

Headnote

National Policy 11-206 *Process for Cease to be a Reporting Issuer Applications* – Application for an order that the issuer is not a reporting issuer under applicable securities laws – issuer has outstanding warrants exercisable into securities of the acquirer – warrant holders no longer require public disclosure in respect of the issuer – relief granted.

Applicable Legislative Provisions

Securities Act, R.S.A., 2000, c.S-4, section 153

Citation: Re Inner Spirit Holdings Ltd., 2021 ABASC 160

Date: 20211007

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

and

In the Matter of
the Process for Cease to be a Reporting Issuer Applications

and

In the Matter of
Inner Spirit Holdings Ltd. (the **Filer**)

Order

Background

The securities regulatory authority or regulator in each of the Jurisdictions (each a **Decision Maker**) has received an application from the Filer for an order under the securities legislation of the Jurisdictions (the **Legislation**) that the Filer has ceased to be a reporting issuer in all jurisdictions of Canada in which it is a reporting issuer (the **Order Sought**).

Under the Process for Cease to be a Reporting Issuer Applications (for a dual application):

- (a) the Alberta Securities Commission is the principal regulator for this application;
- (b) the Filer has provided notice that subsection 4C.5(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in the Provinces of British Columbia, Saskatchewan, Manitoba, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland and Labrador; and
- (c) this order is the order of the principal regulator and evidences the decision of the securities regulatory authority or regulator in Ontario.

Interpretation

Terms defined in National Instrument 14-101 *Definitions* and MI 11-102 have the same meaning if used in this order, unless otherwise defined.

Representations

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

1. The Filer is incorporated under the *Business Corporations Act* (Alberta) with its head office located in Calgary, Alberta.
2. Pursuant to a plan of arrangement under section 193 of the *Business Corporations Act* (Alberta) approved by the Filer's shareholders on July 14, 2021, and completed on July 20, 2021 (the **Arrangement**), all of the issued and outstanding common shares of the Filer (the **Filer Shares**) were acquired by Sundial Growers Inc. (**Sundial**) for consideration per Filer Share consisting of (i) \$0.30 in cash and (ii) 0.0835 of a common share of Sundial (the **Arrangement Consideration**) and, as a result of the Arrangement, the Filer became a wholly owned subsidiary of Sundial.
3. Sundial is a corporation existing under the *Business Corporations Act* (Alberta). The authorized share capital of Sundial consists of an unlimited number of common shares (the **Sundial Shares**). The Sundial Shares are listed on the NASDAQ under the symbol "SNDL". Sundial is a reporting issuer in British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, Northwest Territories, Yukon and Nunavut and is not in default of securities legislation in any of such jurisdictions.
4. Pursuant to the Arrangement, the common share purchase warrants (other than broker warrants) (the **Inner Spirit Indenture Warrants**) of the Filer issued under the warrant indenture dated March 31, 2021, as supplemented by a supplemental indenture dated September 2, 2021 (the **Warrant Indenture**), or issued under warrant certificates (collectively with the Inner Spirit Indenture Warrants, the **Inner Spirit Non-Broker Warrants**) will remain outstanding in accordance with the terms set out in the respective warrant certificates or the Warrant Indenture and, following the Arrangement, will entitle the holder thereof to receive, upon the exercise or conversion of such Inner Spirit Non-Broker Warrant, the Arrangement Consideration, in lieu of each Filer Share to which such holder was theretofore entitled. Any fractional Sundial Shares that Sundial may be required to issue to a holder of Inner Spirit Non-Broker Warrants upon exercise of such warrant shall be rounded down to the nearest whole number and such holder will be entitled to receive a cash payment (rounded up to the nearest whole cent) equal to the product of (x) \$1.0827, and (y) the fraction of a Sundial Share otherwise issuable.
5. All outstanding broker warrants of the Filer (the **Inner Spirit Broker Warrants**) will remain outstanding and entitle the holder thereof to receive, upon the exercise or conversion of such Inner Spirit Broker Warrant, in accordance with its terms (a) in lieu of each Filer Share to which such holder was theretofore entitled upon such exercise or conversion but for the same aggregate consideration payable therefor, the Arrangement

Consideration, and (b) one-half of one Inner Spirit Indenture Warrant. Any fractional Sundial Shares that Sundial may be required to issue to a holder of Inner Spirit Broker Warrants upon exercise of such warrant shall be rounded down to the nearest whole number and such holder will be entitled to receive a cash payment (rounded up to the nearest whole cent) equal to the product of (x) \$1.0827, and (y) the fraction of a Sundial Share otherwise issuable.

