



In the Matter of
The Securities Act (Manitoba)
and the Securities Legislation of the Province of Manitoba
and
In the Matter of Momentum Healthware, Inc.
and
In the Matter of Civica Holdings Limited.

Decision

Background

The Manitoba Securities Commission (the "**Commission**"), as principal regulator in the Province of Manitoba (the "**Province**"), has received an application from Momentum Healthware, Inc. (the "**Issuer**") for an order pursuant to Section 95(2) of *The Securities Act (Manitoba)* (the "**Act**") exempting Civica Holdings Limited (the "**Buyer**") from the application of the take-over bid requirements of Part 2 of National Instrument 62-104 – *Take-over Bids and Issuer Bids* ("**NI 62-104**") in the Province of Manitoba ("**Manitoba**") in connection with an offer by the Buyer to acquire (the "**Offer**") 100% of the issued and outstanding shares of the Issuer.

(the "**Exemption Sought**")

Representations

1. The Issuer is a federal company formed by Articles of Amalgamation dated October 27, 2004. The Issuer has operated its business of the development, maintenance, marketing and sale of real time location systems, assessment management systems, and health records for the senior living and community mental health care market for over 25 years, through predecessor companies amalgamated to form the Issuer.
2. The authorized capital of the Issuer consists of one unlimited class of common voting shares, of which there are issued and outstanding 1,860,407 such common voting shares (the "**Shares**").
3. The Shares are held by 307 registered and beneficial shareholders, of which 15 are current employees of the Issuer and 27 are former employees of the Issuer (collectively, the "**Employee Shareholders**"). The Employee Shareholders, including in some instances their spouses, hold, directly or indirectly through registered retirement savings accounts, an aggregate of 1,718,794 Shares, representing 92.39% of the total outstanding Shares.

4. Based on the share register, the registered and beneficial owners reside in the following jurisdictions:
 - (a) 266 reside in Manitoba holding 67.53% of the total issued Shares;
 - (b) 13 reside in Ontario holding 0.71% of the total issued Shares;
 - (c) 10 reside in British Columbia holding 0.26% of the total issued Shares;
 - (d) 5 reside in Alberta holding 0.02% of the total issued Shares;
 - (e) 4 reside in Saskatchewan holding 0.04% of the total issued Shares;
 - (f) 2 reside in Quebec holding 0.03% of the total issued Shares;
 - (g) 1 resides in Australia holding 0.01% of the total issued Shares; and
 - (h) 6 reside in the United States holding 31.4% of the total issued Shares.
5. There is one stock option outstanding, entitling the holder to acquire 40,000 common shares of the Issuer, and the holder will be exercising that option immediately prior to the completion of the acquisition of the Shares in order to participate in the Offer as a Minority Shareholder.
6. All of the Shares were issued over the duration of the Issuer's existence (including its predecessor companies) as part of the Issuer's capital raising efforts. Its private placement offerings of securities included two offering memorandum exempt offerings pursuant to Section 91 of the Regulations to the Act. Other private placements were completed under the private placement exemptions provided in National Instrument 45-106 – *Prospectus Exemptions*, as well as under the previously applicable Multilateral Instrument 45-103 – *Capital Raising Exemptions*. Shareholders also subscribed for Shares under several rights offerings which were completed in accordance with applicable securities regulations.
7. All of the holders of Shares ("**Shareholders**") agreed, as a condition of acquiring Shares, to attorn to the provisions of an amended and restated unanimous shareholders' agreement of the Issuer (the "**USA**") dated March 13, 2014. The Buyer is not a Shareholder and does not own any Shares.
8. Pursuant to the terms of the USA, in the event that the Issuer or any of its Shareholders receives an offer for the purchase of all of the Shares and the acceptance of the such purchase offer is approved for acceptance by an extraordinary resolution passed at a duly convened shareholders' meeting by the holders of at least 80% of all Shares (an "**Extraordinary Resolution**"), then all of the Shareholders shall be immediately bound to sell their Shares according to the terms of such purchase offer and in accordance with the carry-along provisions of the USA (the "**Carry-Along Right**"). Following approval and acceptance of a purchase offer pursuant to an Extraordinary Resolution, all Shareholders thereby authorize the President of the Issuer to accept or cause to be accepted the purchase offer and further irrevocably constitute the President of the Issuer as their attorney and agent to act for, do all things and sign all documents, in the name of and on behalf of the Shareholders, as required in order to complete the sale of the Shares in accordance with the terms of such purchase offer.

