

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 in securities of an organization that promotes the interests of a particular industry or cause - The securities are issued by a trade association to its members and auxiliary members; trades are limited to members, auxiliary members, the issuer and its employees; there is no market for the securities and none is expected to develop

Applicable Legislative Provisions

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

July 22, 2020

In the Matter of
the Securities Legislation of
British Columbia
(the Jurisdiction)

and

In the Matter of
the Process of Exemptive Relief Applications in Multiple Jurisdictions

and

In the Matter of
Pharmasave Drugs (West) Ltd.
(the Filer)

Decision

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) for an exemption from the prospectus requirement under section 61 of the *Securities Act* (British Columbia) for the distribution of New Franchisee Shares (defined below) to the Filer’s new franchisees or a new franchisee’s Amalco Franchisee Nominee (defined below) (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; 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 the provinces of Alberta, Saskatchewan and Manitoba.

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 the successor entity of Pharmasave Drugs (Pacific) Ltd. (Pacific), Pharmasave Drugs (Western) Ltd. (Western), and Pharmasave Drugs (Central) Ltd. (Central), all of which amalgamated on July 1, 2020 under the *Business Corporations Act* (British Columbia) to form the Filer;
 2. the principal regulator previously issued an order dated February 2, 1998 to exempt Pacific from the prospectus requirement under the Legislation for the distribution of shares to its franchisees or representatives of corporations or partnerships that are franchisees;
 3. the Filer's head office is located in Cloverdale, British Columbia;
 4. the Filer is not a private issuer under National Instrument 45-106 *Prospectus Exemptions* (NI 45-106) or a reporting issuer under the Legislation;
 5. the authorized capital of the Filer consists of an unlimited number of Class A voting common shares (Voting Shares), Class B non-voting common shares (Non-Voting Shares), Class A preferred shares (Class A Preferred Shares), Class B preferred shares (Class B Preferred Shares), Class C preferred shares (Class C Preferred Shares), Class D preferred shares (Class D Preferred Shares) and Class E preferred shares (Class E Preferred Shares)(the Voting Shares, Non-Voting Shares, Class A Preferred Shares, Class B Preferred Shares, Class C Preferred Shares, Class D Preferred Shares and Class E Preferred Shares, collectively referred herein as the Shares);
 6. the sole business of the Filer is to continue the business of its predecessor entities Pacific, Western and Central, namely to oversee the administration of "Pharmasave" drug store franchises in the provinces of British Columbia, Alberta, Saskatchewan, Manitoba and the Yukon territory, including but not limited to the granting of franchise rights in such jurisdictions, and to provide support services to such franchisees;
 7. with each grant of franchise rights by the Filer's predecessor, Pacific, franchisees were required to designate a nominee to hold shares in the capital of Pacific;
 8. prior to a grant of franchise rights and corresponding issuance of shares, the franchisee received a disclosure document containing, among other things, information concerning

Pacific's business and the distribution of shares of Pacific, a copy of the constating documents of Pacific, and a copy of Pacific's most recent audited annual financial statements (collectively, an Old Disclosure Package); the disclosure document also included a copy of a shareholders agreement, which all shareholders of Pacific were required to enter into; the Old Disclosure Package complied with all franchise laws applicable to the franchisee;

9. each shareholder of Pacific received audited annual financial statements of Pacific, prepared in accordance with section 4.1 of National Instrument 51-102 *Continuous Disclosure Obligations* (NI 51-102), as though that provision applied to Pacific;
10. upon each grant of new franchise rights to a new franchisee, the Filer requires that such franchisee designate a nominee (an Amalco Franchisee Nominee) to receive a combination of Class D Preferred Shares and Voting Shares or Non-Voting Shares (collectively, the New Franchisee Shares) from the Filer;
11. prior to each grant of franchise rights and corresponding issuance of New Franchisee Shares, the new franchisee and Amalco Franchisee Nominee will receive a disclosure document containing, among other things, information concerning the Filer's business and the distribution of shares of the Filer, a copy of the constating documents of the Filer, and a copy of the Filer's most recent audited annual financial statements (collectively, a Disclosure Package); the Disclosure Package will include a copy of a shareholders agreement which all shareholders of the Filer are required to enter into; the Disclosure Package will comply with all franchise laws applicable to the franchisee;
12. shareholders of the Filer will receive a copy of the Filer's audited annual financial statements, prepared in accordance with section 4.1 of NI 51-102, as though such provision applied to the Filer;
13. the articles of the Filer provide that its Shares may be transferred only with the consent of the directors of the Filer; if and when a franchisee sells its franchise rights, otherwise terminates its franchise agreement, or both, the Filer's shareholders agreement further provides the Filer with an option to purchase the Shares held by the franchisee or its Amalco Franchisee Nominee; and
14. the Filer is not able to rely on any prospectus exemption in NI 45-106 to issue the New Franchisee Shares to its new franchisees or Amalco Franchisee Nominees; under NI 45-106, the Filer will not be a private issuer, it will not be issuing any offering memorandum, and the individuals designated to receive New Franchisee Shares may not be "accredited investors" or "family, friends and business associates".

Decision

- ¶ 4 The principal regulator is satisfied that the decision 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 Exemption Sought is granted provided that:

- (a) prior to any distribution of the New Franchisee Shares by the Filer to a new franchisee or its Amalco Franchisee Nominee at the time the franchisee joins the Pharmasave franchise, the Filer provides the franchisee and the Amalco Franchisee Nominee with a Disclosure Package and a copy of this order;
- (b) the Disclosure Package includes content that is substantively the same as the content in the Old Disclosure Package;
- (c) the Filer provides each new franchisee and its Amalco Franchisee Nominee with a contractual right of action for misrepresentation that is substantively the same as if each document in the Disclosure Package were a prescribed document under section 132.1 of the Legislation;
- (d) the Filer provides each new franchisee and its Amalco Franchisee Nominee with a contractual right of rescission that is substantively the same as if each document in the Disclosure Package were a prescribed document under section 138.1 of the Legislation;
- (e) the Filer prepares and provides each holder of Shares audited annual financial statements in accordance with Section 4.1 of NI 51-102; and
- (f) any trade in the Shares of the Filer is deemed to be a distribution unless such trade is with the Filer, pursuant to the option granted to the Filer under its shareholders agreement.

John Hinze
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British Columbia Securities Commission