

## 2010 BCSECCOM 629

**Icahn Partners LP, Icahn Partners Master Fund LP,  
Icahn Partners Master Fund II LP,  
Icahn Partners Master Fund III LP, High River Limited Partnership,  
Icahn Fund S.À R.L. and Daazi Holding B.V., 7508921 Canada Inc. and  
Ronald G. Atkey, in his capacity as sole trustee of the LGE Trust  
(collectively Icahn)**

**and**

**Lions Gate Entertainment Corp.  
(Lions Gate)**

**Section 161 of the *Securities Act*, RSBC 1996, c. 418**

<b>Panel</b>	Kenneth G. Hanna Don Rowlatt Shelley C. Williams	Commissioner Commissioner Commissioner
<b>Date of application</b>	September 2, 2010	
<b>Date of hearing</b>	October 18, 2010	
<b>Date of decision</b>	October 18, 2010	
<b>Date of reasons for decision</b>	November 18, 2010	
<b>Appearing</b>		
Mark Gelowitz Allan Coleman Robert Anderson, Q.C. Teresa Tomchak	For Icahn	
Mark Andrews, Q.C. Andrew Nathanson Lata Casciano	For Lions Gate	
Shawn McColm Gordon R. Smith Leslie Rose	For the Executive Director	

# 2010 BCSECCOM 629

## Reasons for Decision

### I Introduction

- ¶ 1 Icahn applied for an order cease-trading a shareholder rights plan (the Second Lions Gate SRP) adopted by the Lions Gate board of directors on July 1, 2010.
- ¶ 2 After a hearing held on October 18 we ordered, considering it to be in the public interest, that trading cease in any securities issued, or to be issued, under, or in connection with, the Second Lions Gate SRP, with reasons to follow (see 2010 BCSECCOM 590).

### II Background

- ¶ 3 On March 1 Icahn made a cash take-over bid for shares of Lions Gate (the First Icahn Offer).
- ¶ 4 On March 11 the Lions Gate board of directors adopted a shareholder rights plan (the First Lions Gate SRP).
- ¶ 5 After a hearing held on April 26 and 27 we ordered, considering it to be in the public interest, that trading cease in any securities issued, or to be issued, under, or in connection with, the First Lions Gate SRP, with reasons to follow (see 2010 BCSECCOM 214)
- ¶ 6 Majority Reasons for Decision were issued on July 26, 2010 (see 2010 BCSECCOM 432).
- ¶ 7 The Majority Reasons provide further background to the history between the parties and explain the public interest reasons for the Majority Decision cease trading the First Lions Gate SRP.
- ¶ 8 Minority Reasons for cease trading the First Lions Gate SRP were issued on September 1, 2010 (see 2010 BCSECCOM 494).
- ¶ 9 On July 1 the Lions Gate board of directors adopted the Second Lions Gate SRP.
- ¶ 10 The Second Lions Gate SRP has not been approved by the Lions Gate shareholders and there are no plans to seek approval.
- ¶ 11 The Lions Gate board of directors took no steps to seek a competing or alternate transaction.

## 2010 BCSECCOM 629

- ¶ 12 On July 20 Icahn made a cash take-over bid for all the shares of Lions Gate it did not own (the Second Icahn Offer) conditional , *inter alia*, to the Second Lions Gate SRP being cease traded.

### III Issue

- ¶ 13 The issue before us was whether it was in the public interest to order that trading cease in any securities issued, or to be issued, under, or in connection with, the Second Lions Gate SRP.

### IV Analysis

- ¶ 14 We followed the Canadian securities regulators' public interest policy principles governing shareholders rights plans by target companies as a defensive tactic. These principles are contained in National Policy 62-202 *Take-Over Bids – Defensive Tactics* and were reviewed in the Majority Reasons and Minority Reasons for cease trading the First Lions Gate SRP.
- ¶ 15 Lions Gate's principal concern, that the Second Icahn Offer did not provide a subsequent offering period, was the focus of the hearing.
- ¶ 16 Lions Gate argued, but did not provide any authority, that without a subsequent offering period, like that provided in the First Icahn Offer, the Second Icahn Offer was coercive and urged us to allow the Second Lions Gate SRP to remain in place beyond the expiry of the Second Icahn Offer in order to facilitate an improved offer.
- ¶ 17 The Second Icahn Offer is not a permitted bid under the Second Lions Gate SRP, and would therefore trigger its operation.
- ¶ 18 There was no issue at the hearing that any party had failed to comply with the relevant securities legislation.
- ¶ 19 We find that the Second Lions Gate SRP, if allowed to continue, would deprive the Lions Gate shareholders of the opportunity to respond to the Second Icahn Offer.

### V Decision

- ¶ 20 We therefore cease-traded the securities issued or to be issued in connection with the Second Lions Gate SRP.
- ¶ 21 November 18, 2010
- ¶ 22 **For the Commission**

**2010 BCSECCOM 629**

Kenneth G. Hanna  
Commissioner

Don Rowlatt  
Commissioner

Shelley C. Williams  
Commissioner