6. To the best of the Filer's knowledge and belief and based on the distribution certificate provided by the co-lead underwriter of the offering pursuant to which the Inner Spirit Indenture Warrants were distributed, there are 63 holders of Inner Spirit Indenture Warrants, 15 of which are in British Columbia (139,250 Inner Spirit Indenture Warrants representing 0.68% of the total aggregate Inner Spirit Indenture Warrants), 10 of which are in Alberta (1,011,000 Inner Spirit Indenture Warrants representing 4.92% of the total aggregate Inner Spirit Indenture Warrants), 30 of which are in Ontario (7,972,300 Inner Spirit Indenture Warrants representing 38.82% of the total aggregate Inner Spirit Indenture Warrants), one of which is in Nova Scotia (67,500 Inner Spirit Indenture Warrants representing 0.33% of the total aggregate Inner Spirit Indenture Warrants), one of which is in the United States of America (2,750,000 Inner Spirit Indenture Warrants representing 13.39% of the total aggregate Inner Spirit Indenture Warrants) and six of which are in other foreign jurisdictions (8,598,950 Inner Spirit Indenture Warrants representing 41.87% of the total aggregate Inner Spirit Indenture Warrants).
7. To the best of the Filer's knowledge and belief, there is one holder of Inner Spirit Non-Broker Warrants issued pursuant to a warrant certificate, which is in Alberta (712,553 Inner Spirit Non-Broker Warrants).
8. To the best of the Filer's knowledge and belief, there are three holders of Inner Spirit Broker Warrants, of which one is in Alberta (287,546 Inner Spirit Broker Warrants representing 10% of the total aggregate Inner Spirit Broker Warrants) and two are in Ontario (2,587,914 Inner Spirit Broker Warrants representing 90% of the total aggregate Inner Spirit Broker Warrants).
9. Following the effective time of the Arrangement, Sundial is obligated to meet the Filer's obligations upon exercise or conversion of the Inner Spirit Non-Broker Warrants and the Inner Spirit Broker Warrants and, in connection with the Arrangement, Sundial Shares were authorized for issuance upon the exercise of the Inner Spirit Non-Broker Warrants and the Inner Spirit Broker Warrants.
10. The outstanding securities of the Filer, including debt securities, other than the Inner Spirit Non-Broker Warrants and the Inner Spirit Broker Warrants, are beneficially owned, directly or indirectly, by fewer than 15 securityholders in each of the jurisdictions of Canada and fewer than 51 securityholders in total worldwide.
11. The Filer does not have any securities outstanding other than the Filer Shares, the Inner Spirit Non-Broker Warrants and the Inner Spirit Broker Warrants.

12. The Filer distributed the meeting materials (which included the information circular, notice of meeting, notice of application, and the interim order) to the holders of the Filer Shares, in connection with the special meeting of holders of Filer Shares that took place on July 14, 2021 to consider the Arrangement, in accordance with the interim order of the Court of Queen's Bench of Alberta dated June 10, 2021.
13. The Filer Shares, the Filer's previously outstanding 12% senior secured convertible debentures due June 30, 2022 and the Inner Spirit Non-Broker Warrants were delisted from the Canadian Securities Exchange (CSE) on July 20, 2021 and the Filer Shares were withdrawn from the OTCQB Venture Market before market open on July 22, 2021. The Inner Spirit Broker Warrants were at no time listed on any securities exchange.
14. The Filer is not an OTC reporting issuer under Multilateral Instrument 51-105 *Issuers Quoted in the U.S. Over-the-Counter Markets*.
15. No securities of the Filer, including debt securities, are traded in Canada or another country on a marketplace as defined in National Instrument 21-101 *Marketplace Operation* or any other facility for bringing together buyers and sellers of securities where trading data is publicly reported.
16. The Filer is applying for an order that the Filer has ceased to be a reporting issuer in all of the jurisdictions of Canada in which it is a reporting issuer.
17. The Filer is not required to remain a reporting issuer pursuant to the terms of the Warrant Indenture, the Inner Spirit Broker Warrants or the warrant certificates representing Inner Spirit Non-Broker Warrants. The terms of such instruments contain provisions addressing, amongst others, a corporate merger, amalgamation, arrangement, or business combination, including the Arrangement, and provide for the payment of the Arrangement Consideration in lieu of the Filer Shares subsequent to such an event. As a result, no consents or approvals were required from the holders of the Inner Spirit Non-Broker Warrants and the Inner Spirit Broker Warrants.
18. Upon granting of the Order Sought, the Filer will not be a reporting issuer or the equivalent in any jurisdiction of Canada.
19. The Filer has no intention to seek financing by way of any offering of its securities.
20. The Filer is not in default of securities legislation in any jurisdiction in which it is a reporting issuer, other than the obligation to file by August 30, 2021 its interim financial statements, management's discussion and analysis and certification of interim filings for the interim period ended June 30, 2021.
21. The Filer is not eligible to surrender its status as a reporting issuer pursuant to the simplified procedure under subsection 19(d) in National Policy 11-206 *Process for Cease to be a Reporting Issuer Applications* because the Filer is in default of securities legislation as described above and the Inner Spirit Non-Broker Warrants and the Inner Spirit Broker

Warrants are not beneficially owned, directly or indirectly, by fewer than 15 securityholders in each of the jurisdictions of Canada and fewer than 51 securityholders in total worldwide.

Decision

Each of the Decision Makers is satisfied that the order meets the test set out in the Legislation for the Decision Maker to make the order.

The decision of the Decision Makers under the Legislation is that the Order Sought is granted.

“original signed by” _____

Timothy Robson

Manager, Legal

Corporate Finance

Alberta Securities Commission