

THE SECURITIES ACT) Order No. 4475
)
Subsection 20(1) and 95(2)(c)) June 2, 2004

MOMENTUM HEALTHWARE, INC.

WHEREAS:

(A) Application has been made by Momentum Healthware, Inc. ("Momentum") and 6241476 Canada Ltd. ("Holdco") to The Manitoba Securities Commission for an order pursuant to Subsection 20(1) of *The Securities Act*, R.S.M. 1988, c. S50, as amended (the "Act") granting an exemption from: (i) the registration and prospectus requirements of Sections 6 and 37 of the Act, respectively, and under Section 95(2)(c) from the requirements of Sections 86 to 91, inclusive of the Act, in order to permit Momentum and Holdco to participate in a reorganization of their capital structure in the manner described below.

(B) Momentum has represented to the Commission that:

1. It is a corporation amalgamated under *The Corporations Act* (the "MCA"), with authorized capital which consists of an unlimited number of Class A Common shares ("Common Shares") and Class A Preference shares ("Preference Shares"), of which 466,899 and 24,817 respectively are issued and outstanding, being held by approximately 350 shareholders.
2. The Preference Shares are entitled to one vote per share and a 10% cumulative dividend which compounds annually (over the past five years, the dividends have accrued but have not been paid). The Preference Shares are redeemable and retractable at a face value of \$47 per share, and each Preference Share is exchangeable for a Common Share on a one for one basis.
3. Momentum is not a reporting issuer in any jurisdiction in Canada, nor are its shares listed on any stock exchange.
4. The holders of Common Shares and the holders of Preference Shares (collectively, the "Momentum Shareholders") have entered into a unanimous shareholders' agreement (the "USA") which contains certain restrictions on the issuance or transfer of shares.
5. Holdco is a corporation incorporated under the *Canada Business Corporations Act* (the "CBCA"), with authorized capital consisting of an unlimited number of common shares ("Holdco Shares"), of which one common share will initially be issued to Momentum, to be repurchased for cancellation prior to the issuance of any further Holdco Shares.

6. Holdco neither carries on nor has carried on business as at the date hereof, nor will it except in accordance with and as contemplated in this Application, and its board of directors will be identical to that of Momentum.

7. Momentum has, in the course of its financial development and business operations, issued debt obligations to several financiers, and in order to accomplish a restructuring and improvement of its balance sheet, Momentum has negotiated an agreement in principle with these and other significant debt holders (collectively, the "Debtholders").

8. The Debtholders, each of whom is also a holder of Common Shares, have agreed in principle, through separate negotiations with Momentum, to effectively exchange such debt for common equity of Holdco, on the condition that the holders of Preference Shares and Common Shares similarly agree to exchange and convert their shares. The proposed plan will result in a significant reduction of the total Momentum debt.

9. Momentum retained professional advisors, and following consultation and negotiation with both major and minor stakeholders involved in the reorganization, and a comprehensive review and analysis of similar valuations in the software industry, Momentum determined a net equity value for the business (the "Net Equity Value"), which formed the basis of all negotiations with the various stakeholders.

10. The proposed reorganization will require the final approval and participation of the Debtholders, although the Board of Momentum shall have the discretion to proceed with the transactions notwithstanding less than all of the Debtholders have subscribed for Holdco Shares.

11. The Debtholders will be invited to and are expected to agree to subscribe for Holdco Shares based on the negotiated determination of their respective debt and equity interests in relation to the overall Net Equity Value. Such subscriptions are to be paid for by the transfer of the debt (including outstanding interest) owing to each Debtholder, together with the Preference Shares (and any outstanding dividends) and Common Shares of such Debtholder.

12. Assuming all of the various stakeholders subscribe for Holdco Shares, including all of the Debtholders, then approximately 82% of the issued Holdco Shares, would be issued to Debtholders (including the Holdco Shares acquired by the Debtholders in exchange for their Common Shares or Preference Shares, as applicable).

13. The holders of Preference Shares will be invited to and are expected to agree to subscribe for Holdco Shares having a value determined on a negotiated basis in relation to the Net Equity Value. In determining the number of Holdco Shares to be issued to the holders of Preference Shares, the outstanding dividend

entitlements will be added to the redemption value. Such subscriptions are to be paid for by the transfer of the Preference Shares and dividend entitlements, such that Holdco will be the holder of the Preference Shares of Momentum following completion.

14. Each subscription agreement from Holdco will contain a provision encouraging and recommending that all subscribers consult their professional advisors and seek independent legal advice.

15. Prior to the proposed reorganization, the holders of Common Shares other than the Debtholders owned approximately 45.42% of all of the issued and outstanding Common Shares, and upon completion of the proposed reorganization, assuming full dilution, such group of shareholders will own 12.71% of the issued common shares.

