

B.3.2 Vivendi S.E.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Application for relief from the prospectus and registration requirements for certain trades made in connection with an employee share offering by a French issuer – In Ontario, application for relief from prospectus requirement only – The issuer cannot rely on the employee exemption in section 2.24 of National Instrument 45-106 Prospectus Exemptions as the securities are not being offered to Canadian employees directly by the issuer but rather through special purpose entities – Canadian participants will have access to disclosure documents – The special purpose entities are subject to the supervision of the local securities regulator – There is no market for the securities of the issuer in Canada – Relief granted, subject to conditions – 5 year sunset clause.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 53(1) and 74(1).
Ontario Securities Commission Rule 72-503 Distributions Outside Canada, s. 2.8(1).

May 20, 2022

[TRANSLATION]
IN THE MATTER OF
THE SECURITIES LEGISLATION OF
QUÉBEC AND
ONTARIO
(the Jurisdictions)
AND
IN THE MATTER OF
THE PROCESS FOR EXEMPTIVE RELIEF APPLICATIONS
IN MULTIPLE JURISDICTIONS
AND
IN THE MATTER OF
VIVENDI S.E.
(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 under the securities legislation of the Jurisdictions (the **Legislation**) for:

1. an exemption from the prospectus requirement (the **Prospectus Relief**) so that such requirement does not apply to:
 - (a) trades of:
 - (i) units (the **2022 Units**) of *Opus 22 Levier* (the **2022 Compartment**), a compartment of a *fonds commun de placement d'entreprise* or "FCPE", a form of collective shareholding vehicle commonly used in France for the conservation or custodianship of shares held by employee-investors, named *Opus Vivendi* (the **Fund**, and together with the Compartments (as defined below), the **Funds**); and
 - (ii) units (together with the 2022 Units, the **Units**) of future compartments of the Fund organized in the same manner as the 2022 Compartment (together with the 2022 Compartment, the **Compartments**), made under Vivendi Group International Employee Savings Plan (**Plan**) to or with Qualifying Employees (as defined below) resident in the Jurisdictions (collectively, the **Canadian Employees**, and Canadian Employees who subscribe for Units, the **Canadian Participants**);
 - (b) trades of ordinary shares of the Filer (the **Shares**) by the relevant Compartment to or with Canadian Participants upon the redemption of Units, as requested by Canadian Participants; and
2. an exemption from the dealer registration requirement (the **Registration Relief**, and together with the Prospectus Relief, the **Exemption Sought**) so that such requirement does not apply to the Filer and its Local Related Entities (as defined below), the Funds and Société Générale Gestion (the **Management Company**) in respect of:
 - (a) trades in Units made pursuant to an Employee Offering to or with Canadian Employees not resident in Ontario; and

- (b) trades in Shares by the relevant Compartment to or with Canadian Participants upon the redemption of Units, as requested by Canadian Participants.

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

- (a) the Autorité des marchés financiers is the principal regulator for this application; and
- (b) the 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 *Regulation 14-101 respecting Definitions*, CQLR, c. V-1.1, r. 3, *Regulation 11-202 respecting Passport System*, CQLR, c. V-1.1, r.1 and *Regulation 45-106 respecting Prospectus Exemption*, CQLR, c. V-1.1, r. 21 have the same meaning if used in this decision, unless otherwise defined.

