Citation: 2023 BCSECCOM 551

**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 – Resale Relief - A federally regulated, members-owned financial cooperative is seeking first trade relief to allow certain of its securities to be traded amongst its members – the Filer is a federal credit union regulated by OSFI; the securities are designed to meet certain OSFI capital adequacy requirements and are not redeemable by the Filer; there is no market for the securities; the trades are limited to members of the Filer; the Filer will provide an annual disclosure document to members holding these securities and any members interested in acquiring these securities

*Securities Act*, s. 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*, s. 76

*Securities Act*, s. 169

August 10, 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  
Coast Capital Savings Federal 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) that the prospectus requirement does not apply to the first trade of a Class D Equity Share (defined below) distributed by the Filer to its Members (defined below) in reliance upon the offering memorandum exemption in section 2.9 of National Instrument 45-106 *Prospectus Exemptions* (offering memorandum exemption) (the Exemption Sought).

The Decision Makers have also received a request from the Filer for a decision that the application and this decision be kept confidential and not be made public until the earliest of (i) the date on which the Filer notifies the principal regulator that it has commenced its offering, and (ii) the date that is one year after the date of this decision (the Confidentiality Relief).

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions (for a dual application):

* 1. the British Columbia Securities Commission is the principal regulator for this application;
  2. 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, Québec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, the Northwest Territories, Yukon and Nunavut (Passport Jurisdictions); and
  3. this decision is the decision of the principal regulator and evidences the decision of the securities regulatory authority or regulator in Ontario.

**Interpretation**

1. 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**

1. This decision is based on the following facts represented by the Filer:
2. until November 1, 2018, the Filer was a credit union incorporated under the *Credit Union Incorporation Act* (British Columbia);
3. on November 1, 2018, the Filer continued as a federal credit union under the *Bank Act* in order to have the ability to conduct its operations throughout Canada;
4. the Filer’s head office continues to be located in Surrey, British Columbia;
5. the Filer is not in default under applicable securities legislation in any jurisdiction of Canada;
6. the Filer is a member-owned financial cooperative with a business focused on day-to-day banking, investments and personal and business lending;
7. there is a membership requirement for customers of the Filer; each member (Member) is issued Class A Equity Shares (Membership Shares) at the start of the customer relationship; there are voting rights attached to Membership Shares;
8. prior to its continuance to the federal jurisdiction, the Filer issued its Membership Shares and other securities pursuant to BC Instrument 45-531 *Exemptions for shares or deposits of a credit union* (BCI 45-531); since its continuance to the federal jurisdiction on November 1, 2018, the Filer has issued Membership Shares in reliance on the prospectus exemption provided under a decision made by the principal regulator dated July 11, 2018;
9. the Legislation contains local exemptions from the prospectus requirement that are only available to credit unions organized and regulated under the legislation of that jurisdiction; some other jurisdictions of Canada have similar local exemptions from the prospectus requirement in their securities legislation; securities distributed under the local exemptions in the Legislation and the similar local exemptions in some other jurisdictions of Canada are not subject to resale restrictions under National Instrument 45-102 *Resale of Securities* (NI 45-102);
10. since the Filer has become a federal credit union, the exemptions available under BCI 45-531 are no longer available to the Filer;
11. the Filer is proposing to issue Class D Equity Shares to Members located in some or all of the Jurisdictions and Passport Jurisdictions in reliance upon the offering memorandum exemption;
12. if the Filer had been able to continue to issue its Class D Equity Shares under BCI 45-531, the Class D Equity Shares would not be subject to any resale restrictions under NI 45-102;
13. the Class D Equity Shares are designed to qualify as Common Equity Tier 1 capital under Office of the Superintendent of Financial Institutions (OSFI) Capital Adequacy Requirements; in accordance with the rules of the credit union and to qualify as Tier 1 Capital under the *Bank Act*, the Class D Equity Shares cannot be redeemed by the Filer or repaid outside of liquidation (setting aside discretionary repurchases or other means of effectively reducing capital in a discretionary manner that is allowable under relevant law and subject to the prior approval of the Superintendent of Financial Institutions);
14. the Class D Equity Shares will not be listed on an exchange or quotation system upon completion of the offering and the Filer does not intend to list such shares on an exchange or quotation system unless and until it becomes a reporting issuer;
15. in satisfaction of the requirements of the offering memorandum exemption and requirements under the *Prospectus (Federal Credit Unions) Regulations* made under the *Bank Act*, the Filer will prepare and deliver an offering memorandum before distributing Class D Equity Shares to Members;
16. in the absence of the Exemption Sought, the first trade of the Class D Equity Shares distributed under the offering memorandum exemption would be deemed to be a distribution pursuant to section 2.5 of NI 45-102 unless the conditions in subsection 2.5(2) are satisfied;
17. a disclosure document containing prospectus level disclosure (including audited annual financial statements with respect to the Filer) that is updated on an annual basis will be available to holders of Class D Equity Shares and to any Members who may be interested in acquiring previously issued Class D Equity Shares (the Annual Disclosure Document); and
18. the Filer has not yet publicly announced its intention to offer the Class D Equity Shares; premature disclosure of this intention may have an adverse effect on the Filer.

**Decision**

1. 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:

1. the Filer remains a federal credit union under the *Bank Act* that is regulated as a federal credit union by the Office of the Superintendent of Financial Institutions;
2. any certificate or other evidence of the Class D Equity Shares will contain a legend stating all applicable resale and transfer restrictions;
3. the Filer continues to make the Annual Disclosure Document available to holders of Class D Equity Shares and to any Members who may be interested in acquiring previously issued Class D Equity Shares; and
4. the first trade of any Class D Equity Shares to a person other than a Member is deemed to be a distribution, subject to section 2.5 of NI 45-102.

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

Gordon Johnson

Vice Chair

British Columbia Securities Commission