

June 10, 2009

**IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ONTARIO, ALBERTA, BRITISH COLUMBIA, MANITOBA, NEW BRUNSWICK,
NEWFOUNDLAND AND LABRADOR, NOVA SCOTIA, QUEBEC, PRINCE EDWARD
ISLAND AND SASKATCHEWAN,
(collectively, the “Jurisdictions”)**

AND

**IN THE MATTER OF
THE PROCESS FOR EXEMPTIVE RELIEF APPLICATIONS
IN MULTIPLE JURISDICTIONS**

AND

**IN THE MATTER OF
AMERICAN CAPITAL, LTD.
(the “Filer”)**

DECISION DOCUMENT

Background

The securities regulatory authority or regulator in each of the Jurisdictions (the “**Decision Maker**”) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the “**Legislation**”) that the Filer is not a reporting issuer under the Legislation, or a decision to revoke the Filer’s status as a reporting issuer, as the case may be, in each of the Jurisdictions (the “**Exemptive Relief Sought**”).

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

- (a) the Ontario Securities Commission (the “**OSC**”) is the principal regulator for this application, and
- (b) the decision is the decision of the principal regulator and evidences the decision of each other Decision Maker.

Interpretation

Terms defined in National Instrument 14-101 - *Definitions* have the same meaning if used in this decision, unless otherwise defined.

Representations

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

- (a) The Filer is a publicly-traded private equity firm and global asset manager, with US\$13,000,000,000 of assets under management as of December 31, 2008.
- (b) The Filer was incorporated in 1986 under the laws of Delaware, U.S.A. Its executive offices are located in Maryland, U.S.A. In addition to its executive offices, the Filer, or its portfolio company American Capital, LLC, maintain offices in New York, Los Angeles, Chicago, Dallas, Boston, London, Paris, and Frankfurt.
- (c) The Filer has a very limited connection to Canada, having no operations, employees, or offices in Canada.
- (d) The Filer's common shares (the "**Shares**") are listed and posted for trading on the NASDAQ Global Select Market ("**NASDAQ**") under the ticker symbol "**ACAS**". The Filer is not in default of any filing requirements of NASDAQ, or applicable requirements of United States federal or state securities regulatory authorities.
- (e) The Filer is a reporting issuer in each of the Jurisdictions and is not in default of the securities legislation in any Jurisdiction.
- (f) The Filer became a reporting issuer in each of the Jurisdictions upon filing a MJDS final prospectus and obtaining a final receipt in December 2006 (the "**2006 Prospectus**"), and has since filed MJDS final prospectuses and obtained final receipts therefor in June 2007 (the "**2007 Prospectus**") and June 2008 (the "**2008 Prospectus**") and, together with the 2006 Prospectus and the 2007 Prospectus, the "**Canadian Prospectuses**"), respectively, and other continuous disclosure documents in the Jurisdictions.
- (g) No securities have been issued by the Filer in any of the Jurisdictions, or any other jurisdictions in Canada, under the Canadian Prospectuses.
- (h) Other than the Canadian Prospectuses, the Filer has never conducted a prospectus offering of its securities in any jurisdiction in Canada, and has no present intention of seeking public or private financing in any jurisdiction in Canada in the future, and has not taken any other steps that indicate there is a market for its securities in Canada.
- (i) The Filer has issued Shares in Canada pursuant to available prospectus exemptions under National Instrument 45-106 – Prospectus and Registration Exemptions (the "**Canadian Private Placements**"). All purchasers of Shares pursuant to the Canadian Private Placements were provided with disclosure in the Canadian offering memoranda which stated that Shares purchased by Canadian investors on a private placement basis would not bear the legend required under

National Instrument 45-102 – Resale of Securities as a condition to the Shares becoming freely tradeable in Canada, and that any resale of Shares purchased pursuant to the Canadian Private Placements must therefore be made in accordance with an exemption from the registration and prospectus requirements of applicable Canadian securities legislation.

Accordingly, Canadian-resident purchasers under the Canadian Private Placements had no reasonable expectation of an ability to resell Shares except outside of Canada or under an exemption from the prospectus requirements.

(j) The authorized share capital of the Filer consists of 5,000,000 preferred shares and 1,000,000,000 Shares. As of March 24, 2009, the Filer had issued and outstanding 214,063,000 Shares and nil preferred shares, inclusive of Shares and preferred shares held in treasury.

