

## Headnote

Multilateral Instrument 11-102 *Passport System* and National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* – reporting insider party to automatic securities disposition plan – relief granted from section 3.3 of NI 55-104 and section 107(2) of the *Securities Act* (Ontario).

## Applicable Legislative Provisions

*Securities Act* (Ontario), s. 107(2)

National Instrument 55-104 *Insider Reporting Requirements and Exemptions*, s. 3.3

**Citation: Re Solium Capital Inc., 2018 ABASC 185**

**Date: 20181214**

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

and

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

and

In the Matter of  
Solium Capital Inc. (**Solium**) and Brian Craig (**Craig**)  
(collectively, the **Filers**)

Decision

## Background

The securities regulatory authority or regulator in each of the Jurisdictions (each a **Decision Maker**) has received an application from the Filers for a decision (the **Exemption Sought**) under the securities legislation (the **Legislation**) of the Jurisdictions exempting Craig, a director of Solium, from the requirement in section 3.3 of National Instrument 55-104 *Insider Reporting Requirements and Exemptions* (**NI 55-104**) and subsection 107(2) of the *Securities Act* (Ontario) (the **Ontario Act**) to file an insider report within five days following the disposition of securities under his ASDP (as defined below), subject to certain conditions.

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

- (a) the Alberta Securities Commission is the principal regulator for this application;
- (b) the Filers have provided notice that subsection 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in British

Columbia, Saskatchewan, Manitoba, Québec, New Brunswick, Nova Scotia, Newfoundland and Labrador 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 55-104 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 Filers:

#### *Solium*

1. Solium is a corporation existing under the laws of the Province of Alberta and is a reporting issuer under the securities legislation of each of the provinces of Canada. Solium is not in default of securities legislation in any jurisdiction.
2. The head office of Solium is located in Calgary, Alberta.
3. The authorized share capital of Solium consists of an unlimited number of common shares (**Common Shares**) and an unlimited number of preferred shares, issuable in series. As at November 9, 2018, Solium had 56,623,640 Common Shares and no preferred shares of any series issued and outstanding.
4. The Common Shares are listed and posted for trading on the Toronto Stock Exchange under the symbol "SUM".

#### *Craig*

5. Craig is a director of Solium, is a reporting insider and is not in default of securities legislation in any jurisdiction.
6. As at November 9, 2018, Craig beneficially owned, controlled or directed 3,041,300 Common Shares (representing approximately 5.4% of the then outstanding Common Shares) as well as 12,624 restricted share units.
7. Craig wishes to sell up to a total of 600,000 Common Shares pursuant to the ASDP (as defined below).

#### *The Automatic Securities Disposition Plan*

8. Scotia Capital Inc. (the **Broker**), Solium and Craig entered into an automatic securities disposition plan (the **ASDP**) dated effective November 9, 2018 to facilitate the automatic sale of up to 600,000 Common Shares beneficially owned by Craig that have been deposited into an account managed by the Broker in accordance with the trading parameters and other instructions set out in the ASDP.