Representations

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

1. The Filer is a corporation formed under the laws of France. It is not, and has no current intention of becoming, a reporting issuer under the securities legislation of any jurisdiction of Canada. The head office of the Filer is located in France and the Shares are listed on Euronext Paris. The Filer is not in default of securities legislation of any jurisdiction of Canada.
2. The Filer carries on business in Canada through certain related entities that employ Canadian Employees (**Local Related Entities**), and together with the Filer and other related entities of the Filer, the **Vivendi Group**. Currently, the greatest number of employees of the Local Related Entities reside in Québec.
3. The Filer has established a global employee share offering under the Plan (the **2022 Employee Offering**) and expects to establish subsequent global employee share offerings following 2022 for the next four years that are substantially similar (**Subsequent Employee Offerings**), and together with the 2022 Employee Offering, the **Employee Offerings**) for Qualifying Employees (as defined below) and participating related entities of the Filer, including Local Related Entities. Each Local Related Entity is a direct or indirect controlled subsidiary of the Filer and no Local Related Entity has any current intention of becoming a reporting issuer under the securities legislation of any jurisdiction of Canada.
4. As of the date hereof, "Local Related Entities" include Divertissements Gameloft Live Inc., Divertissement Gameloft Inc., Gameloft Entertainment Toronto Inc., Interforum Canada and Editions Robert Laffont.
5. Each Employee Offering involves an offering of Shares to be subscribed through the relevant Compartment of the Fund (the **Leveraged Plan**), subject to the decision of the supervisory boards of the FCPEs and the approval of the French AMF (as defined below).
6. Only persons who are employees of an entity forming part of the Vivendi Group during the subscription period for an Employee Offering and who meet other employment criteria (the **Qualifying Employees**) will be allowed to participate in the relevant Employee Offering.
7. The 2022 Compartment was established for the purpose of implementing the 2022 Employee Offering. The Fund was established for the purpose of implementing the Employee Offerings generally. There is no intention for any of the 2022 Compartment or the Fund to become a reporting issuer under the securities legislation of any jurisdiction of Canada. There is no intention for any future Compartment that will be established for the purpose of implementing Subsequent Employee Offerings to become a reporting issuer under the securities legislation of any jurisdiction of Canada.
8. The Fund and the 2022 Compartment have been registered with, and approved by, the Autorité des marchés financiers in France (the **French AMF**). It is expected that each Compartment established for Subsequent Employee Offerings will be registered with, and approved by, the French AMF.
9. Under the Leveraged Plan, each Employee Offering will be made as follows:
 - (a) Canadian Participants will subscribe for Units, and the relevant Compartment will then subscribe for Shares using the Employee Contribution (as defined below) and certain financing made available by Société Générale (the **Bank**), which is a bank governed by the laws of France.
 - (b) The subscription price will be the Canadian dollar equivalent of the average opening price of the Shares (expressed in Euros) on Euronext Paris for the 20 trading days preceding the date of the fixing of the subscription price (the **Reference Price**), less a specified discount to the Reference Price.
 - (c) Canadian Participants will contribute 10% of the price of each Share (expressed in euros) to the relevant Compartment (the **Employee Contribution**). The relevant Compartment will enter into a swap agreement (the **Swap Agreement**) with the Bank. Under the terms of the Swap Agreement, the Bank will contribute the remaining 90% of the price of each Share (expressed in euros) to be subscribed for by the relevant Compartment

(the **Bank Contribution**). The relevant Compartment will apply the cash received from the Employee Contribution and the Bank Contribution to subscribe for Shares.

