



June 13, 2016

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

and

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

and

In the Matter of
Boyd Group Income Fund (the **Filer**)

Decision

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 (the **Exemption Sought**) under the securities legislation of the Jurisdictions (the **Legislation**) to grant an exemption from the requirement under subsection 8.2(1) of National Instrument 51-102 *Continuous Disclosure Obligations* (**NI 51-102**) to file a business acquisition report (**BAR**) in connection with the CC Acquisition (as defined below).

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

- (a) the Manitoba 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 the Provinces of British Columbia, Alberta, Saskatchewan, Newfoundland and Labrador, Nova Scotia, New Brunswick; and Prince Edward Island; and
- (c) this decision is the decision 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*, MI 11-102 or NI 51-102 have the same meaning if used in this decision, unless otherwise defined herein.

Representations

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

The Filer

1. The Filer is an unincorporated open-ended mutual fund trust established under the laws of the Province of Manitoba pursuant to a declaration of trust, with its head office in Winnipeg, Manitoba.

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2. The Filer is currently a reporting issuer or the equivalent to a reporting issuer in each of the Jurisdictions and is not in default of any requirements of the securities legislation in any Jurisdiction.
3. The Filer and its directly and indirectly controlled subsidiaries, including The Boyd Group Inc., a Manitoba corporation, and Boyd Group (U.S.) Inc., a Delaware corporation:
 - (a) operate 357 collision center locations in Canada and the United States;
 - (b) have a significant interest in retail auto glass with locations across 31 states in the United States;
 - (c) operate a third party administrator business in the U.S. which offers first notice of loss, glass and related services with approximately 5,500 affiliated glass provider locations and 4,600 affiliated emergency roadside service providers;
 - (d) had gross revenues of \$1,174,077,000 in fiscal 2015; and
 - (e) had total assets of \$638,922,000 as at December 31, 2015¹.
4. The authorized capital of the Filer consists of an unlimited number of Units. The Units are posted and listed for trading on the Toronto Stock Exchange (TSX) under the symbol "BYD.UN". As of March 22, 2016 there were 18,027,329 Units of the Filer issued and outstanding and valued at a closing price of \$62.77, which equates to a market capitalization of over \$1,000,000,000.
5. On December 19, 2012 and December 24, 2012 (pursuant to an over-allotment option in favour of the underwriters), the Filer issued \$34,200,000 aggregate principal amount of convertible unsecured subordinated debentures (the 2012 Debentures) due December 31, 2017 with a conversion price of \$23.40. The 2012 Debentures were listed on the TSX and traded under the symbol "BYD.DB" before they were converted to Units of the Filer and subsequently fully redeemed by the Filer in January of this year.
6. On September 29, 2014, the Filer issued \$57,500,000 aggregate principal amount of convertible unsecured subordinated debentures (the 2014 Debentures) due October 31, 2021 with a conversion price of \$61.40. The 2014 Debentures are listed on the TSX and trade under the symbol "BYD.DB.A".
7. The 2014 Debentures bear interest at an annual rate of 5.25% payable semi-annually, and are convertible at the option of the holder, into units of the Filer at any time prior to the maturity date and may be redeemed by the Filer on or after October 31, 2017 provided that certain thresholds are met surrounding the weighted average market price of the units at that time. On redemption or maturity, the Debentures may, at the option of the Filer, be repaid in cash or subject to regulatory approval, units of the Filer.

The CC Acquisition and its Significance

8. Under Section 8.2 of NI 51-102, an issuer is required to file a BAR within 75 days of completing a "significant acquisition" (the BAR Requirements). The determination of whether or not an acquisition is significant is determined by the application of the three tests set forth under Section 8.3(2) of NI 51-102 (the Required Tests). Subject to the Optional Tests referred to in paragraph 10 below, if an acquisition satisfies any one of the three Required Tests, it is deemed

¹ All information as of December 31, 2015 - see 2015 Boyd Group Income Fund Annual Report



significant for the purpose of NI 51-102 and a BAR must be filed in respect of that “significant acquisition”.

9. In a transaction that closed on March 31, 2016, the Filer’s Subsidiary, Hansen Collision, Inc., acquired the business and assets of Collision Cure, Inc., Collision Cure, Kokomo, Inc., Collision Cure Indy, Inc., Collision Cure Muncie, Inc., Collision Cure Marion, Inc., and Collision Cure Fishers, Inc., each an Indiana corporation (collectively referred to as Collision Cure) (the CC Acquisition). When the Filer applied each of the Required Tests to the CC Acquisition both the “Asset Test” and the “Investment Test” were satisfied. In fact, in each case, the calculated percentage was less than 4%, that percentage amount being a significant difference from the 20% required to trigger the BAR Requirements. However, when the “Profit or Loss Test” was applied to the CC Acquisition, the calculated percentage was 98.5%, a percentage amount that would require the filing of a BAR. The calculations were based on the December 31, 2015 annual financial statements and are set out below (amounts in thousands of Canadian dollars):

	Collision Cure	Filer	%
Assets	5,371	638,922	0.8%
Investment	21,429	638,922	3.4%
Profit or (Loss)	1,609	(1,634)	98.5%

10. Sections 8.3(3) and 8.3(4) of NI 51-102 provides for the application of optional significance tests when one or more of the three Required Tests is not satisfied (the Optional Tests). When the Filer applied the optional “Profit and Loss Test” under Section 8.3(4)(c), the calculated percentage was again greater than 20% and, as a result, the CC Acquisition is significant under NI 51-102 and, therefore, absent the relief requested herein, subject to the BAR Requirements. In applying both the required and optional “Profit and Loss Test”, the Filer also had regard to the guidance under Sections 8.3(8), (9) and (10) of NI 51-102. In each case, the significance threshold was crossed.

The Significance of the CC Acquisition from a Practical, Commercial, or Financial Perspective

11. Overall, the Filer is of the view that the CC Acquisition is not a “significant acquisition” to it from a practical, commercial or financial perspective due to the results of the asset test and the investment test and other metrics put forward by the Filer.

Decision

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.

Chris Besko
Director, General Counsel
The Manitoba Securities Commission