(k) Canadian securityholders: (a) do not directly or indirectly beneficially own more than 2% of each class or series of outstanding securities of the Filer worldwide, and (b) do not directly or indirectly comprise more than 2% of the total number of securityholders of the Filer worldwide.

The due diligence conducted by the Filer in support of the foregoing representation is summarized below.

(i) The Filer caused its transfer agent, Computershare Trust Company, NA (“**Computershare**”), to conduct an investigation to confirm the residency of the holders of its outstanding securities. As of March 25, 2009:

(A) there are seven (7) registered holders of the Filer’s Shares who are resident in Canada, being approximately 0.72% of the total number of the Filer’s registered securityholders worldwide; and

(B) the number of the Filer’s Shares registered in the name of such registered shareholders is approximately 2,139, which represents less than 0.001% of the Filer’s issued and outstanding Shares;

(ii) In connection with its annual meeting of shareholders, the Filer caused Broadridge Financial Services, Inc. (“**Broadridge**”) to conduct an intermediary search, being a search for Shares which are beneficially owned other than by the registered holder, using a record date of March 16, 2009. Broadridge’s search identified 25 Canadian intermediaries, with a total of 1,820 accounts, holding 1,563,480 Shares in the aggregate;

(iii) Aggregating the data set forth in paragraphs (i) and (ii) above, and assuming that one intermediary account generally represents one beneficial shareholder, the Filer concluded that:

(A) Canadian securityholders number approximately 1,827, being approximately 0.78% of the total number of securityholders of the Filer worldwide; and

(B) the number of the Filer's Shares held by Canadian securityholders is approximately 1,565,619, which figure represents approximately 0.73% of the Filer's issued and outstanding Shares.

(iv) In addition, the Filer reviewed NASDAQ's on-line service (at <http://www.nasdaq.net/publicpages/NasdaqHomePage.aspx>) which provides issuers with, among other information, a breakdown of its securityholders by country. This online service is based on data provided by FactSet Research Systems, Inc. ("**FactSet**"), a provider of global financial and economic information and a NYSE-listed company under the ticker symbol "FDS". FactSet sources its data from U.S. Securities and Exchange Commission filings by institutional investors, which are filed on a quarterly basis. As of March 25, 2009, NASDAQ's on-line service reported the Canadian ownership of the Filer's Shares as representing 0.57% of the Filer's issued and outstanding Shares.

(l) The Filer's Shares are not currently, nor have they ever been, listed, traded or quoted for trading on any "marketplace" in Canada (as defined in National Instrument 21-101 – *Marketplace Operation*), and the Filer does not intend to have its securities listed, traded or quoted on such a marketplace in Canada.

(m) The Filer is governed by, and in compliance with, corporate governance and disclosure standards imposed by the United States Securities and Exchange Commission (the "**SEC**"), the *United States Securities Act of 1933*, the *United States Securities Exchange Act of 1934*, the *United States Sarbanes-Oxley Act of 2002*, and the rule-making authority of NASDAQ, each as amended (collectively, the "**U.S. Rules**").

(n) The Filer files disclosure materials with the securities regulatory authorities in the Jurisdictions electronically through SEDAR, having elected pursuant to section 2.1(2) of National Instrument 13-101 – *System for Electronic Document Analysis and Retrieval (SEDAR)* to become an electronic filer. Continuous disclosure materials mandated by the U.S. Rules are available to the Filer's securityholders through the SEC's website at www.sec.gov.

(o) The Filer has delivered all disclosure material required by applicable U.S. Rules to its Canadian securityholders as an SEC foreign issuer in accordance with National Instrument 71-102 - *Continuous Disclosure and Other Exemptions relating to Foreign Issuers*.

(p) The Filer has provided an undertaking to continue to send or provide to its Canadian securityholders all disclosure material that it is required to send or provide to U.S. resident holders of the Filer's securities of the same class or series, in the same manner and at the same time that such material is required to be sent or provided to U.S. resident securityholders under applicable U.S. Rules.

(q) On March 27, 2009, the Filer issued a press release announcing that it has applied for a decision that it is not a reporting issuer under the Legislation, and that, as a consequence of such decision, if rendered, the Filer will no longer be a reporting issuer in any jurisdiction in Canada.

Decision

Each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Maker with the jurisdiction to make the decision has been met, and orders that the Exemptive Relief Sought is granted.

"Suresh Thakrar"

"Wendell S. Wigle"