

Headnote

Multilateral Instrument 11-102 *Passport System* and National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* – National Instrument 62-104 *Take-Over Bids and Issuer Bids* – the target is the subject of a bid by the offeror; some of the target’s board members, which included members of the special committee, resigned shortly before the date on which the directors’ circular was required to be filed; the newly constituted board and special committee require sufficient time to prepare the directors’ circular so that the target’s shareholders can have appropriate information to make an informed decision about the bid; the target’s shareholders will still have sufficient time to consider the bid and the directors’ recommendation with respect to the bid

Applicable Legislative Provisions

National Instrument 62-104 *Take-Over Bids and Issuer Bids*, ss. 2.17 and 6.1

April 6, 2023

In the Matter of
the Securities Legislation of
British Columbia and Ontario
(the Jurisdictions)

and

In the Matter of
the Process for Exemptive Relief Application in Multiple Jurisdictions

and

In the Matter of
Canaccord Genuity Group Inc.
(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) exempting the Filer from the requirement in subsection 2.17(1) of National Instrument 62-104 *Take-Over Bids and Issuer Bids* (NI 62-104) to prepare and send a directors’ circular to every person to whom the Offer (as defined below) was required to be sent under section 2.8 of NI 62-104 (the Exemption Sought).

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 section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (MI 11-102) is intended to be relied upon in Alberta, Saskatchewan, Manitoba, Quebec, Nova Scotia, New Brunswick, 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 corporation governed by the laws of the Province of British Columbia; the Filer's head office is in Vancouver, British Columbia and its principal place of business is in Toronto, Ontario;
 2. through its principal subsidiaries, the Filer is a full-service financial services firm, with operations in two principal segments of the securities industry: wealth management and capital markets; it has wealth management offices located in Canada, the UK, Guernsey, Jersey, the Isle of Man and Australia;
 3. the authorized capital of the Filer consists of an unlimited number of common shares (the Shares), without nominal or par value, and two classes of preferred shares, each unlimited in number and issuable in series; as at March 14, 2022, the Filer has 99,545,548 Shares, 4,540,000 Series A preferred shares and 4,000,000 Series C preferred shares issued and outstanding; the Shares, Series A preferred shares and Series C preferred shares are each listed on the Toronto Stock Exchange under the symbols "CF", "CF.PR.A" and "CF.PR.C", respectively;
 4. the Filer is a reporting issuer in each of the jurisdictions in Canada and is not in default of securities legislation in any such jurisdiction, other than as it relates to the sending of the directors' circular;
 5. in early August 2022, the board of directors of the Filer (the Board) received a confidential, non-binding proposal from the Management Group (as defined below) regarding the potential acquisition of all of the Shares not already owned by the Management Group;

