to be made to all or substantially all the holders of Common Shares; the Articles also contain coattail provisions pursuant to which Common Shares may be converted into Variable Voting Shares in the event an offer is made to purchase Variable Voting Shares and the offer is one which is required to be made to all or substantially all the holders of Variable Voting Shares;
12. the Filer's dual class structure was implemented solely to ensure compliance with the requirements of the CTA; it has no other purpose;
13. an investor does not control or choose which class of Shares it acquires and holds; there are no unique features of either class of Shares that an existing or potential investor can choose to acquire, exercise or dispose of; the class of Shares ultimately available to an investor is solely a function of the investor's Canadian or non-Canadian residency status; if, after having acquired Shares, a holder's Canadian or non-Canadian residency status changes, such Shares will convert accordingly and automatically; and
14. the Variable Voting Shares are not considered "restricted voting securities" or "restricted voting shares" for the purposes of the Legislation.

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) the Filer publicly discloses the terms of the Exemption Sought in a news release filed on SEDAR promptly following the issuance of this decision;
- (b) the Filer discloses the terms and conditions of the Exemption Sought in all of its annual information forms and management information circulars filed on SEDAR following the issuance of this decision and in any other filing where the characteristics of the Shares are described;
- (c) with respect only to the TOB Relief, the Common Shares or Variable Voting Shares, as the case may be, subject to the offer to acquire of an offeror, together with the Common Shares and Variable Voting Shares beneficially owned, or over which control or direction is exercised, by the offeror or any person acting jointly or in concert with the offeror, would not constitute, at the date of the offer to acquire, in the aggregate 20% or more of the outstanding Common Shares and Variable Voting Shares on a combined basis;
- (d) with respect only to the Early Warning Relief;
 - (i) the acquiror complies with the early warning requirements, except that, for the purpose of determining the percentage of outstanding Common Shares or Variable Voting Shares, as the case may be, that the acquiror has acquired or disposed of beneficial ownership, or acquired or ceased to have control or direction over, the acquiror calculates the percentage using (A) a denominator comprised of all of the outstanding Common Shares and Variable Voting Shares, determined in accordance with subsection 1.8(2) of NI 62-104, on a combined basis, as opposed to a per-class basis, and (B) a numerator including, as acquiror's securities, all of the Common Shares and Variable Voting Shares that constitute acquiror's securities; or
 - (ii) in the case of an acquiror that is an eligible institutional investor, the acquiror complies with the requirements of the alternative monthly reporting system set out in Part 4 of NI 62-103 to the extent it is not disqualified pursuant to section 4.2 of NI 62-103 from filing reports under Part 4 of NI 62-103, except that, for purposes of determining the acquiror's security-holding percentage, the acquiror calculates its security-holding percentage using (A) a denominator comprised of all of the outstanding Common Shares and Variable Voting Shares, determined in accordance with subsection 1.8(2) of NI 62-104, on a combined basis, as opposed to a per-class basis, and (B) a numerator including all of the Common Shares and Variable Voting Shares owned or controlled by the eligible institutional investor;

- (e) with respect only to the News Release Relief, the Common Shares or Variable Voting Shares, as the case may be, that the acquiror acquires beneficial ownership of, or control or direction over, together with the securities of the Filer beneficially owned, or over which control or direction is exercised, by the acquiror or any person acting jointly or in concert with the acquiror, would not constitute 5% or more of the outstanding Common Shares and Variable Voting Shares, as the case may be, calculated using (i) a denominator comprised of all of the outstanding Common Shares and Variable Voting Shares, determined in accordance with subsection 1.8(2) of NI 62-104, on a combined basis, as opposed to a per-class basis, and (ii) a numerator including as acquiror's securities, all of the Common Shares and Variable Voting Shares that constitute acquiror's securities; and
- (f) with respect only to the Alternative Disclosure Relief, the Filer provides the disclosure required by Item 6.5 of Form 51-102F5, except that for purposes of determining the percentage of voting rights attached to the Common Shares or Variable Voting Shares, the Filer calculates the voting percentage using (i) a denominator comprised of all of the outstanding Common Shares and Variable Voting Shares on a combined basis, as opposed to a per-class basis, and (ii) a numerator including all of the Common Shares and Variable Voting Shares beneficially owned, or over which control or direction is exercised, directly or indirectly, by any person who, to the knowledge of the Filer's directors or executive officers, beneficially owns, controls or directs, directly or indirectly, voting securities carrying 10% or more of the voting rights attached to the outstanding Common Shares and Variable Voting Shares on a combined basis, as opposed to a per-class basis.

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