- (d) Each Canadian Participant will receive Units in the relevant Compartment entitling him or her to the Euro amount of the Employee Contribution and a multiple of the Average Increase (as defined below) in the price of the Share subscribed for on his or her behalf.
- (e) Under the terms of the Swap Agreement, the relevant Compartment will remit to the Bank an amount equal to the net amount of any dividends paid on the Shares held in such Compartment.
- (f) The Units will be subject to a hold period of approximately five years (the **Lock-Up Period**), subject to certain exceptions adopted for an Employee Offering (such as death, disability or termination of employment).
- (g) In the event of an early exit resulting from a Canadian Participant exercising one of the exceptions to the Lock-Up Period (**Early Redemption**), the Canadian Participant may request the redemption of Units from the relevant Compartment using the Redemption Formula (as defined below).
- (h) At the end of the applicable Lock-Up Period, the relevant Compartment will owe to the Bank an amount equal to the market value of the Shares held in the relevant Compartment (as determined pursuant to the terms of the Swap Agreement), less
 - (i) 100% of the Employee Contributions, plus the greater of:
 - (1) a guaranteed annual return on the Employee Contributions, or
 - (2) a multiple of the Participation Percentage (as defined below) multiplied by the quotient obtained from dividing the Reference Price by the Average Increase of the Shares, if any, and further multiplied by the difference between the Average Increase and the Reference Price (the **Appreciation Amount**).
 - (A) The **Participation Percentage** will be determined for the relevant Offering and communicated to Canadian Participants prior to finalization of their subscriptions.
 - (B) The **Average Increase** will be determined on the basis of a weekly average during the entire Lock-Up Period. In the event a closing price is less than the Reference Price, the Reference Price will be utilized.
- (i) If, at the end of the Lock-Up Period, the market value of the Shares held in the relevant Compartment is less than 100% of the Employee Contributions, the Bank will, pursuant to the terms and conditions of a guarantee contained in the Swap Agreement, make a contribution to the relevant Compartment to make up such shortfall.
- (j) At the end of the relevant Lock-Up Period, the Swap Agreement will terminate after the final swap payments. A Canadian Participant may then request the redemption of his or her Units in consideration for cash or Shares with a value representing:
 - (i) the Canadian Participant's Employee Contribution; and
 - (ii) the greater of:
 - (1) the Canadian Participant's portion of the guaranteed annual return on the Employee Contributions; or
 - (2) the Canadian Participant's portion of the Appreciation Amount, if any(the **Redemption Formula**).
- (k) At the end of the relevant Lock-Up Period, Unless the Canadian Participant elects to receive the redemption of his or her Units in Shares, the Canadian Participant will automatically receive a redemption of Units in exchange for a cash payment.
- (l) Pursuant to the terms of the guarantee contained in the Swap Agreement, a Canadian Participant will be entitled to receive 100% of his or her Employee Contribution (in Euros) at the end of the Lock-Up Period or in the event of an Early Redemption. The Management Company is permitted to cancel the Swap Agreement (which will have the effect of cancelling the guarantee) in certain strictly defined conditions where it is in the best interests of the unitholders. In the event that the Management Company cancelled the Swap Agreement and this was not in the best interests of the unitholders, then such unitholders would have a right of action under French law against the Management Company. Under no circumstances will a Canadian Participant be responsible to contribute an amount greater than his or her Employee Contribution.
- (m) In the event of an Early Redemption, a Canadian Participant may request the redemption of Units from the relevant Compartment. The value of the Units will be calculated in accordance with the Redemption Formula.

The measurement of the increase, if any, from the Reference Price will be carried out in accordance with similar rules to those applied to redemption at the end of the Lock-up Period, but it will be measured using values of the Shares at the time of the Early Redemption instead.

