

2006 BCSECCOM 615

IDEXX Laboratories Canada Corporation, Associate Veterinary Clinics (1981) Ltd. and Central Laboratory for Veterinarians Ltd.

Section 114(2) and 161(1) of the *Securities Act*, RSBC 1996, c. 418

Hearing

Panel	Douglas M. Hyndman Robin E. Ford David J. Smith	Chair Commissioner Commissioner
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Date of application October 26, 2006

Date of decision October 27, 2006

Appearing

Susan A. Griffin Gary Sollis Sean K. Boyle	For IDEXX Laboratories Canada Corporation
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Robert W. Cooper Miranda Lam	For Associate Veterinary Clinics (1981) Ltd.
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Stephen T.C. Warnett Warren B. Learmonth	For Central Laboratory for Veterinarians Ltd.
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Peter Brady Denise Duifhuis Pamela Egger	For the Executive Director
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Decision

- ¶ 1 On October 26, we heard an application by IDEXX Laboratories Canada Corporation for regulatory orders related to a bid by Associate Veterinary Clinics (1981) Ltd. (AVC) for the shares of Central Laboratory for Veterinarians Ltd. (CLV.) We have reached the following conclusions on the issues put before us by the parties in this hearing:

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1. *Level playing field* — We find that, as a result of the tight timing and errors in some of the documentation, there was significant potential for CLV shareholders to be confused about the extension of AVC's bid on October 23, where to send any requests for withdrawal, and the possible timing of any take up of deposited shares by AVC.

2. *Consideration* — AVC asserts that this is a cash-only bid. IDEXX and Commission staff argue it is not. In our view, the consideration offered by AVC includes anything of value that it offers only to a shareholder who tenders to the bid. Based on our review of the bid documents and accompanying correspondence to shareholders, we find that the consideration offered by AVC includes two elements of non-cash consideration:

- a one year discount for laboratory services for shareholders who tender to the bid; and
- rights conferred by the letter agreement between AVC and Dr. Sally Lester, including a right for shareholders who tender to purchase shares in CLV after AVC acquires it and continues it as an Alberta company.

3. *Contractual withdrawal rights* — IDEXX says that AVC's offer confers contractual withdrawal rights that go beyond those required by the Act. Specifically, IDEXX says AVC offered a right of withdrawal for 10 days after the date of a notice of variation that is not subject to the exceptions described in section 105(e) of the Act. We see merit in this argument but we do not need to make a finding on this point because of our other conclusions.

4. *Take up* — On October 25, AVC varied its offer to remove the condition that 90% of the CLV shares must be tendered. It then purported to take up the shares that had been deposited at that time, representing 87% of the CLV shares. Because the offer included non-cash consideration, section 105(1.1) prohibited AVC from taking up the shares. Because the shares ought not to have been taken up, the shareholders should still have the right to withdraw the shares under section 105(d).

5. *Disclosure* — AVC's bid circular makes some disclosure about the right to acquire post-transaction shares of CLV but says nothing about the discount. It is described elsewhere in letters to the CLV shareholders. IDEXX and Commission staff say that the right to acquire post-transaction shares is a security and, therefore, that AVC is obligated to provide prospectus level disclosure about it in the circular. Although we have concluded that the right is consideration, we have concluded that we do not have enough evidence to find whether it is a security. Since we have not seen the letter agreement that creates the right, we cannot say whether the disclosure about it in the circular complies with the requirements of BC Form 62-902F.

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- ¶ 2 Taking all of these conclusions into account, and considering it in the public interest to do so, we propose to order that:
1. under section 161(1)(a) of the Act, AVC comply with or cease contravening Part 13 of the Act and, among other things,
 - provide notice of the variation to waive the condition that 90% of the CLV shares must be tendered and the resulting extension of the bid,
 - provide disclosure that the shareholders' rights of withdrawal continue as a result of the extension, and
 - provide disclosure about the discount it is offering to shareholders of CLV who tender their shares;
 2. under section 161(1)(b), that AVC cease trading in or purchasing the securities of CLV that it purported to take up on October 25, 2006, except that it may
 - take up and pay for the shares in accordance with the Act and this decision,
 - return the shares to shareholders who withdraw them, or
 - return the shares to shareholders in accordance with the terms of the offer;
 3. under section 114(2)(c), that AVC is exempt from the requirement in section 105(j) to pay for shares that it purportedly took up on October 25 if
 - it takes up and pays for the shares in accordance with the Act,
 - it returns the shares to shareholders who exercise their right to withdraw them, or
 - it returns the shares to shareholders in accordance with the terms of the offer.
- ¶ 3 We invite further submissions from the parties on these orders before we make them. We will hear submissions at the 12th floor hearing room, 701 West Georgia Street, Vancouver BC, on October 30, 2006, at 10 AM.
- ¶ 4 Pending those submissions and our final order, we consider it necessary and in the public interest to extend the following temporary orders, under section 161(3) of the Act, until our final order is rendered:
1. under section 161(1)(a) of the Act, that AVC comply with or cease contravening the Act; and
 2. under section 161(1)(b) of the Act, that AVC cease trading in or purchasing any securities of CLV, including taking up or paying for any shares under its offer.

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- ¶ 5 We also confirm our order under section 114(2)(c) of the Act, given orally at the hearing, that AVC is exempt from the requirement in section 105(j) to pay for shares that it purportedly took up on October 25 until 11:59 PM on November 2.
- ¶ 6 October 27, 2006
- ¶ 7 **For the Commission**

Douglas M. Hyndman
Chair

Robin E. Ford
Commissioner

David J. Smith
Commissioner