Citation: 2013 BCSECCOM 393

Alamos Gold Inc.

and

Aurizon Mines Ltd.

***Securities Act*, RSBC 1996, c. 418**

Panel	Brent W. Aitken Audrey T. Ho Don Rowlatt	Vice Chair Commissioner Commissioner
Date of decision	March 18, 2013	
Date of reasons	September 17, 2013	

Appearing

Andrew Gray	For Alamos Gold Inc.
Sean K. Boyle Alexandra Luchenko Kathleen P. Keilty Bob Wooder	For Aurizon Mines Ltd.
Stephen R. Schachter, QC Wendy Berman Jeff Roy	For Hecla Mining Co.
Gordon Smith Leslie Rose	For the Executive Director

Reasons for Decision

I Introduction

¶ 1 After a hearing on March 15, 2013 we made orders in connection with an offer by Alamos Gold Inc. for Aurizon Mines Ltd. (see 2013 BCSECCOM 91). These are our reasons.

II Background

¶ 2 On January 14, 2013 Alamos offered to acquire all outstanding common shares of Aurizon for either $4.65 in cash or 0.2801 of an Alamos share for each Aurizon common share, at the election of the shareholder. The offer's expiry date was February 19.

¶ 3 The offer contained a minimum tender condition requiring that enough shares be tendered under the offer so that Alamos would have 66⅔% of the outstanding Aurizon shares.

¶ 4 On January 22 Aurizon adopted a shareholder rights plan.

¶ 5 On February 5 Alamos applied to the Commission for an order pursuant to section 161 of the Act for an order cease trading the rights plan. The Commission scheduled a hearing to hear the application.

¶ 6 Before the hearing took place, Alamos and Aurizon came to an agreement as a result of which they requested the Commission to make orders. On February 18, 2013, the Commission ordered, by consent, that trading cease as of March 4 in respect of any securities issued, or to be issued, under or in connection with the rights plan, unless Aurizon waived the application of the rights plan to the offer.

¶ 7 On February 19 Alamos extended the expiry of the offer to March 5.

¶ 8 On March 3 Aurizon entered into an arrangement agreement with Hecla Mining Corporation. The arrangement agreement valued Aurizon shares at $4.75. The agreement also required Aurizon to pay Hecla a break fee of $27.2 million if Alamos acquired more than 33⅓% of the Aurizon common shares. The fee amounted to about 3.5% of the value of the Hecla transaction. The fee was triggered by Alamos' acquisition of 33⅓% of the stock because if it were to do so, it could block the Hecla transaction.

¶ 9 On March 4 Aurizon announced the Hecla transaction and its waiver of the rights plan as contemplated by the consent order.

¶ 10 On March 5 Alamos waived the minimum tender condition and extended the expiry of the offer to March 19, 2013.

¶ 11 On March 11 Aurizon adopted a second shareholder rights plan and on the same day Alamos applied to the Commission for orders cease trading the second rights plan and the proposed arrangement with Hecla unless the arrangement agreement was amended to remove the break fee.

¶ 12 We heard the application on Friday, March 15. On Monday, March 18 we made orders cease trading the second rights plan (2013 BCSECCOM 91). We did not cease trade the Hecla arrangement.

¶ 13 The offer expired on March 19. On that day Alamos announced that it would not be extending its offer and that it would not be taking up any shares tendered because, as a result of the break fee, the conditions of its offer had not been met. In its news release Alamos said that as a result of the break fee "the cost of acquiring Aurizon is now simply too high".

III Analysis

¶ 14 We considered National Policy 62-202 *Take-Over Bids – Defensive Tactics* and followed the relevant authorities. This law has been recently considered by this Commission in *Icahn Partners* 2010 BCSECCOM 214 (decision), 2010 BCSECCOM 233 (reasons), and by the Ontario Securities Commission in *Baffinland Iron Mines Corp.* 2010 LNONOSC 904. The principles established by the Policy and the authorities are well known and we need not review them again here.

¶ 15 By the time of this application, there was no evidence of an alternative transaction, other than the Hecla transaction, that would increase shareholder choice and maximize shareholder value. The auction was essentially over. All that was left was for the Aurizon shareholders to choose between the Alamos offer and the proposed Hecla transaction.

¶ 16 On that basis, there was no reason for the second rights plan to continue, and so we cease-traded that plan.

¶ 17 The next issue was whether it was appropriate also to cease-trade the Hecla transaction.

¶ 18 Alamos argued that the break fee in the Hecla transaction was intended solely to thwart the Alamos offer "by ensuring that the only choice Shareholders are able to make is on the Hecla transaction" and that the break fee "can only be interpreted as an unusual defensive measure aimed at eliminating the opportunity of Shareholders to consider the Offer". Accordingly, said Alamos, the break fee should be set aside.

¶ 19 Aurizon argued that the break fee was necessary to induce Hecla to agree to an alternative transaction. Aurizon and Hecla entered evidence that the terms of the transaction were the subject of vigorous negotiation, including the amount of, and trigger for, the break fee.

¶ 20 The evidence was that the Aurizon board was not going to be able to obtain an alternative transaction with Hecla without the break fee in the form of that which ultimately prevailed. In the exercise of its fiduciary duties, the board assessed the value of the Hecla transaction as a whole in considering whether the transaction would be in the best interest of Aurizon. The board concluded that it would be.

¶ 21 We therefore concluded that the break fee was a necessary element of an alternative transaction the Aurizon board negotiated for its shareholders to consider, rather than an attempt to frustrate the Alamos offer.

¶ 22 As it happened, Alamos decided to abandon its offer. Its stated reason was that the break fee made the deal too expensive – somewhat surprising, considering that Alamos entered no evidence nor made any submissions indicating that the break fee was at a level that, left in place, would cause Alamos to abandon the offer.

¶ 23 In any event, we saw no reason to interfere with the break fee. There was no evidence that the terms of the break fee were unreasonable. The size of the fee was within the usual range of these sorts of arrangements, and the 33⅓% trigger was not unreasonable in the circumstances facing Hecla when it was negotiating the transaction.

¶ 24 We therefore dismissed Alamos' application to cease trade the Hecla transaction.

¶ 25 September 17, 2013

For the Commission

Brent W. Aitken
Vice Chair

Audrey T. Ho
Commissioner

Don Rowlatt
Commissioner