9. The Buyer is a company incorporated in England and Wales and part of a wider group that develops and sells its own software to public sector markets in the U.K., Australia, Singapore and North America. Within North America, the Buyer already supplies health software to a number of Canadian public sector organizations, mainly in British Columbia and Alberta.
10. The Buyer intends to deliver the Offer to the Issuer, for distribution to all Shareholders subject to receipt of the exemptive relief requested in the Exemption Sought. Under the terms of the Offer, the Buyer will require all of the Shareholders except for those shareholders executing the Purchase Agreement (as defined below) (the "**Minority Shareholders**") to enter into simplified share purchase agreements (the "**Short Form Purchase Agreements**"), a copy of which will be appended to the Offer. The Buyer will also require five key Employee Shareholders to enter into, a definitive form of share purchase agreement (the "**Purchase Agreement**"). The Offer will also be conditional, among other things, on the approval by the Shareholders at a duly convened special meeting of shareholders of an Extraordinary Resolution accepting the Offer. The Purchase Agreement and Short Form Purchase Agreements both provide that closing of the Offer will be conditional upon 100% of the issued and outstanding Shares being sold and delivered to the Buyer. It is expected that this condition will be satisfied by a combination of the five key Employee Shareholders executing the Purchase Agreement, other registered shareholders executing a Short Form Purchase Agreement directly and the President of the Issuer executing the Short Form Purchase Agreement pursuant to the Carry-Along Right as agent and attorney of those remaining Shareholders who do not otherwise execute the Short Form Purchase Agreement.
11. Five key Employee Shareholders will be required to enter into the Purchase Agreement (the "**Warrantors**"). The Warrantors comprise the key senior management of the Issuer, and together with their spouses (and in one case a trust), own an aggregate of 85% of the total Shares. The Warrantors have all indicated their support for the Offer and have confirmed their intention to enter into the Purchase Agreement, subject to approval of an Extraordinary Resolution approving the Offer and receipt of the Exemption sought under this application.
12. Pursuant to the terms of the Offer, the consideration for the purchase of the Shares will be all cash (and no exchange of shares or other rights). All shareholders will receive the same per Share cash consideration.
13. The Offer is not subject to any financing conditions and the Buyer has confirmed the availability of cash sufficient to pay the entire cash purchase price. All cash payments under the purchase agreements will be made on closing to the vendor's solicitors, in trust, for distribution to the Shareholders who have tendered the documents required to be delivered pursuant to the terms of the Purchase Agreement or the Short Form Purchase Agreements, as applicable.
14. Three of the five Warrantors will resign as employees, officers and directors as of the closing date of the Offer, with two of the Warrantors continuing their employment under

- the Issuer's new ownership. Pursuant to the terms of the Purchase Agreement, the directors of the Issuer will all resign and each shall sign a release in favour of the Issuer.
15. None of the Warrantors or any Minority Shareholders will be party to any collateral agreement, commitment or understanding that would have the effect, directly or indirectly, of providing such Shareholder with consideration of greater value than that offered to all other Shareholders under the terms of the Offer.
 16. Under each of the Purchase Agreement and the Short Form Purchase Agreements, each Shareholder must provide certain limited representations and warranties regarding title and capacity, including:
 - (a) legal and beneficial ownership of Shares, free and clear of encumbrances;
 - (b) no agreements or rights capable of becoming an agreement to sell Shares to any other party;
 - (c) power and authority to enter into and perform their obligations under the applicable Purchase Agreement or Short Form Purchase Agreement, and the enforceability of such applicable agreement;
 - (d) entering and performing such agreement will not result in the breach or default under any agreement or applicable law; and
 - (e) solvency and residency of each Shareholder.
 17. Each of the Minority Shareholders will be severally – but not jointly – liable for the representations, warranties and covenants given under their individual Short Form Purchase Agreements, and such liability will be limited to the amount of consideration received by each such Shareholder, together with any related family Shareholders.
 18. Pursuant to the terms of the Purchase Agreement, in addition to the limited representations and warranties described above, the Warrantors will also be required to provide substantive business, tax and other warranties and indemnities. None of the Minority Shareholders will be required to give any representation or warranty relating to the Issuer or its business, or will have any indemnification obligation in respect of representations and warranties relating to the Issuer or its business.
 19. On closing of the acquisition, Shareholders will all be required to execute and deliver (either directly or by the President of the Issuer exercising his authority as agent and attorney of the Shareholders pursuant to the Carry-Along Right):
 - (a) the Purchase Agreement or Short Form Purchase Agreement, as applicable; and
 - (b) a stock transfer of the Shares held by that Shareholder to the Buyer, together with the share certificate for such Shares.
 20. The Warrantors, but not the Minority Shareholders, will also be required under the Purchase Agreement to deliver a disclosure letter (regarding representations) and must agree to confidentiality, non-competition and non-solicitation provisions.