- (n) The maximum aggregate number of Shares that may be subscribed for by the Qualifying Employees under the 2022 Employee Offering is 7,000,000 (the **Maximum Offering Size**). A separate Maximum Offering Size may apply to Subsequent Employee Offerings. If subscriptions received from Qualifying Employees under an Employee Offering would result in an acquisition of Shares by the Fund in excess of the Maximum Offering Size, a reduction will be applied to the subscriptions as follows:
- (i) an individual subscription threshold, equal to the Maximum Offering Size, divided by the number of participants in the Employee Offering, will be calculated (the Individual Subscription Size). Subscriptions will be accepted in full from each subscriber up to the Individual Subscription Size; and
 - (ii) the remaining number of Shares available for subscription will be determined, and subscriptions in excess of the Individual Subscription Size will then be proportionally reduced, so as to reduce the aggregate number of Shares subscribed for under the Employee Offering below the Maximum Offering Size.
10. For Canadian federal income tax purposes, a Canadian Participant should be deemed to receive all dividends paid on the Shares financed by either the Employee Contribution or the Bank Contribution at the time such dividends are paid to the relevant Compartment, notwithstanding the actual non-receipt of the dividends by the Canadian Participants.
11. The declaration of dividends on the Shares (in the ordinary course or otherwise) is strictly decided by the shareholders of the Filer on the proposition of the management board. The Filer has not made any commitment to the Bank as to any minimum payment of dividends during the term of the Lock-Up Period.
12. Considering that, at the time of the initial investment decision relating to participation in an Employee Offering, Canadian Participants will be unable to quantify their potential income tax liability resulting from such participation, the Filer or the Local Related Entities will indemnify each Canadian Participant with respect to dividend amounts exceeding EUR100 which are paid on a Share in a calendar year during the Lock-Up Period, such that, in all cases, a Canadian Participant will, at the time of the original investment decision, be able to determine his or her maximum tax liability in connection with dividends received by the relevant Compartment on his or her behalf.
13. At the time the relevant Compartment's obligations under the Swap Agreement are settled, the Canadian Participant will realize a capital gain (or capital loss) by virtue of having participated in the Swap Agreement to the extent that amounts received by the relevant Compartment, on behalf of the Canadian Participant, from the Bank exceed (or are less than) amounts paid by the Compartment, on behalf of the Canadian Participant, to the Bank. Any dividend amounts paid to the Bank under the Swap Agreement will serve to reduce the amount of any capital gain (or increase the amount of any capital loss) that the Canadian Participant would have realized. Capital losses (gains) realized by a Canadian Participant may generally be offset against (reduced by) any capital gains (losses) realized by the Canadian Participant on a disposition of the Shares, in accordance with the rules and conditions under the *Income Tax Act* (Canada) or comparable provincial legislation (as applicable).
14. Under France law, an FCPE is a limited liability entity. The portfolio of the Compartment will consist almost entirely of Shares as well as the rights and associated obligations under the Swap Agreement. The Compartment may also hold cash or cash equivalents pending investments in Shares and for the purposes of facilitating Unit redemptions.
15. The Management Company is a portfolio management company governed by the laws of France. The Management Company is registered with the French AMF as an investment manager and complies with the rules of the French AMF. The Management Company is obliged to act in the best interests of the Canadian Participants and is liable to them, jointly and severally with the Depository (as defined below), for any violation of the rules and regulations governing the FCPE, or for any self-dealing or negligence. The Management Company is not, and has no intention of becoming, a reporting issuer under the securities legislation of any jurisdiction of Canada.
16. The Management Company's portfolio management activities in connection with an Employee Offering and the Compartment are limited to subscribing for Shares from the Filer, selling such Shares as necessary in order to fund redemption requests, investing available cash in cash equivalents, and such activities as may be necessary to give effect to the Swap Agreement.
17. The Management Company is also responsible for preparing accounting documents and publishing periodic informational documents in respect of the relevant Compartment. The Management Company's activities will not affect the value of the Shares.
18. None of the entities forming part of the Vivendi Group, the Funds or the Management Company, or any of their directors, officers, employees, agents or representatives will provide investment advice to the Canadian Employees with respect to an investment in the Shares or the Units.
19. None of the entities forming part of the Vivendi Group, the Funds or the Management Company is currently in default of securities legislation of any jurisdiction of Canada.