9. As set out in the ASDP and as otherwise covenanted by Craig, Craig can only make changes to the trading parameters and other instructions set out in the ASDP or voluntarily terminate the ASDP if all of the following conditions are met:
  - (a) Craig has obtained the prior written consent of Solium in accordance with Solium's disclosure policy;
  - (b) Craig has provided notice to the public of the proposed change or termination by describing it in a filing on the System for Electronic Disclosure by Insiders (**SEDI**) and in a news release, which shall include a representation that, at the time of the amendment or termination, there is no blackout period in effect in respect of the securities of Solium and that Craig is not aware of any material fact or material change about Solium that has not been generally disclosed;
  - (c) Craig has provided the Broker with a certificate from Solium confirming, among other things, compliance with Solium's disclosure and insider trading policies and that, to its knowledge, Craig does not have knowledge of a material fact or material change about Solium that has not been generally disclosed; and
  - (d) such termination or amendment is made in good faith and not as a part of a plan or scheme to evade the prohibitions of Section 147 of the *Securities Act* (Alberta) (the **Alberta Act**), Section 76 of the Ontario Act or comparable provisions in other applicable securities legislation
10. The ASDP does not provide for any waiting period following the voluntary termination of the ASDP by Craig before he can enroll in a new ASDP. However, this decision does not provide the Requested Relief in respect of any new ASDP.
11. The Broker is a securities broker that is at arm's length to Solium and Craig.
12. The Broker has been appointed as an independent broker to effect sales of the Common Shares pursuant to the terms and conditions of the ASDP. The dispositions under the ASDP will be effected by the Broker in accordance with the pre-determined instructions as to the number and dollar value of the Common Shares to be sold, and other relevant information, all as set out in the ASDP.
13. Subject to the restrictions set forth in the ASDP, the Broker will execute the trades in such a way as to attempt to minimize the negative price impact on the market and to attempt to maximize the prices obtained for the Common Shares.
14. Except to set trading parameters in the manner described, Craig does not have the authority to make investment decisions or influence or control any disposition effected by the Broker pursuant to the ASDP and the Broker and Craig will not consult regarding any disposition.
15. Craig will not disclose to the Broker any information concerning Solium that could reasonably be expected to influence the execution of any disposition under the ASDP.

16. The ASDP includes a waiting period of 30 days between the date of adoption of the ASDP and the date that the first disposition may be made under the ASDP.
17. The ASDP has been structured to comply with applicable securities legislation and guidance, including section 147(7)(c) of the Alberta Act, section 175(2)(b) of the General Regulation under the Ontario Act and Ontario Securities Commission Staff Notice 55-701 *Automatic Securities Disposition Plans and Automatic Securities Purchase Plans*.
18. At the time of execution of, and entering into the ASDP, Craig represented that he did not possess knowledge of a material fact or material change with respect to Solium that had not been generally disclosed and that he was entering into the ASDP in good faith and not as part of a plan or scheme to evade the insider trading prohibitions under applicable Canadian securities legislation.
19. At the time of execution of, and entering into the ASDP, Solium certified to the Broker that, to the knowledge of Solium, Craig did not have knowledge of any material fact or material change with respect to Solium that has not been generally disclosed.
20. The Common Shares are not subject to any liens, security interests or other impediments to transfer (except for limitations imposed by any applicable laws).
21. The ASDP will terminate on the earliest to occur of:
  - (a) December 9, 2020;
  - (b) the completion of all sales contemplated by the ASDP;
  - (c) receipt by the Broker of notice of: (i) Solium having entered into a definitive agreement pursuant to which it will be subject to a take-over bid, tender or exchange offer with respect to the Common Shares or an arrangement, merger, acquisition, reorganization, recapitalization or comparable transaction affecting the securities of Solium as a result of which the Common Shares are to be exchanged or converted into shares of another company; (ii) Craig's death or mental incapacity; or (iii) the commencement or impending commencement of any proceedings in respect of or triggered by Craig's bankruptcy or insolvency;
  - (d) the termination of the ASDP by the Broker following receipt of notice of the occurrence of any legal, contractual or regulatory restriction applicable to Craig;
  - (e) the termination of the ASDP by Solium following three business days' prior written notice to the Broker and to the public by way of news release; and
  - (f) the voluntary termination of the ASDP by Craig in accordance with paragraph 9 above.
22. Craig will not amend or terminate the ASDP if a blackout period is in effect in respect of the securities of Solium or if he has knowledge of a material fact or material change about Solium that has not been generally disclosed. Craig will only amend or terminate the ASDP

in good faith and not as part of a plan or scheme to evade the prohibitions of section 147 of the Alberta Act, section 76 of the Ontario Act or comparable prohibitions in other applicable securities legislation.

**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, provided that Craig shall file a report through SEDI, by March 31 of each calendar year, of all dispositions under the ASDP during the prior calendar year not previously disclosed in a SEDI filing, disclosing either of the following:

- (a) each disposition on a transaction-by-transaction basis; or
- (b) all dispositions as a single transaction using the average unit price of the securities.

*“original signed by”* \_\_\_\_\_  
Tom Graham, CA  
Director, Corporate Finance  
Alberta Securities Commission