

Headnote

Application for relief from the registration and prospectus requirements – issuer in the business of conducting a cooperative buying group that functions similar to a franchise - Franchisees required to purchase one common share for a nominal amount upon entering into a franchise agreement - Franchisees not investors in a conventional sense and share issuance not a financing - relief granted subject to conditions.

Statutes Cited

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 25, 53, 74(1)

April 13, 2005

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

AND

**IN THE MATTER OF
THE MUTUAL RELIANCE SYSTEM FOR
EXEMPTIVE RELIEF APPLICATIONS**

AND

**IN THE MATTER OF
FA COOPERATIVE, INC. (the Filer)**

MRRS DECISION DOCUMENT

Background

The local securities regulatory authority or regulator (the **Decision Maker**) in each of the Jurisdictions has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the **Legislation**) that the proposed issuance of common shares of the Filer (**Common Shares**) to a Canadian Franchisee (as defined below) upon the Canadian Franchisee entering into a Franchise Agreement and Stock Subscription Agreement (each as defined below) be exempt from the dealer registration requirement and prospectus requirement (the **Requested Relief**).

Under the Mutual Reliance Review System for Exemptive Relief Applications

(a) the Ontario Securities Commission is the principal regulator for this application, and

(b) this MRRS decision document evidences the decision of each Decision Maker.

Interpretation

Defined terms contained in National Instrument 14-101 Definitions have the same meaning in this decision unless they are defined in this decision.

Representations

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

1. The Filer is a cooperative association incorporated under the General Corporation Law of Delaware on November 1, 2000.
2. The Filer is not, and has no current intention of becoming, a reporting issuer in any Jurisdiction.
3. The authorized capital of the Filer consists of 60,000 Common Shares, divided into two classes: (a) 30,000 Class A Common Shares with a par value of U.S.\$1.00 each; and (b) 30,000 Class B Common Shares with a par value of U.S.\$1.00 each. There are no differences, limitations or restrictions between Class A Common Shares and Class B Common Shares and the holders of Class A Common Shares and Class B Common Shares have the same rights, powers and preferences.
4. There is no market for the Common Shares and the Common Shares are not traded on any marketplace as defined in National Instrument 21-101 Marketplace Operation.
5. The Filer commenced its operations in the United States of America on approximately November 1, 2000.
6. The Filer's business is conducting a cooperative buying group that functions in a manner similar to the concept of a franchise in Canada. The Filer operates in the retail floor covering industry and enables independent floor covering stores to negotiate for the purchase of products together. In addition, membership in the buying group includes:
 - (a) the right to operate a retail floor covering store; and
 - (b) a terminable non-exclusive license to use the trademarks of the Filer on or in connection with (i) the franchisee performing services related to the franchise, (ii) the franchisee's retail sale of products, and (iii) the franchisee's advertising of the above mentioned activities.

7. The Filer's by-laws provide that only a member of the Filer (who must be a franchisee) may hold Common Shares. Those members may in no way sell, encumber or otherwise transfer the Common Shares to any party other than the Filer itself upon the termination of the membership agreement or, with the approval of the Filer, another franchisee.

8. There are currently 362 Class A Common Shares issued and outstanding.

9. The outstanding Class A Common Shares are held by 362 persons or companies resident outside of Canada, each of which is a franchisee of the Filer. Each Class A Common Share was issued for U.S.\$1.00 per share.

10. The Filer has entered into a management agreement with Flooring America Management Enterprises, Inc. (**Flooring America**) whereby Flooring America manages the affairs of the Filer for the benefit of the shareholders of the Filer.

11. 2976820 Canada Inc. (**Flooring Canada**), the operating franchisor in Canada, is a corporation wholly owned by Flooring America.

12. By signing a franchise agreement (a **Franchise Agreement**), a franchisee in Canada (a Canadian Franchisee) will be entitled to become a member in the Filer's buying group.

13. Flooring Canada currently has a relationship with certain entities operating in the Canadian retail floor covering industry and anticipates that those entities will enter into Franchise Agreements with Flooring Canada.

14. In conjunction with the entering into of a Franchise Agreement, each Canadian Franchisee is required to execute a stock subscription agreement (a **Stock Subscription Agreement**) with the Filer in order to subscribe for a Common Share.