20. Shares issued under an Employee Offering will be deposited in the relevant Compartment's accounts with **Société Générale** (the **Depository**), a large French commercial bank subject to French banking legislation.
21. Participation in an Employee Offering is voluntary, and Canadian Employees will not be induced to participate in an Employee Offering by expectation of employment or continued employment.
22. The total amount that may be invested by a Canadian Employee must be a minimum of C\$500 and may not exceed the lesser of (i) 2.5% of his or her estimated gross annual compensation for 2021 (or estimated for 2022, if higher), and (ii) C\$4,000, for the 2022 Employee Offering. For Subsequent Employee Offerings, the total amount that may be invested by a Canadian Employee will be based upon the greater of (i) his or her gross annual compensation for the calendar year ended prior to the year in which such Subsequent Employee Offering is completed, or (ii) the estimated gross annual compensation for the calendar year in which such Subsequent Employee Offering is completed.
23. The Shares and the Units are not currently listed for trading on any stock exchange in Canada and there is no intention to have the Shares or the Units so listed. As there is no market for the Shares or Units in Canada, and as none is expected to develop, any first trades of Shares or Units by Canadian Participants will be effected through the facilities of, and in accordance with, the rules and regulations of an exchange outside of Canada.
24. The Filer will retain a securities dealer registered as a broker/investment dealer under the securities legislation of Ontario to provide advisory services to Canadian Employees resident in Ontario who express an interest in an Employee Offering and to make a determination, in accordance with industry practices, as to whether an investment in an Employee Offering is suitable for each such Canadian Employee based on his or her particular financial circumstances.
25. Canadian Employees will receive an electronic information package in the French or English language, according to their preference, which will include a description of the terms of the relevant Employee Offering and a description of Canadian income tax consequences of subscribing for and holding the Units and requesting the redemption of such Units at the end of the Lock-Up Period. Canadian Participants will have access to the Filer's *Document d'Enregistrement Universel* filed with the French AMF in respect of the Shares and a copy of the regulations of the relevant Compartment and Fund. The Canadian Employees will also have access to copies of the continuous disclosure materials relating to the Filer that are furnished to holders of Shares. Canadian Participants will receive an initial statement of their holdings under the Employee Offering together with an updated statement at least once per year.
26. For the 2022 Employee Offering, there were approximately 476 Qualifying Employees resident in Canada, with the largest number residing in the province of Québec (approximately 377) and the remainder in Ontario (approximately 99), representing, in aggregate, approximately 1.33% of the number of employees in the Vivendi Group worldwide eligible to participate in the 2022 Employee Offering.
27. As of the date hereof and after giving effect to any Employee Offering, the Filer is and will be a "foreign issuer" as such term is defined in section 2.15(1) of *Regulation 45-102 respecting Resale of Securities*, CQLR, c. V-1.1, r. 20 (**Regulation 45-102**) and section 2.8(1) of Ontario Securities Commission *Rule 72-503 Distributions Outside Canada* (**OSC Rule 72-503**).

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:

- (a) with respect to the 2022 Employee Offering:
 - (i) the prospectus requirement will apply to the first trade in any Units or Shares acquired by Canadian Participants pursuant to this decision, unless the following conditions are met:
 - (1) the issuer of the security was a foreign issuer on the distribution date, as such term is defined in section 2.15(1) of Regulation 45-102 and section 2.8(1) of OSC Rule 72-503;
 - (2) the issuer of the security
 - (A) was not a reporting issuer in any jurisdiction of Canada at the distribution date, or
 - (B) is not a reporting issuer in any jurisdiction of Canada at the date of the trade; and
 - (3) the first trade is made
 - (A) through an exchange, or a market, outside of Canada, or
 - (B) to a person or company outside of Canada;
- (b) for any Subsequent Employee Offering under this decision completed within five years from the date of this decision, provided that:

- (i) the representations other than those in paragraphs 4, 9(n) and 26 remain true and correct in respect of that Subsequent Employee Offering; and
 - (ii) the conditions set out in paragraph (a) above are satisfied as of the date of any distribution of a security under such Subsequent Employee Offering (varied such that any references therein to the 2022 Compartment and the 2022 Employee Offering are read as references to the relevant Compartment and the Subsequent Employee Offering, respectively); and
- (c) provided that in the Province of Ontario, the prospectus exemption above, for the first trade in any Units or Shares acquired by Canadian Participants pursuant to this decision, is not available with respect to any transaction or series of transactions that is part of a plan or scheme to avoid the prospectus requirements in connection with a trade to a person or company in Canada.

“Benoît Gascon”

Directeur principal du financement des sociétés

