

Headnote

Multilateral Instrument 11-102 *Passport System* and National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* – relief granted from the requirement to include prospectus-level disclosure, including *pro forma* financial statements, in an information circular in connection with the proposed acquisition of shares by way of plan of arrangement – the public shareholders will be receiving cash – prospectus-level disclosure of the acquiring entity will not be relevant to the shareholders receiving the information circular in making a reasoned and informed decision regarding the transaction.

Applicable Legislative Provisions

National Instrument 51-102 *Continuous Disclosure Obligations*

Citation: Re Shaw Communications Inc., 2021 ABASC 44

Date: 20210412

In the Matter of
the Securities Legislation of
Alberta and Ontario (the **Jurisdictions**)

and

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

and

In the Matter of
Shaw Communications Inc. (the **Filer**)

Decision

Background

The securities regulatory authority or regulator in each of 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**) exempting the Filer from the requirement in Item 14.2 of Form 51-102F5 *Information Circular* (**Form 51-102F5**) to include prospectus-level disclosure in respect of Rogers Communications Inc. (**Rogers**) in the information circular (the **Circular**) to be issued by the Filer (the **Exemption Sought**) in connection with the proposed acquisition of all of the issued and outstanding Class A Participating Shares (the **Class A Shares**) and Class B Non-Voting Participating Shares (the **Class B Shares**) of the Filer by Rogers pursuant to a plan of arrangement (the **Plan of Arrangement**) under Section 193 of the *Business Corporations Act* (Alberta) (the **Transaction**).

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

- (a) the Alberta 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 on in British Columbia, Saskatchewan, Manitoba, Québec, New Brunswick, Prince Edward Island, Nova Scotia and Newfoundland and Labrador; and
- (c) the decision is the decision of the principal regulator and evidence of the decision of the securities regulatory authority or regulator in Ontario.

Interpretation

Defined terms contained in National Instrument 14-101 *Definitions* and MI 11-102 have the same meaning in this decision unless otherwise defined in this decision.

Representations

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

1. The Filer is a corporation incorporated under the *Business Corporations Act* (Alberta). The Filer's principal head office is located in Calgary, Alberta.
2. As of the date hereof, the Filer's issued and outstanding share capital consists of: (a) 22,372,064 Class A Shares; (b) 476,326,106 Class B Shares; and (c) two series of Class 2 Preferred Shares, comprised of 10,012,393 Series A preferred shares (the **Series A Shares**) and 1,987,607 Series B preferred shares (the **Series B Shares**).
3. The Filer's Class B Shares are listed for trading on the Toronto Stock Exchange (the **TSX**) and the New York Stock Exchange (the **NYSE**). The Filer's Class A Shares are listed for trading on the TSX Venture Exchange. The Filer's Series A Shares and Series B Shares are listed for trading on the TSX. Other than the foregoing listings, no securities of the Filer are listed or posted for trading on any exchange or market in Canada or outside of Canada.
4. The Filer is a reporting issuer in each province of Canada and a "foreign private issuer" for purposes of United States securities laws.
5. Rogers is a corporation existing under the *Business Corporations Act* (British Columbia) and is a reporting issuer in each province of Canada. Rogers' principal head office is located in Toronto, Ontario.
6. Rogers' Class B Non-Voting Shares (the **Rogers Shares**) are listed for trading on the TSX and on the NYSE. Rogers' Class A Voting Shares are listed for trading on the TSX.
7. Pursuant to the Plan of Arrangement, among other things:
 - (a) the 17,662,400 Class A Shares and 33,057,068 Class B Shares of which the Shaw Family Living Trust (the **Shaw Family Trust**) is the registered or beneficial owner or over which it exercises control or direction, and up to 120,200 Class A Shares and 5,826,409 Class B Shares held by other Shaw Family Shareholders (as defined below), either directly or through a Qualifying Holdco (as defined in the Plan of Arrangement), shall each be exchanged for \$16.20 in cash and 0.417206775 of a Rogers Share; and