16. Subject to shareholder approval, Momentum will be continued as a corporation under the CBCA and thereafter amalgamated with Holdco. The amalgamated company will continue to operate under the name Momentum Healthware, Inc.

17. None of the holders of Common Shares or Preference Shares will be obligated to subscribe for Holdco Shares, and any such holders who do not elect to subscribe for Holdco Shares will continue to hold Momentum Shares and will be entitled to vote for or against such continuation and amalgamation.

18. Any holder of Momentum Shares who votes against either the continuation or amalgamation of Momentum will be provided the statutory dissent rights which are set out in Section 184 of the MCA, pursuant to which, a shareholder may elect to have his or her shares valued and repurchased by Momentum in accordance with such statutorily prescribed procedures.

19. In order to approve the continuation and amalgamation, Momentum will seek shareholder approval at an annual and special general meeting of all shareholders, and such approval must be by special resolution, requiring an affirmative vote of at least two-thirds of all holders of Preference Shares and Common Shares present in person or by proxy, provided however, that the directors of Momentum will have the discretion to elect not to proceed with either step if the number of shareholders exercising dissent rights exceeds a threshold to be determined by the board and disclosed in the information circular for the meeting. In addition, Momentum Shareholders will be asked to waive certain rights applicable in connection with the transfer of Momentum Shares to Holdco, including rights of first refusal and rights relating to mandatory sale and purchase given the threshold of ownership to be acquired by Holdco. As such waiver effectively constitutes an amendment of the unanimous shareholders' agreement, an affirmative vote of at least 80% of the Preference and Common Shareholders is required to be effective.

The amalgamation will be conditional upon the Debtholders completing their respective subscriptions for Holdco Shares.

20. The information circular and proxy materials to be provided to all of Momentum's Shareholders will comply with the requirements of the Act, including the Regulations thereto, and will contain sufficient detail and information regarding the proposed transactions and any potential impact, in order to allow the Momentum Shareholders to make an informed decision. In particular, the circular will describe the reasons for the restructuring as well as the process which was undertaken, the method by which the Net Equity Value and the formula for conversion was determined. The dilution to shareholders will be disclosed, as will the post-amalgamation ownership percentages of all of the stakeholders. The information circular will also clearly set out the dissent rights under Section 182 of the CBCA, including the procedure for exercising such rights.

21. Prior to the completion of the subscriptions for Holdco Shares described above, the proposed amalgamation will be approved by the directors of Holdco and its sole shareholder at that time, Momentum. The form of subscription will indicate that an amalgamation with Momentum has been so approved.

22. Upon completion of the amalgamation, the Momentum Shares which are owned by Holdco will be exchanged (along with Momentum Shares, if any, still held by any non-subscribing shareholder of Momentum who has not exercised dissent rights) for common shares in the capital stock of the amalgamated company such that the only outstanding shares of the amalgamated company will be common shares. The debt which was assigned to Holdco in consideration for the subscription by Debtholders for Holdco Shares (including debt owing in respect of outstanding dividends and interest) will be cancelled.

23. Given the arms' length negotiations with Debtholders and the steps taken by Momentum to assess the Net Equity Value, in consultation with its professional advisors, the Board of Momentum determined that it would not obtain a separate formal valuation.

24. The issuance of Holdco Shares to subscribers who include Momentum Shareholders and Debtholders may constitute a primary distribution to the public which would otherwise be subject to the prospectus and registration requirements contained in Sections 37 and 6, respectively, of the Act.

25. The acquisition by Holdco of the Common Shares and Preference Shares as consideration for the subscription by the Momentum Shareholders for Holdco Shares will constitute a "take-over bid" pursuant to Section 80(1) of the Act, which is not otherwise exempt from the take-over bid requirements of the Act and would therefore be subject to the provisions of Sections 86 to 91, inclusive, of the Act.

(C) In the opinion of the Commission it would not be prejudicial to the public interest to grant the Order requested.

IT IS ORDERED:

1. **THAT**, pursuant to Subsection 20(1) of the Act the subscription for and issuance of Holdco Shares will be exempt from the registration and prospectus requirements of Sections 6 and 37, respectively, of the Act.
2. **THAT**, pursuant to Section 95(2)(c) of the Act the acquisition by Holdco of Momentum Shares will not be deemed to constitute a take-over bid and the provisions of Sections 86 to 91 of the Act, inclusive, shall not apply to such acquisition.
3. **THAT** the fee for this Order is \$1,550.00.

BY ORDER OF THE COMMISSION

"Chris Besko"
Deputy Director - Legal