

April 12, 2024

Headnote

Multilateral Instrument 11-102 *Passport System* and National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions - Securities Act s. 76 Prospectus Requirements* - A federally regulated credit union wants to distribute membership shares to prospective customers - The filer is a federal credit union subject to a comprehensive scheme of regulation and supervision as a Schedule 1 bank under the Bank Act (Canada); in order to provide savings deposit services to customers, the customers must become members of the credit union by acquiring a set number of membership shares; the relief is analogous to exemptions available to provincial credit unions under local securities legislation

Applicable Legislative Provisions

Securities Act, R.S.B.C. 1996, c. 418, s.76

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
First West Credit Union
(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 for the distribution of the Filer's membership shares (Membership Shares) to prospective members of the Filer (Members), which exemption would be available to the Filer after its continuance as a federal credit union under the *Bank Act* (Canada) as described herein.

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 subsection 4.7(1) of Multilateral Instrument 11-102 – *Passport System* (MI 11-102) is intended to be relied upon in Alberta, Saskatchewan, Manitoba, Quebec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, 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* 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 a credit union incorporated under the *Credit Union Incorporation Act* (British Columbia) (the CUIA) and its head office is located in Langley, British Columbia;
2. the Filer is not in default under applicable securities legislation in any jurisdiction in Canada;
3. the Filer is a member-owned financial co-operative with a business focused on day-to-day banking, investments, and personal and business lending in the Province of British Columbia;
4. historically, credit unions in Canada have been incorporated and regulated provincially with their operations limited to the territory of the incorporating province;
5. currently, the Filer relies on the exemption from the prospectus requirements set out in BC Instrument 45-531 – *Exemptions for shares or deposits of a credit union* (BCI 45-531) in order to distribute its Membership Shares; the term “credit union” is defined in the *Interpretation Act* (British Columbia) to mean a credit union authorized to carry on business under the *Financial Institutions Act* (British Columbia);
6. securities legislation in British Columbia, Ontario and other jurisdictions of Canada contain local exemptions from the prospectus requirements that are only available to credit unions organized and regulated under the laws of the applicable local jurisdiction;
7. in 2010, the Government of Canada enacted legislation allowing provincial credit unions to continue federally and operate under the *Bank Act (Canada)* (the Bank Act); the Filer wishes to continue as a federal credit union to the Bank Act from the CUIA;
8. the federal credit union provisions of the Bank Act enable a provincially organized credit union, such as the Filer, to continue as a federal credit union under the Bank Act and operate nationally under the supervision and oversight of the Office of the Superintendent of Financial Institutions, the federal financial institutions regulator;
9. under the Bank Act, a federal credit union, like provincial credit unions, must be organized and carry on business on a co-operative basis and provide financial services primarily to its members; ownership of membership shares is a requirement for membership in a federal credit union;

10. the Filer wishes to continue as a federal credit union under the Bank Act in order to have the ability to conduct its operations throughout Canada;
11. upon continuance, the Filer will change its name to "First West Federal Credit Union";
12. upon continuance, the Filer will be a Schedule I bank under the Bank Act;
13. the Filer's capital structure includes Membership Shares; a holder of Membership Shares that holds the requisite Membership Shares may become a Member of the Filer; each Member is entitled to one vote on a resolution at a general meeting of the Filer no matter how many Membership Shares they hold; each holder of a Membership Share is entitled to receive dividends, as declared at the discretion of the Board, and to receive the remaining property of the Filer upon a liquidation, dissolution or winding up of the Filer;
14. each new customer of the Filer is required to purchase five Membership Shares in order to become a Member of the Filer and conduct business with the Filer; these shares are a membership requirement and are issued only at the start of the customer relationship; as of the date of this application, the issue price is \$1.00 per Membership Share; the current total cost per customer is therefore a minimum of \$5.00; and
15. after continuance as a federal credit union under the Bank Act, the Filer will no longer be able to rely on the exemptions from the prospectus requirement set out in Canadian securities legislation available to provincially organized credit unions.

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 continues as a federal credit union under the Bank Act; and
- (b) the Filer continues to be subject to regulation, examination and supervision by Office of the Superintendent of Financial Institutions as a federal credit union.

John Hinze
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British Columbia Securities Commission