6. on August 9, 2022, the Board established a special committee (the Prior Special Committee) of independent directors with a mandate to, among other things, assess the proposed offer by the Management Group and alternatives available to the Filer; the Prior Special Committee was comprised of Gillian Denham, Dipesh Shah, Charles Bralver and Sally Tennant; the Prior Special Committee retained Davies Ward Phillips & Vineberg LLP as independent legal counsel and RBC Dominion Securities Inc. as independent financial advisor;
7. subsequently, as part of its mandate, the Prior Special Committee engaged in discussions and negotiations with the Management Group regarding the possibility of a Board-approved transaction;
8. on January 9, 2023, certain of the Filer's management, being Daniel Daviau, David Kassie, Stuart Raftus, Marcus Freeman, Jeff Barlow, Mark Whaling, Don MacFayden, David Esfandi, Patrick Burke, Jason Melbourne, Andy Viles, Nick Russell, Jennifer Pardi, Adrian Pelosi, Fera Jeraj and the additional senior employees listed on the certificate of the Management Group appended to the Take-Over Bid Circular (as defined below) (collectively, the Management Group) issued a press release announcing their intention to make an unsolicited bid for all of the Shares not already owned by the Management Group or any of their affiliates or joint actors;
9. following the Management Group's announcement, the Prior Special Committee and the Management Group continued to engage in discussions and negotiations; the Prior Special Committee retained Barclays Capital Canada Inc. as independent financial advisor for the purposes of exploring and assessing possible alternative transactions that might be available to the Filer;
10. on February 27, 2023, the Management Group, through 1373113 B.C. Ltd. (the Offeror, a corporation controlled by Daniel Daviau), formally commenced an unsolicited bid for all of the Shares not already owned by the Management Group or any of their affiliates or joint actors (other than Non-Rollover Shares, as defined in the Offer) for \$11.25 per Share in cash (the Offer) by advertisement and filed a take-over bid circular dated February 27, 2023 (the Take-Over Bid Circular);
11. the Offer constitutes an insider bid within the meaning of Multilateral Instrument 61-101 *Protection of Minority Security Holders in Special Transactions* (MI 61-101);
12. on March 7, 2023, SKKY Capital Corporation Limited (SKKY Capital) sent a requisition for a general meeting to the Filer to be held no later than May 10, 2023 for the principal purpose of reconstituting the Board, particularly to remove each of the members of the Prior Special Committee and elect two new directors nominated by SKKY Capital; SKKY Capital owns approximately 8.8% of the Filer's issued and outstanding Shares and has entered into an irrevocable (hard) lock-up agreement dated July 31, 2022, as amended, with the Offeror in support of the Offer;
13. the Filer issued a press release on March 13, 2023 disclosing that, over the course of the weekend of March 11 and 12, 2023, all four members of the Prior Special Committee and one

additional director, Francesca Shaw, resigned as directors of the Filer; at a meeting of the Board held on March 12, 2023, a new director, Terrence Lyons, was appointed to the Board and the special committee was reconstituted (as reconstituted, the Special Committee) with all new members, being existing director Michael Auerbach and newly appointed director Terrence Lyons; on March 13, 2023, the Special Committee retained Norton Rose Fulbright Canada LLP as new independent counsel;

14. on March 20, 2023, the Filer issued a press release disclosing the appointment of Amy Freedman and Rod Phillips to the Board and to the Special Committee;
15. on March 22, 2023, the Filer issued a press release disclosing that the Special Committee has retained Greenhill & Co. Canada Ltd. as new independent financial advisor, to succeed Barclays Capital Canada Inc. who had tendered its resignation effective as of March 24, 2023;
16. under subsection 2.17(1) of NI 62-104, if a take-over bid has been made, the board of directors of the offeree issuer must prepare and send, not later than 15 days after the date of the bid, a directors' circular to every person to whom the bid was required to be sent under section 2.8 of NI 62-104;
17. in light of the timing of the changes to the composition of the Board and the Special Committee and the engagement of new independent legal counsel and new independent financial advisors by the Special Committee, the Board was not in a position to send a directors' circular that would have been compliant with the disclosure required by Form 62-104F3 *Directors' Circular* (Form 62-104F3) within the timeframe prescribed by NI 62-104; and
18. the Board will be in a position to send a directors' circular in the form of, and containing the information required by, Form 62-104F3 and subsection 2.2(2) of MI 61-101 (the Directors' Circular) by April 11, 2023 at the latest.

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 will file and send the Directors' Circular on or before April 11, 2023 to every person to whom the Offer was required to be sent;
- (b) the Filer will promptly, and no later than one business day after the date of this decision, issue and file a news release disclosing that it has obtained the Exemption Sought and that it will file and send the Directors' Circular on or before April 11, 2023;

- (c) the Filer will promptly, and no later than one business day after the date of this decision, notify the Offeror that it has obtained the Exemption Sought; and
- (d) no “deposit period news release” (as defined in NI 62-104) may be issued until at least 20 days following the sending of the Directors’ Circular.

Gordon Johnson
Vice Chair
British Columbia Securities Commission