- (b) each Class A Share and Class B Share held by any shareholder not described in paragraph (a) above (the **Public Shareholders**) shall be exchanged for \$40.50 in cash.
- 8. The exchange ratio for the Rogers Shares set out in paragraph 7(a) was determined using the volume-weighted average trading price for the Rogers Shares for the 10 trading days ending March 12, 2021, the last trading day prior to the announcement of the Transaction.
- 9. Public Shareholders will only receive cash, and not Rogers Shares, pursuant to the Plan of Arrangement.
- 10. The Plan of Arrangement constitutes a “business combination” for the purposes of Multilateral Instrument 61-101 *Protection of Minority Security Holders in Special Transactions* (**MI 61-101**). The Filer is required to comply with the applicable obligations set out in MI 61-101, including the minority approval requirements. Accordingly, the arrangement agreement between the Filer and Rogers provides that the Transaction must be approved by the following votes cast at the meeting to approve the Transaction (present in person or by proxy):
 - (a) two-thirds of the votes cast by holders of Class A Shares, voting separately as a class;
 - (b) two-thirds of the votes cast by holders of Class B Shares, voting separately as a class;
 - (c) a majority of the votes cast by holders of Class A Shares, voting separately as a class, excluding votes attached to the Class A Shares held by Persons described in items (a) through (d) of section 8.1(2) of MI 61-101 (including the Shaw Family Shareholders);
 - (d) a majority of the votes cast by holders of Class B Shares, voting separately as a class, excluding votes attached to the Class B Shares held by Persons described in items (a) through (d) of section 8.1(2) of MI 61-101 (including the Shaw Family Shareholders); and
 - (e) such other approval of securityholders of the Filer as may be required by the Court of Queen’s Bench of Alberta.
- 11. The “Shaw Family Group” is defined under the Plan of Arrangement to mean: (a) the estate of JR Shaw, his spouse and issue (whether natural born or legally adopted) and spouses thereof, the estates of any such individuals, and corporations owned or controlled by any one or more of the foregoing or by trusts of which any one or more of the foregoing are the principal beneficiaries (including the Shaw Family Trust); (b) the estate of James Robert Shaw; and (c) each of the charitable foundations listed in Schedule “B” to the Controlling Shareholder Agreement (as defined below).

12. A “Shaw Family Shareholder” is defined under the Plan of Arrangement to mean the Shaw Family Trust and any other member of the Shaw Family Group that is the registered holder of Class A Shares, Class B Shares or Qualifying Holdco Shares (as defined in the Plan of Arrangement) at the Effective Time (as defined in the Plan of Arrangement) and that has agreed, in a form reasonably acceptable to Rogers, to be a Shaw Family Shareholder.
13. The Shaw Family Trust beneficially owns, directly or indirectly, or exercises control or direction over, 17,662,400 Class A Shares and 33,057,068 Class B Shares. Approximately 120,200 additional Class A Shares and 5,826,409 additional Class B Shares are held by other members of the Shaw Family Group.
14. The Shaw Family Trust and each of the directors of the private corporation that acts as its trustee is an “accredited investor” (as such term is defined in Section 73.3(1) of the *Securities Act* (Ontario) and National Instrument 45-106 *Prospectus Exemptions*, as applicable). The Shaw Family Trust is operated under the supervision of such board of directors by a sophisticated family office that manages substantial investment assets on behalf of members of the Shaw Family Group. The Shaw Family Trust engaged its own professional advisors, including legal and tax advisors, in connection with the Transaction. The Shaw Family Trust negotiated directly with Rogers regarding their respective rights and obligations in connection with the Transaction, as set out in the Controlling Shareholder Agreement.
15. The Shaw Family Trust entered into the controlling shareholder voting support agreement with Rogers (the **Controlling Shareholder Agreement**) which provides, among other things, for certain rights and obligations of the parties thereto in connection with the Transaction, including an irrevocable election by the Shaw Family Trust to receive cash and Rogers Shares under the Plan of Arrangement and an obligation on the part of the Shaw Family Trust to vote in favour of the Transaction, until June 13, 2022, or until the Controlling Shareholder Agreement is terminated earlier in accordance with its terms. The Controlling Shareholder Agreement provides for certain representations and warranties of Rogers in favour of the Shaw Family Trust and any joinder parties. In addition, in connection with the Transaction, the Shaw Family Trust conducted due diligence in respect of Rogers.
16. The Shaw Family Trust has already made its investment decision in respect of the Transaction by negotiating and entering into the Controlling Shareholder Agreement. Furthermore, it has executed a certificate addressed to the Filer and Rogers pursuant to which it acknowledged and certified the following: (a) it is an “accredited investor”; (b) it does not need, nor does it wish to receive, prospectus-level disclosure in respect of Rogers (including *pro forma* financial statements of Rogers) in the Circular; and (c) it consents to the Filer making the application for the Exemption Sought (an **Eligibility Certificate**).

17. Any additional member of the Shaw Family Group (other than the Shaw Family Trust) that holds Class A Shares or Class B Shares and wishes to become a “Shaw Family Shareholder” under the Plan of Arrangement, and by doing so receive Rogers Shares as partial consideration under the Plan of Arrangement, may elect to do so by: (a) signing a joinder to the Controlling Shareholder Agreement, in a form reasonably acceptable to Rogers; and (b) delivering an Eligibility Certificate to the Filer and Rogers.
18. Subject to the satisfaction of certain conditions, including the receipt by the Filer of the Exemption Sought, it is anticipated that the Circular will be delivered for printing by April 12, 2021.
19. The Filer is not in default of any of its obligations under the securities legislation of any jurisdiction in Canada or the United States.
20. The Circular will, other than with respect to the prospectus-level disclosure in respect of Rogers required to be disclosed in accordance with Item 14.2 of Form 51-102F5, comply with the disclosure requirements of Form 51-102F5 and will disclose that the Filer was granted the Exemption Sought.

Decision

Each of the Decision Makers is satisfied that the decision meets the tests 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.

“original signed by”

Timothy Robson
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