15. The Filer proposes to issue and allot to each Canadian Franchisee, one fully paid and non-assessable Class A Common Share in the capital stock of the Filer in consideration for which each Canadian Franchisee will pay to the Filer the sum of U.S.\$1.00.

16. It is expected that there will be approximately 65 Canadian Franchisees, in nine provinces, including: 30 Canadian Franchisees in Ontario, 4 Canadian Franchisees in Manitoba, 5 Canadian Franchisees in Saskatchewan, 9 Canadian Franchisees in Alberta, 4 Canadian Franchisees in Newfoundland and Labrador, 1 Canadian Franchisee in Prince Edward Island, 2 Canadian Franchisees in Nova Scotia, 3 Canadian Franchisees in New Brunswick and 7 Canadian Franchisees in British Columbia.

17. Each certificate representing a Common Share will bear a legend stating that the Common Share represented by the certificate and the right to transfer the Common Share is subject to restrictions on transfer contained in the Filer's by-laws and in the relevant Stock Subscription Agreement.

18. As a shareholder of the Filer, each Canadian Franchisee will be provided the audited financial statements of the Filer on an annual basis. As well, the Filer will hold an annual shareholders' meeting, at which time all shareholders of the Filer will be provided with a review of the operating results of the Filer and the opportunity to ask questions of management of the Filer.

19. Each Canadian Franchisee is obligated to pay to Flooring Canada, upon execution of the Franchise Agreement, a non-refundable initial franchise fee as specified in the Franchise Agreement. The initial franchise fee is deemed to be fully earned by Flooring Canada upon execution of the Franchise Agreement and is not refundable. The current range of the initial franchise fee and recommended display packages is from \$25,000 to \$60,000.

20. Immediately upon the termination for any reason whatsoever of the Franchise Agreement, the Canadian Franchisee must immediately endorse the certificate representing the Canadian Franchisee's Common Share in favour of the Filer and deliver the same to the Filer free and clear of all liens and encumbrances. In exchange for the certificate duly and properly endorsed to the Filer, the Filer is obliged to refund to the Canadian Franchisee the purchase price of U.S.\$1.00 paid. The only exception to this requirement to transfer the Common Share to the Filer occurs where, with the approval of the Filer, the Common Share is transferred to a new franchisee to whom the Canadian Franchisee is selling its franchise business.

21. No Canadian Franchisee is known to be, or is expected to be at the time it acquires a Common Share, an "accredited investor" as defined in Section 1.1 of OSC Rule 45-101 Exempt Distributions.

22. The Filer is not registered extra-provincially in Saskatchewan under Saskatchewan co-operative legislation.

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.

The decision of the Decision Makers under the Legislation is that the Requested Relief is granted provided that:

(a) before the issuance of a Common Share to a Canadian Franchisee as permitted by this decision, the Filer delivers to the Canadian Franchisee a copy of

- (i) the articles and by-laws of the Filer, and all amendments thereto;
- (ii) the most recent annual audited financial statements of the Filer;
- (iii) this decision; and

(iv) a statement to the effect that as a consequence of this decision, certain protections, rights and remedies provided by the Legislation, including statutory rights of rescission or damages, will not be available to the Canadian Franchisee and that certain restrictions are imposed on the subsequent disposition of the Common Share;

(b) all share certificates representing the Common Shares bear a legend stating that the right to transfer the Common Shares is subject to restrictions contained in the by-laws of the Filer and the relevant Stock Subscription Agreement;

(c) the exemptions contained in this decision cease to be effective if any one of the provisions of the articles or by-laws of the Filer or of any Franchise Agreement or Stock Subscription Agreement relevant to the exemptions granted herein are amended in any material respect without written notice to, and consent by, the Decision Makers;

(d) the Filer prepares and sends audited financial statements to each Canadian Franchisee on an annual basis; and

(e) the first trade in the Common Shares to a person or company other than the Filer upon the redemption of the Common Shares or to a Canadian Franchisee is deemed to be a distribution or primary distribution to the public.

"Wendell Wigle"
Commissioner
Ontario Securities Commission

"Paul Bates"
Commissioner
Ontario Securities Commission