21. The Issuer is not a reporting issuer and there is no published market for its Shares. The Issuer has always been operating essentially as a private company with its Shareholders all having agreed to be bound by, and to sell or transfer the Shares only in accordance with the terms of the USA. The Issuer is not in default of securities legislation in any Canadian jurisdiction.

22. The manner in which the Offer will be made and completed, in accordance with its terms and following the applicable provisions of the USA in respect of the Carry-Along Right, will result in (a) the equal treatment of Shareholders; (b) the provision of adequate information to offeree Shareholders; and (c) an open and even-handed process because:
 - (a) the Offer is for all of the Shares and all Shareholders will receive the same price and cash consideration;
 - (b) there are no collateral agreements which would provide additional benefit to any Shareholder;
 - (c) under the Carry-Along Right, all Shareholders will receive a copy of the Offer, which will have appended to it a copy of the Short Form Purchase Agreement to be signed by all Shareholders;
 - (d) a meeting of Shareholders will be held to approve and accept the Offer by Extraordinary Resolution on 21 days' notice, and the notice sent to Shareholders will be accompanied by a management proxy circular ("the Circular") which will comply with the provisions of Form 51-102F5 of National Instrument 51-102 – *Continuous Disclosure Obligations*, and will contain substantially all of the same information regarding the Offer as would be required by Form 62-104F1 of NI 62-104;
 - (e) the Issuer intends to deliver the notice of the meeting of Shareholders, together with the Circular, on the day following the granting by the Commission of the Exemption Sought;
 - (f) at the meeting to approve the Extraordinary Resolution, Shareholders will have the opportunity to ask questions and discuss the terms of the Offer so that they will have access to full disclosure regarding the Offer prior to voting on whether to approve and accept it;
 - (g) the Issuer and the Buyer intend that the closing of the purchase of Shares be completed within 10 business days following the approval of the Extraordinary Resolution; and
 - (h) the USA represents a contractual agreement among all the Shareholders as to the process by which they may sell or dispose of their Shares, and by which an offeror can acquire all of the Shares pursuant to the Carry-Along Right, making that process transparent and applicable to all Shareholders in the same manner.

23. The Buyer (as well as its officers, directors, insiders and affiliated entities) may only acquire Shares in accordance with the USA, which imposes restrictions on any transfer of Shares and creates a process which would have similar effect to the restrictions imposed upon an offeror under Part 2 of NI 62-104 in respect of any acquisition of securities of an offeree either before or during a bid.
24. Once the Offer is accepted and approved by Extraordinary Resolution, all of the Shareholders are bound to tender their Shares, and the Buyer has agreed to purchase all of the Shares as a condition of the Offer. Any normal course acquisitions by the Buyer would be subject to the terms of the USA (which, in addition to the Carry-Along Right, contains a right of first refusal). The Buyer does not currently own any Shares, nor does it have any intention to do so other than pursuant to the Offer.
25. The Board of Directors of the Issuer supports the Offer and will, in the Circular, indicate their unanimous support for the Offer and will recommend acceptance of the Offer.
26. In the event of any change to the material terms of the Offer before the Shareholders' meeting to approve the Extraordinary Resolution occurs, the Issuer would be required to amend its management proxy circular, thus ensuring Shareholders' have full disclosure and an opportunity to accept or reject changes to the Offer. If the Extraordinary Resolution had already been passed, changes to the terms of the Offer would require compliance with the process set out in the Carry-Along Right once again.
27. The Buyer will be exempt from the provisions of Part 2 of NI 62-104 with respect to purchase of Shares under the Offer outside of the Province of Manitoba, pursuant to the De Minimis exemption set out in Section 4.5 thereof, however, all Shareholders will still receive the Offer and will be entitled to vote on the Extraordinary Resolution. If the Offer is approved and accepted, they will all be bound by the Carry-Along Right of the USA to sell their Shares and will receive the same consideration as all other Shareholders.
28. The Issuer and Buyer cannot rely on the Non-Reporting Issuer exemption set out in Section 4.3 of NI 62-104 because the Issuer has more than 50 security holders, excluding employees and former employees.

Decision

The Commission is satisfied, based on the representations of the Issuer and Buyer, that to grant the decision would not be prejudicial to the public interest.

The decision of the Commission is that the Exemption Sought is granted.



Chris Besko, Director
Manitoba Securities Commission